

SOCIAL PRACTICES OF PLANNING LAW IN  
THE BUILT ENVIRONMENT OF SANTIAGO  
2007-2017

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I, Vicente Burgos Salas, confirm that the work presented in this thesis is my own. Where information has been derived from other sources, I confirm that this has been indicated accordingly in this thesis.

## ABSTRACT

This thesis explores the role of planning law in urban change in Santiago, Chile. Working from a view of law constituting the built environment, I examine the interaction between the practices of planning law and the production of the spatial to analyse how legal instruments impact in urban processes. Cities are subject to legal institutions and procedures that aim to regulate and organise their development. The enforcement of planning law by governments affects the practices of actors in cities. Yet, little is known about the spatial impact of actors' interpretations, understandings and ways of doing things from the perspective of the practice of planning law. My main argument is that reading the relation between law and the built environment in cities such as Santiago can help to uncover the potential for legal instruments to achieve desired urban change.

The thesis expands on the literature of legal geography and on debates examining the relation between law and the city. To that end, I conduct an exploration of the social practices of law by documenting and comparing the interpretation and enforcement of planning law by public, private and civil actors in the built environment of three local governments in Santiago. The research approach develops an analytical understanding of the meaning of the social practices of law and their constitutive role in the spatial outcomes in the built environment.

The research explores this relation between law and the built environment by examining primary data collected through qualitative fieldwork, document analysis and quantitative analysis of rulings regarding administrative decisions on planning controversies in Santiago. Mixed methods provide a broad range of sources to document the ways public, private and civil actors put planning law into practice. At the same time, the thesis researches the discourses of law that are mobilized by these actors in the processes of change in the Municipalities of Santiago and in Chilean legal institutions. The data is analysed through discourse analysis, with a focus on actors' practices, discourses and strategies using planning law and its spatial manifestations in the built environment.

Avoiding seeing law as an abstract concept and a linear process, I contribute to a more comprehensive understanding of planning law, arguing its social practice in a given time and place is a key element to unveil its constitutive role in the built environment through the canalisation, as in establishing the legal course and limits of the intentions and objectives of different actors. Providing an analysis of how planning law is materialised in the built environment, the research seeks to uncover the relevance of social practices of the different actors in the use of planning law. It discovers that formalistic interpretations deeply influence how actors perceive planning law and how they use it for their objectives and presents the built environment as a manifestation of the consequences of a legalistic interpretation of planning law. The reflection on the strong links between the social practice of law and its spatial manifestation seeks to explain how canalisation could be used for addressing urban policy objectives through legal instruments and the potential of planning law to produce change in Santiago.

## IMPACT STATEMENT

The urban development in Chile has steadily increased since 1990. Many types of residential, commercial and industrial projects have impacted significant areas in Chilean cities. In recent years, the intensity of land exploitation has affected local communities and stressed public administration offices. Many of these projects have exploited land value without appropriate balance of local communities, generating urban degradation and affecting the quality of the neighbourhoods. This situation has increased the interest for local communities and NGOs to fight against developments through planning law procedures.

In this context, studying the role of planning law in these processes of urban change has a number of academic and non-academic impacts.

Academically, this thesis develops an analytical framework to study the relation between the practices of planning law of public, private and civil society actors and how legal instruments canalise the objectives of urban policies. By looking at how law constitutes the built environment, the thesis can help to advance to a broader understanding of the development of place. The main contribution of the thesis is expand the research of planning law as more than a discussion on how design better rules and regulations of planning law: the role of social practices of actors' "ways of doing things legally" affect planning and spatial results in ways which have been unattended from legal and urban scholars.

Specifically, the literature of legal geography has emphasized the reciprocal constitution of law and spatiality as core objects for research. This thesis focuses on case studies using planning law in three municipalities of Santiago, Chile. This brings methodology of legal geography to unveil the definitions and constructions of Chilean Planning Law and the revision of rules and regulations in the context of a South American city, and how the city making by actors is related with legal

This study also has a number of policy impacts for urban rules and regulations. In particular, the case studies show that ill-defined and wrongly implemented rules and

regulations can be catalysers of conflict and damage among communities. The thesis can serve as a basis to reflect on the concept of legality of legal instruments that support such policies and generate better processes of planning participation. Also, the recompilation of testimonies and reflections from communities can serve to generate rules and regulations that include those discourses and strategies.

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## LIST OF ABBREVIATIONS AND ACRONYMS

ADI	Real Estate Developers Association
CCHC	Chilean Chamber of Construction
CNDU	National Council for Urban Development
DDU	Urban Development Division of the Ministry of Housing and Development in Chile.
DOM	Directorate of Municipal Works ( <i>Dirección de Obras Municipales</i> )
GLUD	Ley General de Urbanismo y Construcciones ( <i>General Law of Urbanism and Development</i> )
GOUD	Ordenanza General de Urbanismo y Construcciones, (a <i>General Ordinance of Urban Development and Construction</i> )
INE	National Statistics Institute
JVB	Junta de Vecinos de Bellavista
LUP	Land Use Plan
LUP	Land Use Plan (Plan Regulador Comunal)
MHDU	Ministry of Housing and Urban Development
MOP	Ministry of Public Infrastructure
MTT	Ministry of Transport and Telecommunication
NDEC	Neighbourhood Defence of Estación Central (“Agrupación de Defensa de Barrios de Estación Central”, NDEC)
OECD	Organisation for Economic Co-operation and Development
SEREMI	Regional Secretary of the Ministry of Housing and Urban Development
SERVIU	Service of Housing and Urbanization

## Chapter 1. Introduction: Why study planning law?

My research is concerned about how the importance planning law in the production of the built environment is understood. This thesis explores the social practices of legal actors such as civil servants, private developers and residents affected by urban developments in relation to planning law, with an emphasis on the spatial results of these practices. This aim is very much related to my professional experience as a lawyer and planning practitioner in Chile since 2007. The aim of conducting doctoral research was heavily influenced by my professional experience as an urban developer of social housing between 2007 and 2012 and as a civil servant between 2013 and 2015.

When I started the process of applying for doctoral research, my main concerns were related to my experience as a lawyer and the practice of planning law in Chile. At the time, I was working in the Urban Development Division of the Ministry of Housing and Development in Chile (DDU). We oversaw the interpretation of applicable planning laws for developers, municipalities and communities, and developing legal proposals for urban policies. During this time, I was deeply impressed by the multiplicity of problems of interpretation and enforcement of the planning laws in concrete cases of development in Chile. The number of questions, divergences and unwanted consequences produced by the enforcement of planning law in Chile were many.

The objective of the civil servants in the DDU was to improve planning law rules and regulations and the interpretations employed by municipal officers, private developers and residents all over the country. However, the belief of many of my colleagues was that for every regulation drawn up, interpreted or specified, a *trick* could be created, particularly by those who wanted to develop new urban projects. There were many cases in which a regulation created for a particular purpose appeared to have unwanted or unplanned consequences in the built environment. I sensed that the possibility for local governments and citizens to control the objectives of their development were limited by the legal system itself and the range of manoeuvre that it provided for the DDU to interpret. At the same time, the number of institutions related to the interpretation of planning law and how it fitted with the general principles of public law was astonishing. Any controversial issue regarding the city included multiple, and normally incompatible, interpretations of planning law by different public institutions. The fragmented structure of the Chilean government

added complexity to the task of providing the clearest possible laws to regulate the built environment.

The interpretation of planning law was deeply influenced by how we, the civil servants believed it could be interpreted formalistically by different actors, artificially separating the objective of the rule from its strict interpretation according to the 'letter of the law'. When the Division was in charge of developing a regulation to be included in a reform of planning law, there was an analysis of how those changes could be interpreted by a number of public institutions and actors. One of the main objectives of planning laws was to avoid a creative interpretation that could lead to unwanted results. It would take just one person or developer to change the interpretation of the new regulation and generate unplanned consequences. Also, planning law was subject to uncoordinated interpretations by government agencies and by legal jurisdictional institutions. The Courts normally interpreted planning law differently from the DDU. These considerations were taken in account when new legal reforms were being developed.

At the same time, there were increasing public discussions and arguments regarding the urban challenges that Chile faced. The rise in social and residential segregation; urban insecurity; the increasing housing deficit; the fragmented urban governance of Santiago; problems in transportation; chaotic land use planning; and the appearance of immigration to the main cities in Chile, were themes that informed the urban discussions. A diagnostic report by the Ministry of Housing and Urban Development concluded that the tools that the planning system had were inadequate, fragmented and antique. "Legal and institutional dispersion" limits the capacity of the State to obtain data and deliver public policies that tackle the stated problems (MHDU, 2014:14, own translation).

In that sense, Santiago has characteristics that make an interesting city to research on. Its contradictory numbers on an intense real estate development, while increasing housing deficit and residential segregation have been described by research as it is explained in following chapters. However, a in depth revision on the causes of these problems hardly ever discuss planning law and the practices of actors as part of the explanations for the observed outcomes.

Since 2014, the Ministry of Housing and Development has sought to implement a new National Policy of Urban Development that identifies general principles that inform the next generation of policies and reforms to tackle these problems. One of its agreed objectives is to “provide support and a sense of unity and coherence to the restatement of the different legal bodies that require modernization to adequate to the new challenges of cities” (MHDU,2013 :15). In that spirit, a new land policy for social integration was devised in order to recommend policy reforms such as specific taxation on land development, payments for externalities and mandatory social integration in new housing projects (MHDU, 2015:23). However, most of the recommendations required reform in the legal bodies of planning law. These reforms required legal translations in legal reforms that will eventually change procedures and requirements of planning processes based on legal decisions by the same actors that have produced the described problems.

This research is, therefore, very much related to my experience, the frustrations about understanding actors’ use of planning law and the institutional context of planning in Chile. The intention of making planning law ‘better’ and fit for policy aims faces the challenge of a dialectical relationship with the built environment. Particularly, after my experience in the Division, I argue that the social practices of actors such as local and national civil servants, private developers, residents and other actors, and their understandings and knowledge of “what law is and what it *should be*” need to be considered and examined. The value of this information is twofold. On the one hand, the outcomes of public policies and the stated objectives of planning law reform are influenced by the interpretation and practices of actors. On the other hand, these and interpretations could influence the creation and design of new planning legal regulations.

Also, a consideration of the social practice of planning law can enlighten discussion of planning law reform and provide better ways of addressing the urban challenges that Chile faces. As I will explain in the literature review, a prominent way to address these challenges is to conceptualise planning law as a result of public policies or as a political instrument to achieve specific results. However, I believe that there is much attention on those problems for which planning laws reforms are needed, but little awareness of how the legal system, its context and culture affects the ability of planning law to achieve the policy objectives. I also agree that there is a need for a new planning law to address the issues that I have outlined, but reflection is required on how these instruments need to fit

with the law as a system. The practices of planning law by lawyers, planners and multiple actors the social practice of law more generally must be examined to understand what is at stake when reform or a new policy is developed.

The motivation for this research has been to address actors' common understandings and ways of doing things -the social practice of planning law - that use planning legal rules and regulation to achieve their objectives in the built environment: What does the social practice of planning law mean and how do these common understandings influence the relation of law to the built environment? What are the common understandings of actors and how are they part of the spatial production of Santiago? I believe that if we grasp those understandings of law spatially, it is possible to comprehend new ways that change the meaning from planning law in the books to planning law in action.

Political objectives in the city such as poverty reduction, the creation of integrated housing policies or the achievement of mixed and vibrant neighbourhoods are mostly expressed through planning law reform. My argument is that the social practices of planning law must be unpacked and better understood, in order to deepen the understanding of planning law and its relevance in processes of urban change.

## 1.2 Planning law in the city of the 21st Century

A growing proportion of the world's population is urban and the challenge of developing a sustainable society will be faced in cities. Inequality has become an increasingly urban issue, as the gap between the rich and the poor in most countries is at its highest levels for 30 years (OECD, 2015). This context has resulted in calls for planning practitioners to develop inclusive and socially just approaches as the core of urban planning efforts (Watson, 2009; Uitermark and Nicholls, 2017). The Habitat III conference, which took place in 2016, discussed the major urban challenges for the next 20 years. The main promise was to deliver commitments to achieve sustainable development (UN-Habitat, 2016b). The output of this conference was the *New Urban Agenda* document, which provides shared commitments to achieve "sustainable urban development". To that end, legal frameworks and regulation appear in different places. For instance, one of the Commitments (N°41) is to promote legal mechanisms in cities to create inclusive platforms

that allow participation in decision-making and planning and enhanced civic engagement. Another example is Commitment N°110, which sets out the necessity for regulations that ensure safe housing and planning. Legal instruments appear important to the achievement of several of the commitments of the New Urban Agenda.

In considering the benefits and challenges of increasing urbanization, UN-Habitat argues that planning law plays a fundamental role in the management and development of the urban environment. Particularly, UN-Habitat promotes socially and environmentally sustainable cities, including commitments to:

*Review restrictive, exclusionary and costly legal and regulatory processes, planning systems, standards and development regulations; Adopt an enabling legal and regulatory framework based on enhanced knowledge, understanding and acceptance of existing practices and land delivery mechanisms so as to stimulate partnerships with the private business and community sectors; and put into effect institutional and legal frameworks that facilitate and enable the broad based participation of all people and their community organizations in decision-making of human settlement strategies, policies and programmes* (UN-Habitat, 2016a, p. 2)

UN-Habitat recognizes in planning law one of the foundations of effective urban management and development for sustainability. However, the term “review” suggests that current legal systems are part of the reasons for the incapacity to effectively solve segregation or informality. Particularly, planning law impedes innovation and reforms to overcome the challenges of cities. At the same time, many cities such as Santiago are “burdened by laws that do not match the prevailing urban reality”<sup>1</sup>. Also, already-existing planning laws are difficult for authorities to enforce, sometimes because the authorities lack sufficient legal expertise, and other times because informality changes the enforcement of planning law in determined places. Multiple and rigid rules and regulations have pushed some citizens to pursue land, housing and business through non-legal routes.

This perspective highlights the importance of the quality of legislation and an on-going relation between planning law, policy and planning, but it does not recognise a broader role of the constitutive relationship of law on the built environment. The aspect of

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<sup>1</sup> UN-Habitat, 2018, available at: <https://unhabitat.org/urban-themes/urban-legislation/> [Consulted: April 15<sup>th</sup>, 2019]

practices or the meaning of legal institutions in spatial terms is also absent from these UN-Habitat policy documents. The role of actors interpreting and using planning law for their own objectives and the role of the Courts and public officers are notably absent from the debates about sustainable development. At the same time, dynamic spatial processes are connected to a static perspective on planning law. According to this approach, planning law needs to be reformed in order to improve its results, but it is not questioned how that planning law translates into practices that, as I argue through this Thesis, also constitute cities.

Traditionally, the debates over planning law in Latin America have focused on the problems associated with the non-compliance of several actors with the urban planning legal regulations (a critic of this subject can be found on Azuela, 2016). These questions are important: most cities in Latin America are characterized by their informality, sometimes directly attributed to the rigidity of laws; but the focus on irregularity has resulted in the overshadowing of other aspects of legal institutions in urban society such as the consequences of the enforcement of those rules. Since this century, a number of Latin American scholars have questioned on the many and unexpected effect that law has in the life and organization of cities (Azuela, 2016, Rajevic 2009). Rather than question how planning law should be improved, these scholars have focused what happens with legal phenomena in cities in practices. Particularly, as the second Chapter explains, in the case of cities it has been recognized that planning law rules and regulation have an active role in the built environment.

The call for international institutions and scholars to focus attention on planning law has found fertile ground in Chile. Coincidentally, urban planning has been widely discussed after the development of the new Urban Development National Policy in 2013. Proposals have emerged from the Commission in charge of legal reforms of land policy and social housing. These proposals require important changes in the planning law that regulates those matters. However, the calls for law reform have not been explicitly linked to the role of legal social practices. How actors see the planning law, their objectives, techniques, assumptions and strategies to implement their visions through legal instruments of planning are not included nor mentioned in those calls for reform. As I will argue during the course of this research, not considering these social practices of planning law could restrict the impact of planning law reform. Therefore, this research aims to

generate discussions on the constitutive relation that hope to provide answers that understand law dynamically and practically for the case of Chile. That perspective aims to contribute to ongoing debates about planning law in the context of global urbanization.

### 1.3 Context of the research: the urban environment of the inner centre of Santiago, Chile

This thesis proposes to explore the role of social practices in planning law in the built environment, taking an approach that considers planning law through its rules and regulations, legal decisions and a case-study. These three sources of data are located in Chile, focused on three Municipalities (Providencia, Independencia and Estación Central) of the central area of Santiago.

The importance of planning law in the built environment has been thoroughly researched (see, for instance, the work of Azuela 2009, 2013, 2014, 2016; and Fernandes 1995, 2003, 2009, on the relation between planning law and the built environment). Chile has also received academic attention to the study of the legal institutions of planning law (Rajevic, 2000, 2007, 2010; Vicuña, 2013). These Chilean scholars have focused on understanding institutions of planning law such as construction permits, the legal codes of planning law and its rules and regulations and conceptualise them from a descriptive perspective. Yet, Chilean research has not focused on the social practices of planning law that deal with the urban environment; or the influence of these social practices on the spatiality of concrete situations, such as the renovation of the urban centre or the appearance of mega-density urban developments. The reasons for the invisibility of these social practices are multiple: at times, social practices of planning law are ignored in accounts of planning law that focus on its rules and regulations and results; at other times, social practices of planning law are hidden in accounts that research the planning system as a political artefact. Similarly, the employment of research methods that can follow socially and spatially meaningful patterns of the actions of actors using planning law is limited.

In 2019, Santiago is a city with over seven million inhabitants, where land use plans and construction permits are managed at the municipal level. To follow the spatiality of social practices of planning law, the research focused on data at this level. After reviewing the discourses of planning law rules and regulations and studying the rulings of legal

institutions, I document the spatial results of social practices using three municipalities as units of analysis. The chosen municipalities represent places of the city in which private developers have approved projects that vary with the income characteristics of each municipality, have clashed with the interests of existing residents. In these cases, local and national level civil servants have taken different decisions based on legal technicalities as it has been documented for conflict of laws (Riles, 2004) and for planning criteria which has been related with pursuing political objectives (such as in the case of Toronto documented by Valverde, 2012). Following the built environment effects of decisions made through legal processes, allowed me to compare the social practices of planning law and the legal strategies and interpretations of actors in the three cases, which constitute the built environment in forms documented in this Thesis.

#### 1.4 Research aim, research question and definition of key terms

This thesis contributes to the discussion of the constitutive relationship between the social practice of planning law and the built environment in three municipalities of Santiago. It takes a case study approach and documents the role of Chilean planning law through three cases of urban change in Santiago. The scope of the research is the practices of actors in employing planning law to produce effects in the built environment and how its enforcement is spatially relevant to the constitution of the built environment in these three municipalities. These contributions make relevant a series of questions: How is the constitutive relation of the built environment by law relevant to understanding planning processes and challenges in cities? How do social practices of planning law relate to economic, social and cultural motivations?

The research question is the following:

How do social practices of planning law constitute the built environment in three municipalities of Santiago?

Two sub questions structure the analysis:

1. What are the elements that constitute the social practice of planning law?
2. How do urban actors use planning law for their objectives in the city?

The key terms of the research question are introduced, although I will expand on these definitions throughout the research, particularly in Chapter 2. The adequacy and accuracy of these definitions are explored throughout the thesis and reflected upon the Analysis Chapter.

Definitions of planning law represent different emphases on law itself. One way of defining planning is by considering its objectives, constituted by the rules and regulations of different legal codes aiming to regulate the territorial planning of human settlements and the urban use of the land (Rajevic, 2000: 531). In the same spirit, according to UN-Habitat (2016:1), planning law is “the collection of policies, laws, decisions, and practices that govern the management and development of the urban environment”. Law, in its turn, are rules, usually made by a government, which may forbid individuals to perform various kinds of actions or that may impose various obligations on individuals (Hart, 1961). Planning law refers to the rules and regulations that are used to order the planning of cities. In this definition, planning law refers to any legal rule contained in a legal code which deals with how urban planning is performed, including, for example, the act of plan-making and its instruments and the resulting procedures for construction permits that may be obtained. Although this definition is useful at this stage to identify the group of rules and regulation that I am analysing, it will be critiqued and expanded with the notion of social practice of law in later chapters. The Analysis Chapter (Chapter 8) provides a re-conceptualisation of planning law based on the debates and material presented in this thesis. Other terms, such as “urban law”, used by scholars (Philippopoulos-Mihalopoulos, 2007; UN-Habitat, 2016a), “urban planning law”(Berrisford, 2011), “urban rules” (Gil, 2013) or land-use regulation (Valverde, 2011; Hengstermann and Hartmann, 2018) are included under the definition of planning law used throughout this thesis.

These definitions of planning law will be enhanced with debates on the relevance of law for the social production of the space. Scholars of Legal Geography have argued that legal debates should include spatial understanding of legal institutions as part of the law itself (Delaney, 2003). This idea does not refer to simplistic references to geographical conditions (such as climate or physical form) to explain the differences between legal orders and the implementation of positivist law on an empty “white page” container of space (Butler, 2015). To the contrary, the interest is in questions of how the law “shapes

physical conditions” and legitimates spatial results, making clear that law has a physical presence (Holder and Harrison, 2003:3). This reconceptualization of law also provides a methodological tool, showing the legal significance for the built environment of documents, buildings, street layouts and practices (Bennett and Layard, 2015). The material significance of law and the constitution of the legal and the spatial are expanded in Chapter 2.

Related to the spatial significance of planning law, the social practice of law refers to the “ways of doing” of actors which determine answers to legal questions based on common and background understandings in a legal community at a given time and place (Dagan, 2018). These understandings - perceived as obvious by a community of actors - provide stability and predictability in the interpretation of the law, even if legal codes and rules and regulations change. In that sense, the accepted understandings gain validity not as linguistic agreements but as predictive and stable conditions which are shared by actors in common decisions in the built environment. These shared understandings provide actors following spatial objectives in the city, such as private developers or residents, with legal certainty for their decisions and agendas.

When I use the term *built environment*, I refer to “*the totality of physical structures: houses, roads, factories, offices, sewage systems, parks, cultural institutions, educational facilities, and so on*” (Harvey, 1976: 265). From this perspective, the built environment of a city (in the case of this research, Santiago) is made up of those physical elements that constitute *palpable* things. The literature review discusses how the built environment relates to the concept of space and its social production.

## 1.5 Key argument of the thesis

The argument of this thesis arises from the role of planning law in the constitution of the built environment. In the Chilean context, planning law can be seen as an instrument of change where legal rules govern the decisions for urban change: planning law sets incentives and objectives for actors to make decisions. However, academics have argued that the social practices of law matter for how law is practised. Following that reflection, in this thesis I argue that law constitutes the built environment through the social practices of planning law. By looking the literature of law and space and its argument that they co-

constitute each other I show that (i) the spatial is present in the law in a number of forms, and that (ii) the understanding of space that the law operates with is one that is even, universal, neutral and undifferentiated. However, by acknowledging that law constitutes the built environment Thesis shows that the treatment of law on space is actually particular, uneven, invested with different possibilities and thus creates uncertainties.

To reflect on this argument, I developed a conceptual framework inspired by insights from legal geography. As I explain through the course of the thesis, legal geography scholars argue that law is always in space and spatiality is always in the law. Law is also always social, and spatiality is socially produced. Showing how the law and space are co-constitutive provides a particular way into understanding the social practices of planning law. The conceptual framework of my research is partially inspired in the idea that law is always in space, to analyse dominant discourses and strategies in planning law emerging from the enactment of legal devices and the review of legal decisions and forms in which planning law is enforced in three different spatial contexts in Santiago, constituted in three municipalities: Independencia, Providencia and Estación Central. That analysis produced results that identified the following social practices of planning law: a formalistic interpretation of planning law (following what the rule requires apparently without other consideration); technicalities endorsed by formalism to achieve dominant built environment results; and formal interpretations influencing the discourse of public and private actors.

I interpret these results as evidence of the significant role of social practices of planning law working with the built environment. The production of the built environment is canalized by planning law providing limited parameters for public and private actors to engage in interactions about the enaction of the built environment. This canalisation through planning law has spatial consequences (binary manifestations of legal discourses and decisions) and influences how actors develop their strategies in urban processes. In arguing that the social practices of planning law can be understood through the way that law constitutes the built environment canalizing **planning and the production of the space** means that: policy makers focused on planning law reforms need to go beyond reconsidering how planning sets objectives and incentives to consider how planning **law is interpreted and used in strategies by public and private actors**. At the same time,

academics focused on planning law need to take account of the specific forms/ways in which social practices of planning law emerge in order to understand their effects.

## 1.6 Overview of the Thesis

The thesis is structured in eight chapters, each combining description and analysis of planning law aiming to unveil the social practice of law and its constitutive role in the built environment.

Whilst the first three chapters represent academic reflections on relevant bodies of research and theory, Chapter 4, 5 and 6 combine evidence obtained from the fieldwork with analytical discussions of planning law. The last two chapters aim to condense both theory and data gathered to provide reflections and future steps for the study of social practices of planning law and the built environment.

Chapter 2 explores the literature on the role of planning law in the built environment. Looking particularly to debates on planning law, legal theory and planning theory, I argue that although planning law has been addressed by legal and planning scholars, a study of the social practices of law in the built environment is still missing. The legal geography approach is also reviewed and discussed, highlighting the interaction of law in space, and arguing that the built environment is where practices and discourses of planning law are embedded. After that, conceptual definitions of planning law and the built environment are developed, which serve to develop the conceptual framework presented to answer the research question.

Chapter 3 sets out the methodology used in this research. The research objectives and the main research question are presented, and epistemological and methodological considerations are discussed. The research is grounded in a social constructivist worldview which sees planning law as a social construction, suggesting that law is also discovered in interactions of actors in the construction of the built environment.

I present my research design and an approach to the research, the motivations behind the decisions about methods and data choices and the limitations and challenges that I confronted. The data collection and analysis methods are examined. The research

uses a threefold method to produce a pluralistic account of planning law and its role in the built environment: it documents the discourses of formal planning law bodies; studies the results of rulings on planning law by the administrative Court in Chile (*Contraloría General de la República*, “CGR”) and examines three case studies of local governments in Santiago. Primary data collection of rulings is conducted and combined with observation, interviews and document analysis. The analysis method aims to understand the evidence in which planning law social practice is present in the built environment development. The chapter also reflects on my positionality or how the role of the researcher might shape the research and its results.

Chapter 4 provides an account of what *planning law* is in Chile, according to its rules and regulations. After describing the main legislative instruments and their historical and political context, I explore the role of the institutions in charge of urban planning. This chapter discusses in depth the meaning of the two main legal devices in formal Chilean planning law: the construction permit and the Land Use Plan. I discuss how both legal devices relate to discourses and social practices of law by actors in the built environment.

Chapter 5 presents a quantitative and qualitative examination of the role and action of *Contraloría General de la República* (CGR) in the built environment. First, I explain the role of CGR in the Chilean legal system and its increasing importance for the interpretation of planning law, particularly regarding the legal devices described in the previous Chapter. After that, I evaluate the action of the CGR in the 2007-2017 period, analysing the results of the rulings and the major trends of that period. I discuss the technicalities used by actors and those favoured by CGR to solve planning law controversies and how it has established a form of legal knowledge that becomes consolidated in the social practice of planning law.

Chapter 6 documents processes of urban change in three local governments in Santiago. In each of the cases, I analyse how actors use legal devices through technicalities and discourses constituting the built environment through the social practice of planning law. In the case of Independencia, the municipal planning team aims for changes in urban development through changes to their Land Use Plan. In this process, the limitations and incentives that planning law offer are documented. The case of Providencia analyses the process of a disruptive project in the heart of a traditional neighbourhood, showing how planning law makes places through multiple interpretations and procedures that often blur

the law itself. The last case is an analysis of the outcomes in a section of Estación Central, where as a result of the lack of a Land Use Plan, a series of events related to planning law dramatically changed the urban environment.

Chapter 7 discusses and makes explicit the findings of the thesis. Drawing on the three empirical chapters, Chapter 7 reflects on what has been discovered in relation to the social practices of planning law in Chile and how they relate to the existing debates. It starts by taking a critical look at the built environment of the case study municipalities of Santiago and proposes a conception of how social practices of planning law constitute the built environment. The chapter reflects on the social legal practices of formalism, evidenced in the prior chapters, and shows the ways in which planning law is interpreted is fundamental to an understanding of the constitutive role of social practices of planning law in the built environment.

Chapter 8 is the concluding chapter of this thesis. It starts by summarising the research findings, providing answers for the three research sub-questions, and explaining the key implications of the thesis, in terms of how planning law needs to be considered before it is reformed and which aims policy should locate in planning law (and which of them not) with regards to the consideration of legal practices in the built environment. Finally, it ends with opening elements for further research.

## Chapter 2.      **Reviewing planning law in the literature**

This chapter brings together a range of disciplines and ontologies dealing with planning and the built environment, from urban planning, geography, legal theory and sociology. The discussion aims to enhance the common understanding of planning law described in the introduction. I aim to explore how scholars have researched the role of social practices - ways of doing- of actors in relation to planning law and the spatial results in a built environment. Although scholars have studied, on the one hand, the relation of planning law to urban planning and the city (see Section 2.1.1) and, on the other hand, carried out critical analyses of the role of law in specific practices and in society (Section 2.1.2), other authors are specifically exploring the relationship between the social practice of planning law and its role in the built environment (Section 2.1.4). While there is evidence that law has an important role in the management of the urban development (UN-Habitat, 2016a), the role of practical interpretation, application, and enforcement by actors in ordinary practices in urban development – such as processing construction permits or interpreting the regulation of a particular local Land Use Plan - requires attention, in order to know how planning law conforms to the practice of law of each country.

The role of social practices in planning law can be tackled from disciplines that have different ways of approaching the interest of this research. This chapter explores the works of legal scholars who discuss planning law as an instrument of urban planning, and socio-legal scholars who discuss the role of law in social processes, as distinct from a law-centred description of legal practice. At the same time, I introduce the work of urban planning scholars who have also debated the role of planning in the city of the 20th century, providing material for examining spatial processes. This chapter suggests four aspects of a conceptual revision of planning law: planning law in the context of urbanisation processes; the socio-legal approach of the practice of law; planning in neoliberal cities; and the geography and law, all of them in order to refine the research question. After that, the chapter explains how these approaches feedback to each other in addressing the research question with a focus on the social practice of planning law in Santiago, with insights from law and geography and the spatialization of law.

### 2.1.    Enhancing planning law

This section explores bodies of literature that discuss different notions of planning and law. The first section introduces literature on planning law and its relationship with urban planning outcomes in the context of increasing urbanization. Then, two bodies of literature that develop understandings of “law” and “planning” -core concepts of this Thesis- are introduced: on the one hand, how the law can be studied and researched, and on the other, urban planning debates in the context of neoliberal economies. In order to reconnect planning and law, the final body of literature discusses insights from the disciplines of Geography and Law into practices of law in the built environment. The studies based in geography and law enhance reflection on the relations between law, planning and the built environment, particularly connecting the social production of law on space.

### 2.1.1. Law and urban planning

This subsection introduces research on planning law in general and the effects of planning law in processes of urbanisation. I describe how planning law has been linked with intended and unintended results in specific cities, measuring how planning law is functional for the objectives of public policies in cities. I argue that these analyses focussed on the results of planning law have only hinted at the meaning of what *planning* and *law* constitute when planning law is researched.

The increasing urbanisation of the global population has challenged systems of producing cities that can be described as outdated: physical spatial model of cities inspired by the 1933 Charter of Athens, an urban manifesto based on the ideas of Le Corbusier, still determine how cities are planned; and calls to rethink and reframe planning are being made (United Nations: Department of Economic and Social Affairs, 2018; Un-Habitat, 2018). In the context of increasing urbanisation and the problems it brings (i.e., segregation, evictions, vulnerability), the rules and regulations of planning law that govern the process of management and development of cities, have gained attention. Time and again in this increasingly urbanized world, planning law has been charged with setting high standards that can be impossible to meet for newcomers and the poor populations of cities. There is evidence that planning law excludes many of the poor from the economic benefits of the city, increasing social injustice and vulnerability, made visible in evictions and informality (Glasser, 2014). In Latin American cities, the dynamic process of urbanisation is

accompanied with the enforcement of obsolete planning laws which can provide support to oppressive discourses and legalistic measures such as evictions of informal settlements (Glasser, 2014; Fernandes and Maldonado, 2009). Therefore, the reform of planning law is seen as essential to developing an urban planning practice that achieves more inclusive cities (UN Habitat, 2016).

Beyond this interest on the phenomenon of the increasing urbanization and planning laws (Fernandes, 2011), there are scholars such as Benjamin Davy or Emily Talen who focus on the effects of planning laws' physical effects in cities: planning laws have technical and procedural features such as zoning that shape the built environment and so have effects on daily life. Scholarship has increasingly questioned how planning law relates to consequences in the configuration of cities. For example, planning law is deeply related to the location of housing since the recognition of property starts and ends at planning law (Davy, 2012). The manipulation of planning law and land use planning has resulted in the exclusion of certain social groups in cities in the United States (Mandelker and Stamper, 2002). Although planning law has different techniques and roles within different jurisdictions and countries Davy, Talen and others coincide regarding the technical and procedural characteristics and their consequences on the development of the cities they have researched.

Another aspect of the literature on planning has focused on the failure of planning law to provide efficient instruments for urban planning (Davy, 1997; Azuela and Cosacov, 2013; Azuela, 2016). Many countries face a "perennial dissatisfaction" with whichever planning laws hold at a given time (Alterman, 2013: 101). After a study that compared planning laws in 13 countries, it was concluded that urban planners in these countries face problems applying planning law to urban planning objectives. Coincidentally, research has shown that the configuration of planning law in the United States applies not to a specific place or objective in cities but to abstract ideas which leads to rules and regulations disconnected from what is needed (Talen, 2012). According to Talen, planners often enforce planning laws abstract ideas out of inertia - doing things routinely and not considering the consequences that the enforcement of planning law can have on the form and pattern of the built environment.

These problems have prompted political systems to make legal reforms to planning law. However, countries that have pursued political actions to reform planning law have faced the inability of the political system to provide improved planning law that could facilitate good instruments of planning (Alterman, 2013). It has been also noted that massive political reforms to planning law are difficult and hardly achievable (Alterman, 2013). One main obstacle for these reforms has been the need to provide certainty and clarity for public and private actors while representing social needs, a combination which have proved too difficult to meet (Rajevic, 2010; Berrisford, 2011). At the same time, there are always more politically appealing issues than changing planning law. The difficulty in obtaining consistent and significant legal reforms creates the motivation for specific “piecemeal” legal reforms: instead of pushing a review of the general system of planning law, it is sensible to make limited reforms. In the case of Chile, this has created convoluted and complex planning law and regulations, as I show in Chapter 4.

Undesirable or unwanted social, environmental and economic results in the built environment can be related to the failure of political institutions to provide planning law that meets the challenges posed by cities. These convoluted planning law rules and regulations are applied by actors such as planners, developers and neighbours through daily enforcement and interpretation, which produce a city form that might have been never intended, but is, at the same time, “legal”. The reasons for the links between unwanted effects and planning law are multiple: urban institutions or rules that were created for a particular objective fail in implementation or by design (Davy, 1997); unseen consequences of implementation of planning laws (Talen, 2012); stakeholders who use planning law for their own interests (Deborah G. Martin, Scherr and City, 2010); or even outmoded planning criteria that still prevail in non-modified planning rules. Reforms and political changes result in a welter of political objectives and rules and regulations which result in the characterisation of planning law as a particularly complex branch of law.

Scholars agree in describing planning law and its instruments as a very complex system (Fernández, 2003; Booth, 2007; Hengstermann and Hartmann, 2018). This is not only related to the different political perspectives that the legal codes, rules and regulations of planning law represent.; the technical complexity of providing rules that regulate the development of buildings and material constructions is per se, also a complex challenge (Talen, 2012). At the same time, the processes of the built environment and the

controversies between actors makes planning law that intends to govern the management and development of cities fraught with uncertainty (Azuela, 2016, Fernández, 2003). The complexity of the process of the production of the city clashes with the complexity of legal instruments in the built environment.

This complexity presents challenges to the theoretical discussion of planning law. One example is the difficulties faced in developing a general description of planning law without referring to a specific context. As Alterman notes (2013:103), the complexity and uniqueness of each national legal system means that every comparison must signpost a number of differences or contexts that limit that exercise. Planning laws in compared jurisdictions depend on variables which are difficult to ignore such as general legal similarities (for instance, common law or Civil Code traditions); unitary or federal states; geographical and economic conditions (Alterman, 2011). This has meant that much of the research on planning law has been done at national levels, limiting the comparison of successful legal instruments between cities.

However, it is possible to overcome some of the problems of these singularities in the making of planning laws by comparison of common concepts: a recurrent objective of descriptions of planning law has been to examine the limits that planning law sets on private property. Although in Latin America, property debates have been linked with the legalisation of informal settlements as an recurrent urban policy, in recent years the definition of property and its objectives has been linked with the power of planning institutions in different countries (Davy, 2012). In the case of Brazil, the debate between an individualistic private property system based on the ownership model of the Civil Code law, and property as a collective right has been the central debate on planning since 1988 (Fernandes, 2003). According to Fernandes (2003), planning law centred on the defence of private property as an individual choice limits the ability of planners to regulate the city. In contrast, when planning law understands private property in relation to its social duties, planning can achieve a transformative role through the implementation of its legal instruments.

With this focus on property, a key issue is how different devices of planning law, such as Land Use Plans or Construction Permits, provide incentives for urban development or requirements for social housing. Comparing the scope and length of

planning law instruments among countries, from those which do not affect the private ownership of property and those that do affect, redefine and redistribute property rights (Gerber et al., 2018) shows how legislation regulates technical requirements and the extent of the protection of private property. From this perspective, the planning laws of different countries have been evaluated regarding their ability to ensure fair urban development (Lincoln Institute of Land Policy, 2016; 2018), studying how public goals such as social inclusion or new housing can be enhanced in cities. Particularly, the extent to which urban governance can solve issues such as externalities or how individualistic property rights can be limited through planning instruments such as developer obligations and compulsory purchases (Munos & Van Kalveren, 2019). The examination of planning in relation to private property provides a common language to compare approaches of planning law.

Private property also provides an example of how research on planning law can move from analysis centred on legal instruments of urban planning to analysis that question the discourses of planning that are enforced through private property. The seminal work of Patrick McAuslan, (1980), *The Ideologies of Planning Law*, questioned the reasons for the “lack of objectivity and neutrality” in the rules and regulations of planning (McAuslan, 1980:2). His analysis of planning in the UK in the 1970s, shows that planning law contains within it three competing ideologies: (1) private interests of private property owners whose interests conflict with; (2) state officials with a conception of a singular ‘public interest’; both of which ideologies leave little space for; (3) citizens’ public participation. McAuslan’s central idea is that narratives and discourses of *planning* and *law* matter in order to understand the outcomes of planning law. In the UK, according to this perspective, the competing narratives of private actors and state officials have failed to include the perspectives of citizens and represent different public interests. A revision after 30 years of planning reform in the UK concludes that the state-of-art of planning law remains steadily in these terms (Adshead, 2014)

McAuslan’s insights into planning law are an important starting point for an analysis of the social practice of law: planning law is more than the legal codes, rules and regulations. However, questioning discourses and the ideologies of planning law has been a minor line of research. Most of the literature I have reviewed has considered “planning law” by considering “planning” and “law” as fixed concepts. Therefore, my next step is to discuss literature that addresses the nature of law and the challenges of planning. As Azuela

argues (2016), the relations of the city and the law require an understanding of “law” with its performative character and how the challenges of planning give content to the law. In that spirit, in the next section, I introduce discussions of the nature and the study of law and the relevance of law in discussions of planning.

### 2.1.2. Debates on the study of law

This thesis needs to set out its assumptions and normative elements to ensure the highest conceptual and methodological rigour. My research discusses legal codes with rules and regulations, rulings, and legal instruments, which can be considered differently depending on understandings of what law is and how it should be studied. This section introduces debates on approaches to the study of law, providing elements that will be used during the thesis to research planning law. Particularly, socio-legal analysis and the concept of ‘technicalities’ are proposed as theoretical tools for researching the social practice of planning law.

The study of law confronts a lengthy division between Legal Positivism and Legal Realism and socio-legal scholars. Positivism has been described as a theory of law that argues that what is distinctive about legal norms and their operation are their validity derived from enactment by an authority without reference to other considerations such as social or moral norms, or “good” and “bad” (Leiter, 2001; Atria, 2016). As a dominant theory of law, the tradition of positivism starts with the work of Jeremy Bentham and John Austin that provide three principles: there is no necessary link between legal norms and morals; legal norms are promulgated by the legal sovereign; and legal norms are reducible to commands for a person (Sebok, 1995). The positivist position sees law defined by its characteristic form - legal institutions- and its normative function of maintaining social order through coercion (Raz, 1992). Therefore, the study of law for Positivists requires and includes an understanding of legal doctrines and the legal interpretation of law within the legal system without reference to social considerations (Atria, 2016).

Particularly important to Positivist legal theory is how the law is interpreted. The operation of law as an expression of the sovereign provides the elements for an interpretation of law based on the legal consistency of the general commands in specific cases. A *formalistic* interpretation argues that the law is intelligible as problems and solutions

that are internally coherent (Weinrib, 1988) and which do not require decisions to be justified through ethical, political or religious external considerations. According to Luhmann (1989), the law is a normatively closed system, where other concepts (Luhmann uses the term 'systems') such as politics or economics have relevance only if they are translated into legal language. This legal interpretation has a distinctive rationality and a logic considered to be independent of ideology, philosophy or political justifications (Blomley, 2003). In that sense, *formalism* as the idea that solutions to legal problems can be rationally supported by referring to the "real" meaning of legal concepts has been at the centre of critiques of positivist theory by legal realism and socio-legal scholars (Harris, 1989).

In contrast, the main focus among scholars of Legal Realism is an attention to the social constitution of law. Although Legal Realism was initially limited to a theory that questioned judges' real motives and reasons when deciding cases (Leiter, 2001), it has expanded to take up the notion that law is a social construction which develops in society and it has social consequences (Tamanaha, 2017). The interest of Legal Realism is similar to Legal Positivism in separating law as it is from the law as it ought to be, but from the point of view of experiences of people rather than the internal validity of law (Ratnapala, 2013). In that sense, Legal Realists oppose an internally coherent and abstract concept of law. The interest of Legal Realists in the social relevance of law, or what law constitutes in society, has opened different paths of research. The interests of this research have merged with the research conducted by socio-legal scholars, or in the sociology of law.

The sociology of law and socio-legal scholarship are fields that embraces the relations between law and society. Sociologists argue that the law encompasses all forms of "social control" such as customs, moral codes, internal rules of communities and associations (Ratnapala, 2013). The distinction between law in the books and law in action originally noted by Pound in 1910 initiated a tradition of scholars interested on the social effects of law with a focus on the impacts of the implementation of rules in practice (Treviño, 2013). Socio-legal scholars have as their centre of attention legal institutions and their effects in society. Research on the meaning of law for social relations has allowed exploration of the connections between law and cultural, political and social forces. The methodological tools and multidisciplinary approaches for studying the effects of the law

have provided socio-legal scholars with social science concepts on elements such as culture or social life.

The social constitution of law allows to raise questions of assumed perceptions of law. For Blomley, the law is discursively imagined as a closed domain which at the same time is autonomous - but essential- from society, as an abstract construction (Blomley, 2003). The closed nature of law and the perception that it is developed and decided above society constitutes its authority (Levi and Valverde, 2008). The authority to engage in legal decisions also derives from the fact that law is a system of knowledge which is technically driven by expert practitioners (Hatcher, 2014). In that sense, socio-legal scholars focus not only on the effects of legal institutions but also on deconstructing the perceptions of what law means. The perceived closed and authoritative nature proposed by legal formalism has been contrasted with the perception that law can be uncertain and ambiguous, reflecting the power of political and economic forces (Harris, 1989; Unger, 1976).

Groups of socio-legal scholars working from the perspective of law as a social constitution of law have taken approaches to legal analysis that overcome the problems of Positivist study of law. An example is critical legal scholarship - a reaction against “liberal legal theory” that considers the law a public good and necessary for liberty (Ratnapala, 2013). For critical legal scholars, the law is a system of domination that increasingly divides society by imposing different oppressive qualifications such as employers and employees, landlords and tenants, straight and gay, and others. Although critical legal scholars fail to provide a consistent legal theory, they inform jurisprudence in questioning the supposed value-free constitution of the concept of law.

A recognition of how Legal Realists and socio -legal scholars can open up questions and enable reflections on the legal conceptualisation of the urban can be exemplified in the limited recognition of cities in the formal legal system in different countries. Frug (1980) details how the production of the city is full of legal mechanisms like private property without legal recognition in the legal powers of city management powers in the North American legal system. In fact, in liberal legal orders, the legal in the urban is represented in real property and jurisdiction -the physical limit for an authority of a legal body to administer justice- limits and frontiers (Delaney, 2003). In that sense, it has been argued that the not recognition of the city as a legal entity has been functional to increasing the

powers of private corporations and individual rights, restraining public powers and the recognition of individuals as part of a community in cities (Frug, 1999). In that context, concepts as the rule of law are analysed in action, concluding that it entails the power of capital and diminishes things which are not recognized by law, such as cities or community rights (Frug, 2010). According to Frug, the recognition of concepts such as ‘city’ and ‘community’ in legal terms would provide better legal instruments for citizens to combat economic market forces and urban displacement.

However, some socio-legal authors like Mariana Valverde (2016) have expanded these descriptions of law as a “single-entity” (a state-enforced law at a national scale) with the notion that law can also be “*a loose collection of mechanisms and rules that are often at odds with one another – and as if this monolithic ‘law’ worked in the same way throughout all scales and levels of government*” (Valverde, 2016:5). The inclusion of the concept of scale to study law in action permits a distinction between the levels at which the law is socially constituted. In that sense, along with critical descriptions of what national law means, how regional and local governments enforce law becomes a relevant focus of analysis in understanding the action of law. Research has shown that these are units that have different powers from the central state and can contradict the interpretations enforced by national authorities.

*One would think that the fact that what ‘law’ is and does nationally is completely different and even counter to what ‘law’ is at the local level would produce either confusion or cynicism among the citizenry. But the opposite is the case. Instead, legal heterogeneity or pluralism ensures harmony, or at minimum, fosters quiet coexistence. To give an example that has echoes in both the US and in Europe: the city of Toronto has adopted a strong pro-immigrant policy that ensures that to receive municipal services (including schooling) nobody will be asked to provide proof of legal status. This is quite at odds, and deliberately so, with the federal government’s increasingly negative attitude towards any immigrants that do not come with considerable wealth. But the two systems of rules, federal and local, can and do coexist even though they pull in opposite directions because they govern different things, such that the two jurisdictions are relatively independent from one another (Valverde, 2016:7).*

The consideration of law in action also provides tools for researching different scales (national, regional, local, for instance) at which law can constitute the social. In

practice and at the local level, law - again - loses its perceived consistency and neglected concepts (such as “the city”) obtain consideration from legal analyses.

The focus on the “local system of rules” or the local level is part of the inquiry by socio-legal scholars into the practice of law performed by actors on an everyday basis. Along with enquiries into the local implementation of law, socio legal scholars have turned attention to the technicians and specialists who interpret law as set in ordinary situations and make apparently meaningless legal decisions: the grant of a licence for a business in a municipality, or the granting of a construction permit appear as non-relevant legal decisions for research. In contrast, the focus of Positivist theory is on cases that represent abnormalities or interesting cases that create precedents. Main research has dismissed *technicalities of law*, which are the practical and instrumental legal problem-solving by actors through technocratic legal and doctrine argumentation based on legal knowledge (Riles, 2004).

Riles (2004) argues that legal scholars - including positivist and socio-legal scholars – have focused on the *content* of legal norms dismissing the technicalities of law as interesting for research. But legal research cannot ignore the technical aspects of law, because it would mean disregarding the many actors involved (beyond lawyers and judges), the ideologies and the practices, which are manifestation of what is argued to be the very core of legal scholarship: the place of law in society. According to Riles (2004:976), research on the technical character of law reveals the ideologies behind technical aspects; the actors “who see themselves as modest but expertly devoted technicians”; the problem-solving paradigms employed by actors; and the forms of legal argumentation. A focus on the mundane production of the law centres on the action not only of judges in legal decisions, but also on non-legal-experts such local public officers or actors who also use legal technicalities to achieve their objectives (Valverde, 2003). In discussing how to study these technicalities normally dismissed by legal scholarship, Riles shows that an account of the technical dimension of legal knowledge is itself a cultural practice, arguing against reducing legal technicalities as an expression of its historical, social and political context.

An epistemological interest in the technicalities of law from the perspective of socio-legal scholarship can enrich the meaning of the social practice of the law. Research and questions on the technicalities employed by lawyers, legal institutions and non-expert

legal actors, can complement legal doctrine and indicate how social practice also provides meaning to law. According to Valverde (2012:7), this focus also provides lenses through which to analyse prior neglected variables in urban studies in which the mundane operations of legal interactions of citizens appear without relevance against aggregate data and marginal groups' interactions with law. The city is full of legal technicalities applied in mundane and ordinary decisions, such as granting a construction permit or neighbours interpreting law to stop an urban development through legal technicalities, which make these legal decisions and adjudications relevant to the constitution of the city.

In sum, the socio-legal and critical legal scholars have argued that law must be understood as socially constituted. This is the position on understanding the law that this Thesis will use and theorize from. Legal decision-making is related with the political and social context of judges and lawyers, and that law can be related with discourses and realities that are socially constructed. I have discussed the work of scholars who argue for a focus on the ordinary and mundane technicalities drawn on a broad range of legal actors, that include judges and lawyers, but also non-experts such a civil servants, private actors and citizens, who engage in legal decisions that also constitute the social practice of planning law. With this approach to how law is understood in this research, I now discuss how planning will be conceptualised as part of planning law.

### 2.1.3 Debates on planning: is there space for the law?

As the interest of this research on planning law and its constitutive role in the built environment, in the prior subsections I discussed relevant elements that are directly related with the understanding of law. On the one hand, I described definitions and discussions on planning law. On the other hand, I described law as a socially constituted concept and I focused on the ordinary and mundane uses of law. In this subsection, I explain ways in which legal systems and its practices could be considered among the current debates in planning theory.

The two last decades of the 20<sup>th</sup> century witnessed an attack on the rationale and the results of a predominant type of planning: the idea of a city planning created by a planner based on fixed concepts and on its experience was severely challenged (Gunder, Mandanipour and Watson, 2020).Among the challenges that occidental cities have

confronted since those years, planning has emerged as a debated discipline in constant change and discussion. In this section I highlight about two elements that derive from urban complexity: the diversity of actors living in cities; and the context of neoliberal policies. Both discussions are introduced in this section in order to explain the importance of law in planning studies. It is concluded that law is conceptualised as a fixed concept limiting artificially the practical analysis of planning.

Planning theory describes how planning and its practices both function and evolve. Planning is an intervention with the objective to alter -or intervene- the existing course of processes and events (Fainstein and Defilipis, 2016). In that respect, planning theory has consolidated as a discipline which theorizes and discusses context of practices for spatial management addressing either critical descriptions or alternative knowledge to improve the planning discipline (Friedmann, 2008). Planning theory is also important to understand how practice and planning itself will evolve (Gunder, Mandanipour and Watson, 2020). In that sense, planning and practices have been moved from an interest of the better way to plan to concern about ethics and public policy, inclusiveness, and discourse, influencing planners and methods.

The complexity of cities is traceable in their urban form, being one reason why so much urban policy has focused on the built environment. However, planning was once criticised for its lack of interest in the material outcomes of planning in cities. The seminal work of Jane Jacobs (1965) underlined that planning practice lacked interest in the results of planning in the built environment of cities.

*Cities are an immense laboratory of trial and error, failure and success, in city building and city design. This is the laboratory in which city planning should have been learning and forming and testing its theories. Instead, the practitioners and teachers of this discipline (if such it can be called) have ignored the study of success and failure in real life, have been incurious about the reasons for unexpected success, and are guided instead by principles derived from the behaviour and appearance of towns, suburbs, tuberculosis sanatoria, fairs, and imaginary dream cities—from anything but cities themselves (Jacobs, 1965:17).*

Her critique considered planning prototypes known as “City Beautiful; Radiant City; Garden City” along with planning theorists like Howard and Le Corbusier. Jacobs

warns against abstract logics replacing the rich diversity of cities (Fainstein and Defilipis, 2016:26). It also represented a call for a planning practice based on an incremental approach rather than a scientific and rational model. Since then, the call for the acknowledgement of diversity has been noted as a continuing challenge for the governance of cities (Valverde, 2012).

The role of the diversity of actors and interests has been incrementally included in the planning agenda with a focus on the role of planners in obtaining agreements through participation processes. The *collaborative planning* approach has examined the theoretical conditions in which actors could reach agreements and understand different interests (Healey, 1997). However, efforts to implement these ideas proved that the already-powerful continue to dominate discussions and outcomes, which puts in question the possibility of efforts for mutual understanding (Fainstein, 2000:460). In addition, the gap between the theoretical ideal conditions for the discourse confronts practical problems, because long-standing or restrictive agendas proved difficult to tackle in this model. Nevertheless, participation has been considered a core element in planning processes seeking to avoid the appearance of conflicts, particularly since the 1990s (Lane, 2006). However, as Beauregard (2016) argues, the main issue in planning literature is writings about place, without considering the places where practice occurs and how planning decisions are made. It has been argued that planning exists as a set of different and diverse planning practices, which comes from evidence its tools, object, practice and knowledge (Alexander, 2016). At the same time, new and global challenges such as climate change, globalisation and technological advances that have new data and questions for the way planners perform spatial planning, strategic planning and the use of planning instruments. As Gunder et al (2019:1) argue, “*planning and its many roles have changed profoundly over the recent decades; so have the theories, both critical and explanatory, about its practices, values and knowledges*”.

However, among these highlighted debates on the relation between the practices of people and private and public organizations has not taken law and legal system as an element that can contribute to describe those practices. Regarding spatial planning, there is general understanding that law is important to planning, as it was discussed in the section 2.1.1. However, reflections on how the legal system itself motivates a specific set of practices and these influence the practice of planning law is scarce. as it was concluded before, “law” as fixed and linear concept. For instance, the research on informality of Roy

(2016:524) describes the *unplannable* Global South city as the one that lies beyond “the sphere of regulations, norms and codes” while the formal is a designation given by State power and wealthy urbanities and informal is the development could not retrieve power to regularize its development: urban informality is a mode of production of space and a practice of planning (533). Although these are valuable insights to describe (and deconstruct) the blurred line among the formal and informal in many cities, a possible reflection to get a deeper understanding the idea of informality is to understand how those regulations, norms and codes are interpreted by groups and organizations and how those inform the practice of planning.

Although there are reflections regarding the relevance of law in the act of planning the way “*law and legal process has shaped the objects and practice of planning is much less well understood*” (Booth, 2016: 344). As Booth underlines, the way in which the legal system and legal context is interpreted, the space for local actors to interpret the regulation and legal thinking (what is understood that laws *do*) also help to understand how planning is performed by planners and practiced by the people and groups that involve in planning processes. At the same time, calls to reform planning practice require, most of the times, changes in legislation of rules and regulations. Changes in the planning agenda to tackle the weakness and limitations against unsustainability or injustice will require reform in policy guidance, planning regulation tools and property rights (Rydin, 2013). However, the way that groups and organizations -and planners- will interpret and contest those reforms is not much discussed by literature that addresses the practice of planning.

Beyond calls for greater focus on practice and participation, planning has faced another change in its role in the built environment since the 1980s. The use of spatial planning and planning itself use has been transformed from regulating and sometimes limiting urban growth to encouraging it “by any and every possible means” (Hall, 2014:415). The economic crises on the decade before led to a questioning of the legitimacy of planning. Planning was seen to inhibit market forces, limiting economic development of cities and therefore responsible for the failure of cities to deal with decline and promote development (p. 416). The urban environment could be revitalized through public-private partnerships and less intervention by the state, and the mission of planning was to encourage investment. From a practice perspective, planning debates have been heavily influenced by economical neoliberal context in which many of occidental and global south

cities live in. This is particularly interesting to a number of planning discussions that link its failures with neoliberalism. And there are many reasons to that: “*a consequence of the supremacy of public choice, free-market economics and the rise and global acceptance of a dominant and extensive neoliberal ideology that undermines the role of public institutions, faith in the efficiency and legitimacy of public planning has degraded to being, at best, a poor alternative to market-based solutions.*” (Gunder, Mandanipour and Watson, 2020:4).

Since that change to neoliberal market approaches to planning, critical planning debates have constantly questioned the role of market forces in the city and the “entrepreneurial turn” in urban governance (Pinson and Journal, 2016). Neoliberal discourse has been adopted as a celebration of market efficiency, discouraging state intervention (Theodore, Peck and Brenner, 2009; Campbell, Tait and Watkins, 2014). The state, in this view, has transformed its role from developer to manager of urban development. Although the banking crisis of 2008 led to reflections on the limitations and opportunities of change, research has underlined that neoliberalism has maintained its core elements (Peck, Theodore and Brenner, 2013). The limitation of the state in urban affairs has consolidated entrepreneurial and competitive policy forms among local and regional level representatives to attract investment (Harvey, 2005) resulting in sharpening inequality and social exclusion (Macleod, 2002).

However, the notions of critical geography about the neoliberal city have been contested as being imprecise in regulations terms. Particularly, one of the critiques of the critical literature on planning has been that it does not engage with theories of regulation and public goods (Rickards *et al.*, 2016; Storper, 2016). Instead, the critical assessment of neoliberalism in the city has preferred to develop concepts to explain neoliberalism itself rather than producing an accumulation of empirical data (Pinson and Journal, 2016). In this way, critical geographers have tended to ignore planning regulations, land use zoning and urban policies in their research. Critiques of the conceptualisation of the neoliberal city, have been countered by the argument that they are “imprecise and over-reaching”, confusing liberalism with neoliberal policies and nostalgia for welfare states (Storper, 2016:37). Agglomeration economies have been linked with benefits for financial services, innovation and leisure (Cheshire et al. 2014). Cheshire et al. (2014) argue that, from the evidence, planning can hardly achieve the stated aims and potentially can have unintended outcomes.

One of the ways in which the reactions against neoliberal conditions of development in cities have been framed in the terms of the “right to the city”. According to Lefebvre’s reflections, the right to the city is a claim by people who formally live in the city but are marginalized from its benefits (or, the right to not be alienated) and, at the same time, it is the concrete aspiration to share and use the city’s amenities to work, study, care and live (Marcuse, 2009; Aalbers and Gibb, 2014). Critical geographers have argued that neoliberal cities create conditions for contradictory processes in which developers profit from accumulation through the dispossession of those who live in and create the liveable city (Harvey, 2012). The claims for a right to the city are a challenge to neoliberal urban development, creating resistance to the power relations of capital against citizens and calling for a socially-just reorganization (Harvey, 2012; Madden and Marcuse, 2016).

However, neither the critical geography nor the right to the city critiques of neoliberalism have addressed the relevance of planning law (nor that of law itself). As Hubbard and Lees argue:

*What is often forgotten in such debates is that, strictly speaking, rights to the city are legal in character: they only apply if they are upheld by some authority or other. These authorities have different jurisdictions, and can operate on different scales simultaneously, meaning that at times it is not clear which rights take precedence: for example, rights to freedom and self-expression are enshrined into international treaties and agreements (e.g. the Universal Declaration of Human Rights, drawn up by the UN in 1948) but in Western democracies municipal law continues to play a crucial role in mediating and shaping these (Attoh 2011)(Hubbard and Lees, 2018:9).*

In other words, many of the artifacts and concepts that have been developed in order to reinvigorate the planning practice in a neoliberal context depend on legal instruments that are many times applied by planners. However, there is not much reflection on how the right to the city is consistent with legal interpretation and practice of actors in the context of a legal system. That could undermine the ability of the right to the city to develop as a right to limit the action of markets in the city.

Other research topics in critical accounts of planning have also questioned the possibility of achieving social justice in the city through planning. The idea of justice and planning has been framed by the theoretical planning model of the “just city” (Fainstein, 2000, 2010), which argues that planning should be oriented to spatial relations based on equity. This approach includes scholars who answer the call for diversity in “radical participation” beyond the communicative model and who argue for a political response to contest power (Macleod, 2002); and includes those who provide normative conditions for the distribution of social benefits and social justice (Fainstein, 2000). Being in the latter group, Fainstein focuses on exploring an urban theory of justice, as focused on the justice of urban outcomes and the justness of processes in the production of the city.

Although it is not tackled directly, law is silently discussed in the perspectives of debates of planning theory. Considering the three main directions that Fainstein (2000) describes for planning theory: the communicative model, the new urbanism, and the just city. The first requires a procedure that could evade substantive content, but which requires rules of mutual recognition. Planning procedures are almost intrinsically regulated by rules and regulations of standards and consultations. While new urbanism is a movement that claims that advocated for what people wants *against* “archaic” zoning laws (p. 472), these are, laws that are a production of the rule of law. Other research topics in critical accounts of planning have also questioned the possibility of achieving social justice in the city through planning. The idea of justice and planning has been framed by the theoretical planning model of the “just city” (Fainstein, 2000, 2010), which argues that planning should be oriented to spatial relations based on equity. This approach includes scholars who answer the call for diversity in “radical participation” beyond the communicative model and who argue for a political response to contest power (Macleod, 2002); and includes those who provide normative conditions for the distribution of social benefits and social justice (Fainstein, 2000). Being in the latter group, Fainstein focuses on exploring an urban theory of justice, as focused on the justice of urban outcomes and the justness of processes in the production of the city, which implies the questions of how outcomes are enforceable and standardized, which are generally reached through planning reform.

Current discussions for planning for social justice debate the possibility of urban planning embracing the diversity of cities in its processes and regulating sustainable economic development as a result. Nevertheless, the debates have not included how planning law relates to either the processes or the outcomes of just city planning theory. The exception, which relates planning law to obtaining just processes and outcomes, was discussed by McAuslan (2013). Evaluating planning laws in the UK since 1980, he notes how more and more complex legislation made the planning system more centralized and more legalistic (p. 151). The emphasis on legalistic multiplication reflects the production by the political system of a massive body of legislation and regulations that make the involvement of citizens difficult and therefore, prevent just processes. At the same time, McAuslan (p. 154) discusses how ill-conceived legislation can also produce injustice as an outcome, using as an example a comparison between the UK and the US and their instruments of control of externalities of urban development: planning gains and impact fees.

Nevertheless, planning theory that discusses practice could benefit from a deconstruction of what legal systems contain and influence in spatial planning, master plans and the use of instruments of urban policy. Most of the accounts that discuss law assume it in a formalistic perspective where the content of planning law ends at its text. As I will argue during this research, social practice of planning law is full of resources to understand the practice of planning.

However, as was argued in the section 2.1.2, even the recent directions in critical planning studies tend to neglect the practice planning law - as is the case of critical geographers and the concept of neoliberal city - or frame its consideration as devices that are part of the interest of planning studies -such as market centred urban policies. The social practices of actors using planning law have not been relevant for planning theory, not even when concepts related to law (such as *right* to the city or *just* planning) have been employed. In the next section I review legal geography approach, which have researched legal mechanisms and interpretation in spatial terms.

#### 2.1.4 The role of law on space: Legal Geography

Socio-legal studies and critical legal scholars have reflected an interest in spatial questions focused on the connections between law and geography. The approaches between law and geography provide a line of enquiry to investigate a limitation of research: a deeply rooted division between Law and Geography (Blomley, 2003; Bennett and Layard, 2015). Although some scholars have investigated the relation between planning rules and regulations and the production of places (see Section 2.1.1), legal geography has called for reflection on and questioning “*the causality of the orthodoxy by arguing the imbrication of the legal, the social and the spatial*” (Blomley, 1994:63). The seminal work of Blomley in 1994 argued that law could be felt and made “locally” in the specificity of the place. In this subsection, I explain how legal geography provides a new set of questions for a research on planning and law.

The study of the relations between law and geography has occurred in a context in which the social sciences have been concerned with the role of space for the social explanations in what has been called “the spatial turn”(Butler, 2015). The spatial turn is characterised in the arguments of human geography by the understanding that the spatial is the result of social relations and power (Massey, 1994), and the “rediscovery” of the city as a matter of concern for social sciences (Amin and Graham, 1997, 2002). The assumption that spatial factors are a core element for understanding social relations and social construction has been poorly addressed by legal studies. Legal analyses understood geographic elements such as climate or physical form as causal drivers for the particularities of legal bodies in specific jurisdictions, such as how landscapes determine water laws (Bennet and Layard, 2015) or how mountains and sea can create a “strict adherence to the law” without any data or studies that provide evidence (for instance, Orrego, 2006). In contrast, approaches that combine geography and law take space as an element that could destabilize the understanding of the law itself.

Legal geography has conceptualised the reciprocal construction of law and spatiality as core objects of inquiry. Consequently, legal geography research has created concepts for tracing how the legal is performed and the social embodied in particular instances or moments. Concepts such as *splice* (Blomley, 2003:30) or *nomosphere* (Delaney, 2004:853) aim to merge the discursive and the material elements of law and space where legal decisions take place: the performance of the legal and its embodiments which are spatially located (Bennett and Layard, 2015). The conceptual construction allows that legally designed places

-such as a Court, a building, an airport, a university or a public building- can be legally and spatially tangible, distinguishable and recognised. These concepts reflect the move from treating law and space as autonomous binaries to the understanding that they are conjoined and co-constituted.

Assuming the premise inaugurated by Blomley, legal geography has undertaken research into the interactions of the social, place and law. The assumption is that the legal co-creates the spatial and the spatial co-create the law. “*Legal geographers note that nearly every aspect of law is located, takes place, in motion, or has some spatial frame of reference. In other words, law is always worlded in some way. Likewise, social spaces, lived spaces, and landscapes are inscribed with legal significance*” (Braverman *et al.*, 2014:1). Legal geographers consider law as *generative of* and *responsive to* geographical contexts (Bartel *et al.*, 2013). This assumption opens the door for a plenitude of methodological tools to understand the relation between the law and space: as Blomley (2003) argues, it has opened enquiries that legalise space and spatialise law.

To examine the interactions of the law and space (*spatialising law*), research has studied law and the social practice of law through questioning the spatial elements of rules and regulations, enquiring elements of rules and regulations in the everyday relations that produce the space. A core reflection of Legal Geography has been to challenge the law as a decision by a legal authority, independent of other social or moral references. In that sense, it questions the theories like Positivism that conceptualizes the law as universal and aspatial (Hatcher, 2014). In maintaining this universality and equality, there is a tendency for the law to “*erase spatial specificity and local difference in the name of an ordered and apparent coherent unity*” (Blomley, 2003, 25). The examination of law in specific places and in the constitution of space contests the notion of universality and shows that there are actors who benefit from, and disempower others, by the universal application of law across space. Law is always enacted and performed in particular spaces at specific times, (Mitchell, 2003) contradicting the universalizing narrative of law.

As it was argued in Section 2.1.2, socio-legal studies have started to unpack law as an institution which is socially constituted, challenging the notion of law as neutral and separate from social relations. Geographers exploring legal issues continue this line of research adding that this isolation of law from the social also neglects space (Blomley, 2003; Philippopoulos-Mihalopoulos, 2018). The description of law as a self-explanatory system

of *aspatial* principles such as universality, predictability and equality contrasts with specificity and difference found in places (Blomley, 2003). Central aspects of the law such the *rule of law*, *property* or *jurisdiction* are evaluated for their spatial effects, challenging these core principles. Law can be analysed spatially as an expression of power, institutions and narratives that are unfolded and made possible in space.

The examination of law through a spatial lens has revealed how law empowers specific discourses constituting places. For example, Blomley (2011) shows how the regulation of sidewalks and the definition of what ‘public flow’ -as a measure for the usefulness of sidewalks- is, are an expression of how the law regulates public spaces by privileging “ideal” usages of the common sphere. Research has investigated the meanings of property rights and place-attachment of people, concluding that environmental protection and traditional-knowledge collide with the rights of property ownership failing to provide a basis for understandings (Robinson, 2013; Bartel and Graham, 2016). For instance in Australia, the success of climate change arguments on litigation is deeply connected with the social context and place of the coast where the effects of these changes are most evident (O’Donnell, 2016). In these accounts, the law is not analysed on the basis of its doctrinal or jurisprudential merit, but in its constitutive role through the production of places and spaces.

This critical conceptualisation of planning law argues that negative effects of public policies have exclusionary outcomes through planning law. For instance, the legal research with spatial lens critically analyses how the practices of administrative agencies, lawyers, the police and others can be functional to gentrification. Hodkinson and Essen (2015) show that legal rules and regulations were functional to forces of gentrification in London since 2005, enabling “accumulation by dispossession” for property developers. They argue that the law has an ideological power that is deployed in practices that undermine resistance to gentrification, limiting the capacity of households to legally oppose evictions. As discussed early, an understanding of the effects of any given rule or regulation can change after it is discussed in practical cases and measured in specific terms.

Legal Geography also provides tools to reflect on places and spaces through a legal lens (*legalising space*). Legal geographers argue that the implementation of law is inextricably located in space (Blomley, 2003, 2009; Holder & Harrison, 2003; Philippopoulos-

Mihalopoulos, 2010) and is central to the understanding of space (Bartel *et al.*, 2013). For instance, the co-constitution of law and space in the neoliberal context of Bristol, has changed the mechanisms of planning law which have transformed prior heterogeneous city centres spaces into a homogeneous model and a privately owned retail city: the law of the place has created legal and spatial boundaries and in which formerly accepted practices are now *antisocial*. (Layard, 2010). Blomley (2004) has explored the meanings of property in cities in order to “unsettle” the consequences and the centrality of private property in struggles over the urban.

In that reflective spirit, legal institutions can also be reconceptualised through a spatial lens. The notion of jurisdiction - the authority of a legal body to administer justice - is taken by Valverde (2009) to explain how the legal concept of jurisdiction governs and naturalises the ‘inter-legality’<sup>2</sup> of governance through space. The organization of governance requires separating and sorting different scales, in which state or national-scale policies seldom relate to nuisance measures at a local scale. However, the legal division of the space of jurisdiction has effects which are beyond territory, establishing the ‘what’ (the object) and the ‘how’ (capacities) of legal governance. In that sense, jurisdiction “*is used as a flexible and malleable legal medium in the interactions between law and the built environment*” (Parizeau and Lepawsky, 2015:21). Similarly, Ford argues that the naturalisation of borders created by the law is a technique to organize governance in the territory “*not as an act of recognizing a difference, but one of making a distinction*” (Ford, 2014:139). Borders can make those distinctions seem “inevitable” and provide logical reason for forms of inequality or segregation that the law by itself would not tolerate (i.e. a Municipality that has less funding just because it has less revenues than the next one, although they are in the same territory).

Both reflections, legalise space and spatialise law, confronting the commonly accepted notions of Legal Positivism, idealising law as abstract, rational and reasoned. The practice of law at a local level adapts and deploys its contradictions and inconsistencies, while upholding the discourse of a universal and pure law (Hubbard and Prior, 2018). As Latour (2010) notes, the practice of interpretation of law by public officials is also imagined to take place in ‘pure’ spaces where the reasons of law can be separated from contingent arguments (Latour, 2010). The expectation of legal certainty over time is also assumed in

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<sup>2</sup> According to Valverde (2009) “*The constant interactions among different legal orders – each of which has its own scope, its own logic, and its own criteria for what is to be governed, as well as its own rules for how to govern – make up the process that de Sousa Santos (1987) calls ‘interlegality’ (by analogy with ‘intertextuality’, one assumes).*”

the idealisation of, not only the law, but also in the practice of the officials who implement it.

Legal Geography is useful for my research because it has deepened the understanding of law since the 1990s, turning attention to the practices that law generates in specific places. From considering law as cultural product which represented an expression of the social context, legal geography has focused on the practices of actors which think and act through the law (Braverman, *et al.*, 2014). A focus on legal techniques and legal knowledge and how they perform specifies ways in which law is concretised or materialised in place (Riles, 2011). The specific forms in which planning law and its practices are overlooked by accounts of law that look to the national level and see the law as a state product only. A good example on how the understanding of law is deepened is an analysis on the relation of municipal law with everyday practice in Vancouver between 2000 and 2010, which revealed how planning at the micro-scale resulted in limiting the rights of marginalized groups, limiting diversity (Valverde, 2012). At the same time, Valverde (2011) and Blomley (2011) have explored how local legal knowledges in planning law help to uncover specific forms of governing which have been overlooked in the functioning of the city.

Increasingly, the analysis of the interactions of law and space have also focused on the importance of legal practices of *planning law* in the production of cities. Attention has recently become focussed on how planning law coproduces the city. For example, an analysis of English property and planning law shows that gentrification can be facilitated through legal mechanisms and practices, and that attention to legal aspects can provide resources to resist gentrification and dispossession (Layard, 2018). In the same line of enquiry, an analysis of the scales of planning law -or inter-legalities- in Australia concludes that diversity in cities requires fuzzy and an open-texture interpretation of law (Hubbard and Prior, 2018) or a broader interpretation of the right to the city, contrasted to the recent transformation of public spaces into private ones (Layard, 2010).

Scholars whose work combines geography and law provide theoretical grounds for the examination of the practice of planning law beyond a normative understanding of planning law. In this section, I have reviewed how Legal Geography allows for new lines of enquiry for the role of law on the built environment. Legalizing space and spatializing law

are re-conceptualizations that provide new questions for a research on planning law. However, the study of legal geography has not reached South American cities. The focus on place has privileged cities where scholars are familiar with, mainly in United States, Canada and Europe. In fact, a certain familiarity with the context is needed to understand links between the social life and the law. In that belief, this research aims to use the reflections of this theory in the Chilean context.

The next section outlines the argument of the thesis in the light of these theories and the relevant research discussed above.

#### 2.1.5 Research topic

The role of the social practices of planning law in the production of the city has been an increasing focus of research. Debates about planning law have expanded from a focus on informality to debates on the consequences of legal institutions for urban planning and the city, in the context of Latin American cities. However, very little is known regarding the social practices of legal actors and the legal technicalities they work with in using planning law to produce in the built environment of cities. This is partly due to the fact that urban research focused on planning and urban theory often mixes law into other political and social analysis (Valverde, 2014), and law becomes indistinguishable from other forces. The analysis of legal bodies of planning law has pointed to problems in the implementation of planning law and the unintended effects of legal rules and regulations or the political and economic context of its implementation. However, as Booth (2016) notes, law is fundamental to an understanding of the practices of planning and legal thinking and shapes the way planning is conceptualised by planners. The centrality of law for planning noted by Booth justifies a focus on the social practices of legal actors using technicalities of planning law, which has not been discussed in the planning debates considered in the previous section. For considering those social practices, this thesis takes the spatial and legal perspectives of Legal Geography and planning law.

The review of different accounts of planning (and) law raises a number of questions that relate to the research topic of the social practice of planning law. Although I will not answer all these questions, this have been present in the design of my reserach: What is the relation of planning law to the practice of planning? How does planning affect

the social practice of law? What constitutes the technicalities of planning law? Are these technicalities a sign of what actors think that law is and should be? Who benefits from the social practice of planning law? How is planning law used to reach for concrete objectives? How does the social practice planning law relate to the built environment? And how does planning law practice relate to planning and the objectives that planners establish? Does planning law matter in a neoliberal city context? Do those practices and discourses based on law shape the built environment? In what way?

My argument is that the theoretical developments of Legal Geography relating to the social practice of planning law may help to uncover the role of social practices of law in the built environment of Santiago. I hope to address a limitation of the mainstream planning law literature: a focus on the room for improvements based on planning reform based on a limited understanding of the social practices that legal actors develop. It takes for granted that better technical legal instruments can produce desired effects. In addition to this limitation, the notion of law assumed by planning theory has many similarities with a Legal Positivist perspective which ignores the effects of the instrumentalization of the technicalities of law used by legal and non-legal actors. The contribution of Law and Geography to the literature of planning law and the focus on social practices which are embodied and performed in place will include elements that are currently not taken account on planning law is understood by policy makers and planners. The next section offers a critical discussion of the definitions used in the research. The final section proposes the constitutive role of social practices of planning law in the built environment as a framework and an analytical lens that will be deployed in the accounts of planning law in this research.

## 2.2 Theoretical framework

The following section discusses three theoretical concepts that are used to understand the constitutive role of social practices of planning law in the built environment as the identified research topic. I present reflections on these concepts and justify the chosen definitions. The first is planning law, which is important in order to frame what it is being discussed. The second definition aims to identify the space of the constitution of

planning law: the built environment. Finally, I present the social practices of planning law as an analytical tool to discover the constitutive character of planning law .

### 2.2.1 Conceptualising planning law and its social practice:

Planning law is an important concept for the research because it is to be researched and organises the structure of the research. Definitions of the concept vary, not only in identifying what planning law is, but also what considered to be included within the understanding of planning law.

A first step towards conceptualising a definition are the insights from legal literature. Legal theory on planning law itself is scarce, and the study of planning law has mainly been framed within the branches “Administrative or Public Law” or “Civil Law”. In legal texts addressing law and the built environment, planning law is seen as simply a specific branch of Public Law (Wood, 1999). A specific definition of planning law sees it as “*the rules from different legal codes aiming to regulate the territorial planning of human settlements and the urban use of the land*” (Rajevic, 2000:531). Consistent with this definition, planning law refers to “*the body of laws (national statutes, ministerial proclamations, state/provincial laws and local bylaws or regulations) that govern both the making of spatial plans—at a city, town, village or district level—as well as the regulation of land use and land development*” (Berrisford, 2011:209). Complementing these definitions, Platt (1996) argues that planning law addresses how desirable land use may be achieved and who has the authority to decide among competing interests and uses. Under these definitions, planning law: (1) depends on a number of bodies of law of different levels; (2) aims to regulate planning or “spatial plans”; and, (3) has the use of land as a core element.

Although the main objective of planning law is to regulate the spatial, the concept of space is notably absent from debates on legal theory. These accounts of planning law are mainly centred on the objectives of planning and its formal sources (codes of laws, rules and regulations), reflecting a Positivist description that is applicable to any branch of law. Ironically, the framing of planning law within the limits of Positivist theory ignores that its main objective is to develop “spatial” plans, being the physical place where these laws aim to be implemented. In fact, a core contribution of Law and Geography scholars is that law is “spatially blind”. As Bennett and Layard (2015) note , the invisibility of the spatial setting in descriptions of law and its instruments means that the abstraction of law is based on the

abstraction of the non-geographical (Pue, 1990). But, the geographical account of law shows that law also refers to social practices that focus on meaning, interpretation, representation, and similar conceptualisations in the making of place (Delaney, 2003; Martin, et al., 2010).

What does the notion of space add to the research on planning law? According to Blomley et al., (2001), reading the legal in terms of the spatial and *vice versa* can change our understanding of law and space, and the inclusion of local conditions and context can explain the practices and experiences of how law happens (Braverman, *et al.*, 2014). The recognition of the spatial and its with the legal and the social, requires that legal geography research recognises “which work law and spatiality [are] doing at any particular place and time” (Bennet & Layard, 2015:4). Therefore, the inclusion of space requires methods that help to untangle the legal and spatial, which are used in this research in the processes of the built environment.

The concept of constitution of law on the built environment also adds questions about how planning law is researched in relation to spatial processes. Traditionally, planning law and space have been studied from a linear perspective: how physical characteristics are a consequence of planning law that explains their form. In that sense Talen (2012) has researched how forms and patterns of US cities are a result of rules and regulations around land use. She questions how planning law impacts the performance of place and makes a comparison between the physical results of planning law and the original objectives. However, according to Harrison and Bedford (2003), a focus on planning practices allows showing which values are admitted and acted on in planning obligations and the impact in their neighbourhood of these values. This is enforced with the perspective that planning law is enforced by local authorities and “shapes cities through practices” of instruments such as development control, licences, permits and others (Hubbard and Prior, 2018). The constitutive role of social practices has appeared as main emphasis of legal geography on planning law.

This research is akin to the research on planning law as bodies of legislation and the practices that are embedded in the built environment. The concept of the social practice of planning law is particularly focused on the idea that research on law must be understood in terms of the law’s constitution through actors practices. The social practice of planning

law, therefore, is not only the enforcement and interpretation by legal Institutions, but also includes legal thought and the practices of non-legal actors which contribute to the understanding of the constitution of law in place (Valverde, 2009b; Riles, 2004). In that sense, technicalities -which are mostly ignored by Positivist approaches (Wood, 1999)- are assumed to be rich elements of research to understanding what planning law ‘does’ when constituting specific places. In that way, the constitution of the built environment is embodied through the knowledge and the power of legal technicalities that empower, but also limit, how the law is interpreted and enacted. Technicalities of actors to use the planning law will enrich the understanding of its instruments: Land Use plans, permits, interpretations from Courts and uses of planning law in planning processes. These instruments aim to regulate the spatial development of the built environment, which will be defined in the next section.

### 2.2.2 The built environment of the city of Santiago

This section aims to provide the theoretical definitions the built environment and their relationship with the concept of planning and space. I have argued that the reflections of geography and law can provide this research with theories that fill the gap left by the neglect of the role of social practices of planning law in the production of the built environment. Research into law and space is part of the “spatial turn” in Geography and the Social Sciences since the 1990s. Thus, the use of legal geography scholarship demands a conceptual understanding of the *space* that the law is “turning to”. The conceptualisation of the built environment as part of the space and its social production is introduced in this section.

Planning and the built environment are interlinked concepts. According to Harvey (1976:6), the built environment is *the totality of physical structures: houses, roads, factories, offices, sewage systems, parks, cultural institutions, educational facilities, and so on* . From this perspective, the built environment of a city (in the case of this research, Santiago) is made up of those physical elements that constitute “palpable” things: the material city. Planning the city has an evident interest in the physicality of the city, where types and location of streets, buildings, and facilities certainly matter to how life is lived. The physical constitution of cities is an objective of urban planning which aims to produce and regulate structures in space through processes of decision-making for spatial development (Fainstein and

Defilipis, 2016). As well as material structures in place, the management of space is also one of the objectives of urban planning.

The idea that planning should provide either aims (produce and regulate space) or methods (processes of decision-making) are two of many multiple versions of its role. The project of planning remains a fluid and heterogeneous concept:

*On the one hand, planning is the face of power and order, expressing the interests of economic and political regimes. On the other hand, planning is social struggle and mobilization for justice and opportunity. On the one hand, planning is the knowledge of anointed experts, armed with microeconomic theories of land markets and toolkits of communicative mediation. On the other hand, planning is rowdy debate and a remaking of the very sphere of public discourse and its signs and symbols (Roy, 2011:10).*

However, beyond these debates, planning must be concerned with the production of the urban space (Roy,2011). Like Fainstein and Defilipis's (2016) definition, (the production and regulations of structures in space), the recognition of space as the medium through which processes are deployed and objectives are embodied, seems a central element for planning.

Like geographers, planners are also concerned with the production of space and the understanding of space as socially produced. To understand the concept of “production of space” important for planners and geographers to understand what I mean using the word constitution. I will briefly explain the ideas of Lefebvre. He theorized the space going beyond its physical dimension as result of abstract “mathematical” constructions based on idea of “social production of space” (Lefebvre, 1991). The French philosopher argues that space is constituted by: the *everyday spatial and physical practices* of social life; *representations* of the space aimed to organize it; and *representational spaces* where the social imaginary of lived experience is produced (Lefebvre, 1991), These three dimensions (physical, mental and social) are interrelated and constitute a base from which to understand the notion of the social production of the space (Butler, 2015). Rejecting abstract or empty notions of space, Lefebvre (Ibid) argues that space is the social production of: (a) forces of production; (b) a product both as a resource and as a commodity; (c) a basis for reproduction of property;

(d) a place of ideological and symbolic structures; (e) a political instrument; and (f) a means for human counter reaction and appropriation.

The physical entity of the built environment of a city is composed of places where the social production of practices, representations and social imaginaries have material consequences. The social production of space rejects a reductionist understanding of the built environment only as a physical entity:

*The initial basis or foundation of social space is (...) physical space. Upon this basis are superimposed - in ways that transform, supplant or even threaten to destroy it - successive stratified and tangled networks which, though always material in form, nevertheless have an existence beyond their materiality: paths, roads, railways, telephone links, and so on (Lefebvre, 1991, p. 400).*

The social production of space starts with its physicality and ends with the reconceptualization of material forms, through processes that reimagine its material constitution. Thus, the physical loses its immobilized and static conceptualisation and gains theoretical richness as a place where practices are deployed and the urban is constituted.

These conceptual definitions of the production of space allow the critical analyse of material results in built environment. For instance, the Chilean model of neoliberalism and the planning processes in Santiago since the return to democracy in 1990 have been analysed through their spatial results. The processes which have physical results in the built environment of Santiago can be related to the planning practices, representations and imaginaries which are possible under a market-centred approach to urban development. In that spirit, it has been argued that the planning system in Chile has adopted a specific form of “technical-market enterprise” (Silva, 2011) developed in a dialectic relationship with the Washington Consensus advocated by the IMF (Gilbert, 2002). These accounts explain the disordered but permanent urban change through private-public partnership that have transformed Santiago. A detailed account of the built environment of the inner city of Santiago is given in Chapter 6.

The conceptualisation of space as a social production and the multidimensionality of these processes has enabled different social sciences to take up renewed interest in space. As it was argued before, socio-legal scholars, and particularly the literature on legal

geography, have increasingly studied how the legal is part of the social construction of space, and how law is also a consequence of the conceptualisation of space as social. In fact, several scholars have argued that legal institutions, legislation and juridical decisions affect the social production of urban space (Fernandes and Varley, 1998, 3; McAuslan, 1998; Valverde, 2012). Following these reconceptualizations, this research specifically enquires the role of social practices of planning law in that social production, looking for explanations and meanings of how planning law constitutes the built environment of Santiago.

### 2.2.3 Geography of law and the search for the constitutive role of the social practices of planning law

The constitutive nature of law on space is part of the usefulness of legal geography to understand reality. According to Valverde, a project for law and space could suffer the same problem of core concepts of social science: they could mean anything if the theoretical enterprise was not consistently defined. In other words, the risks of ideas being meaningless in relation to a loose definition of what law and space research means. In that sense, Valverde suggested that the convergences of law and space would only matter if the importance of law in relation to space was emphasised: An enquiry on the constitutive role of law, she argued, means that legal processes include the being of entities and actors that should be taken account (and not taken for granted) in research of the city (Valverde argued this ideas in the Law & Society Conference in 2017).

This research focuses on the idea of the constitution of law on space. However, as it was previously discussed, legal geographers have argued that law and space are co-constituted. What precisely is the co-constitutive role of law? According to Delaney (2003), it is a move that overcomes the grammatical or formal understanding of the law but attends to the mapping of legal meanings onto material landscapes. In turn, Bennet and Layard (2015, p. 413) have argued that

*Fieldwork is an intuitive and productive method in legal geography, particularly when it includes an understanding of how spaces and places are themselves co-produced – legally and politically as well as socially and spatially. Immersive, site level enquiry seeks to investigate precisely how (and why) sites are framed, managed or used in the way that they are. This spatial detective work*

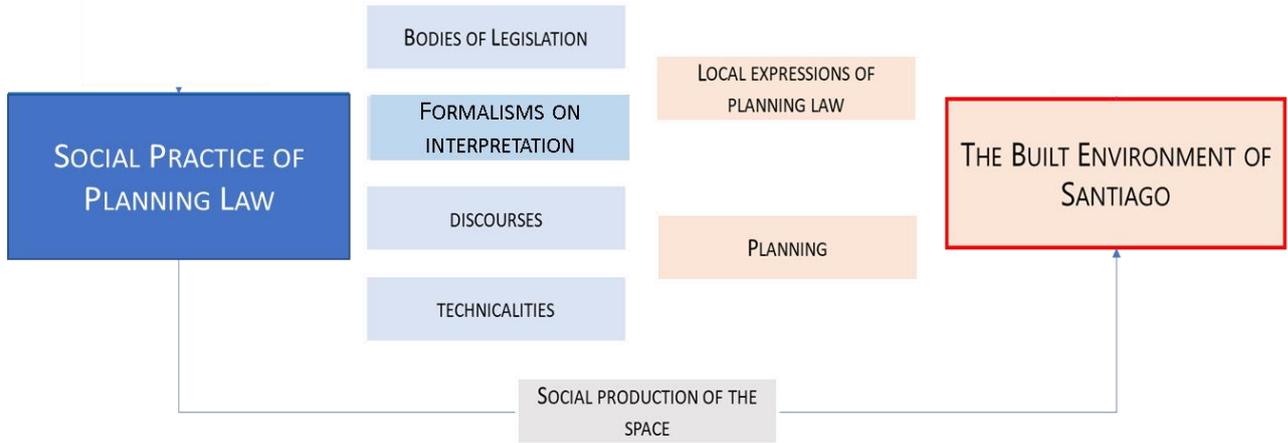
*emphasises the importance of materiality, asking how the spatio-legal is implicated in the making of place and how it plays out amidst the embeddedness of humans within a world of physical things and the resistances and affordances that they represent. (Bennett and Layard, 2015, p. 413).*

The materiality of law recognises that the physicality of place is interlinked with the law - a spatial understanding of the legal. The spatial then, is seen as a theoretical construction of multiple processes, one of which can be deciphered through the understanding of the social practice of planning law.

My intention in the literature review of planning law, legal studies, planning and legal geography has been to develop a framework that is capable of recognising the multiple ways in which social practices of planning law constitute the built environment of Santiago. The theoretical framework aims to explain how planning law is grounded and embodied through social practices in the constitution of the built environment, challenging the “dematerialisation” by which Legal Positivism marginalises specificity (Bennett and Layard, 2015). The social practices of planning law entwine legal concepts and devices with local experiences that concern the use of land and decisions which only can be understood contextually (von Benda-Beckmann, 2006). Legal geography offers methodologies for exploring the constitution of law on space through the practices of planning.

The theoretical definitions given in the light of the discussion of debates in the field are organized in a framework formed around the social practice of planning law and the built environment in three municipalities of inner Santiago (Figure 1). Examining the social practice of planning law can show how legal actors use planning law and legal instruments through practices (ways of doing), discourses and technicalities which constitute the built environment in Santiago. Investigating the manifestation of social practices by civil servants, private developers and residents shows that mundane practices, such as these municipalities in Santiago, are not neutral or empty, but places full of active meaning (Bennett and Layard, 2015). At the same time, the built environment of Santiago represents places where planning is performed within the limits of planning law. The concept of planning law can be revisited once social practices are identified and analysed. as the trajectories and processes that represent how planning law is present constituting the built environment.

FIGURE 1: CONCEPTUAL FRAMEWORK



SOURCE: AUTHOR

The concept of planning law as the sum of legislation but also social practices of actors through discourses and technicalities enriches its role in the production of the built environment of Santiago. As the Conceptual Framework explains, the built environment, in its turn, is the place where the law is “spatialised” and where the local and the planning context convert an abstract planning law to a tangible understanding of the action law. This is the process that, for this thesis, is understood as the way the abstract concepts of planning law become material through localised social practice and in specific places. Those social practice of planning law through legal instruments, I argue, canalizes the objectives of actors in the city.

### 2.3 Conclusion

The literature review shows that critiques of planning law in relation to the built environment aim to make urbanisation processes fair, providing the governing bodies of planning with devices able to accomplish desirable planning objectives. However, the law is absent from discussion about the nature of planning. Particularly, there is a relative neglect in how legal practices of planning law have a role in the production of the city. Research in the fields of geography and law provides theoretical constructions that can help to address this gap: studies of the constitutive relation between law and space provide research tools

to analyse legal practices and discourses and their constitution on the built environment destabilizing a universal and theoretical the enforcement of law. However, the contribution of legal geography to planning studies in South America is as yet, slight, and there is room for expansion.

A narrow understanding of planning law has limited conceptual debates regarding what kind of planning law is required for a better city and has overlooked the discourses and practices that law produces. For this research, planning law is assessed not only as a body of law but as practices and technicalities that are deployed in the constitution of the built environment.

This thesis examines the specific contexts of the interactions of law, planning and the built environment in Santiago. Santiago is introduced in the next Chapter and contextualised in Chapter 6. The next chapter explores the methods used to carry out the research which aims to fill the gaps identified, especially in relation to planning law in Chile.

### **Chapter 3. Methodology to study the role of planning law in the production of the built environment.**

#### 3.1 Introduction

This chapter presents the approach taken to the study of the social practice of planning law in the built environment in three municipalities of Santiago. As the previous chapter has shown, studies of planning law have not considered how the social practice of planning law constitutes the built environment through discourses and technicalities. The interest of this chapter is to address this challenge. It delineates the research approach taken in this thesis, based on primary data collection from a plurality of sources.

This interest is based in the initial question of how the social practice of planning law is relevant for planning processes. However, after the literature review, I engaged the initial interest with the current debates on planning law, legal studies, planning studies and in particular with the notion of the constitutive production of law on space.

The following chapter is presented in a structure of three parts. I start by explaining how my experience relates with the methodological decisions that the theoretical framework implies. I explore the different considerations of socio-legal scholars for the development of a research design, reflecting on methodological considerations -research design, intellectual approach and worldview- on which I will focus and what approach is best suited to my research. I then present my research design, the motivations for decisions about methods and the limitations and challenges that I confronted. After that I describe my methods and the different sources of evidence of the social practices of planning law, particularly in processes relating to the built environment of three municipalities of Santiago. A brief reflection on the theoretical foundations of and methodological justification for, the methods that I used in the collection of primary and secondary data is presented. The choice of data collection is discussed in the last part of the section. I explain how examination of: the formal legal codes of planning law; official documents; the rulings of CGR; and a multiple case study approach constitute my methods to obtain data about the social practices of planning law. It offers an explanation of how the perspectives from Geography and Law on “law in action” allowed me to follow the social practices of planning law in Santiago. This discussion also describes how the case studies and urban processes were selected, and how the fieldwork in

Santiago was carried out. Finally, I discuss the main limitations of the research and how they have been dealt with.

### 3.1.1 Reflections on the conceptual framework and the methodology

This chapter examines a number of methodological debates that define the approach of this thesis. As a study interested in planning law and in the built environment, the research design, the approach and existing research that I have reviewed are relevant to that same interest. The framework developed in the previous chapter allowed me to refine and focus my research question. However, before I start this Chapter, this section presents a reflection on how the theoretical and methodological decisions provided in this Chapter, engage with my experience with research in Chile, both in law school and my work experience in urban planning.

In Chapter 2, I showed that existing research has conceptualized planning law as the sum of legal bodies, practices, techniques and discourses that, while aiming to regulate the spatial dimension of cities and land distribution, also constitute what the city is. But this conception would limit the contribution of this research to a legal-positivist understanding of planning law and would fix its methods in the sphere of socio-legal scholars who include law in general research into the functioning of social life. The focus on practices in this thesis explores evidence of the grounded and mundane uses of planning law in order to understand its role in the production of the space. Rather than contributing to the development of legal doctrine, the methodology focuses on providing methods for studying the social practices of law as objects of inquiry.

The research on planning law also varies depending on the conceptual understanding of planning law and its role in the built environment. Scholars interested in planning law as a legal instrument can, of course, engage in critical accounts of how law is functional or not for public policies objectives in the city, such as the ability to manage informality or to provide housing to its inhabitants. Scholars of Positivist legal studies and urban studies use this framework to analyse the law, and for most of my professional life I have used this paradigm to explain planning law.

However, I have been increasingly interested and influenced by scholars in the tradition of socio-legal research which have focused on the content of legality and how that content is deployed in practices. The question of how law constitutes the spatial has opened theoretical concepts that encourage inquiry into the built environment of cities through following the social practices of planning law. For critical legal scholars, the social effects of the law are determined by its narratives and power dimensions whereas scholars of legal geography focus on the mutual and constitutive relations between space and law.

The final part of the previous chapter presented theoretical definitions that aimed to contribute to studies in the intersection of legal geography and planning law. Scholars have analysed planning law and its rules and regulations have overlooked the weight of everyday experiences, ways of doing and interpretations of planning law in the built environment made by legal and non-legal actors. At the same time, the work of the socio-legal scholars often engages in traditional forms of critique to law that focuses on the law as an exclusively state-level matter, overlooking social practices at the local level are not only a consequence of state centred law, but also that they constitute the built environment. This definition expanded my perspective of the law as a lawyer.

In that sense, my education as a lawyer and my experience and position on planning have been a useful start but also a limitation to conduct my research. I am a lawyer by education and profession, and I have dedicated my professional work to urban planning. On the one hand, I could not develop this thesis without knowing planning law in practice. However, on the other hand, I had a narrow understanding of what law is during that practice. The education of lawyers in Chile is very much linked to a positivist approach, where the law is studied in two ways. The first, related with more progressive lecturers, is based on the idea of law as a social contract and the different justifications for law and effects in constitutional, tort and criminal law. The second way, more prominent in lecturers, consists of a formal approach where rules are learned and repeated without question. Neither of these two systems considers potential methodologies for critically studying the law, or questions the position that law occupies in the conformation of the social: these questions were largely absent from my legal education, as were approaches that question the effects of the law in everyday experiences, such as socio-legal studies or gender studies. That limitation on the understanding of what law was also a limitation on the importance of the law for

planning not only in how the rule or regulation of planning law was describe, but how it operated in the real world.

My understanding of the law and the importance of practical questions only began once I started practising the law as a lawyer. The lack of methodology to critically study the law implicated that practicing the law as a lawyer was the main methodology approach to understand its impact on everyday and mundane situations. In that sense, legal practitioners from sociology of law illustrate the differences between a theoretical description (law in the books) and a practical one (law in action) (Banakar and Travers, 2013). For me, the study of law was completely reconfigured by the different experiences in my life as a practitioner. The embodiment of the law in social practices that I, and many colleagues, engaged in allowed me to understand that circumstances transform the meaning of law in many situations and decisions.

I experienced planning consultations, construction permits discussions, frustrations and successes and the different hopes, ambitions and disappointments that the action of planning law involved. An important part of this experience was the innumerable urbanistic rules, planning permissions, civil servants, practices and parties involved which are almost impossible to know in their totality - by anyone (Valverde, 2015). And yet, they shape the experience of the city: the effect of planning laws is undeniable but chaotic. In the Ministry of Housing and Development, the interpretation of planning law rules and regulations in day-by-day cases that could decide whether a new urban development was legal, trying to balance the interest of different parties and the original intention of planning law was a great introduction into the difficulties of understanding the multiple meanings that planning law could have. This allowed me to become aware of different perspectives, actors and legal procedures. My education and experience as a lawyer have enabled me to ask questions about, and to unpack, planning law, and the research methodology I draw on is heavily influenced by this fact. In that sense, this research aims to bring theoretical relevance to social practices that I experienced in the production of the built environment of Santiago.

As I have described, my professional experience has been very much related to planning law, which gives me a privileged position to understand its everyday action but also limits my understanding of its potential constitutive force on the built environment. Through my experience in planning law, I developed beliefs and convictions of what planning law

should be. These views can be a bias in conducting this research. However, I decided to embrace this reality as part of my position as a researcher: my experience shows that ordinary practices express profound convictions and beliefs that move actors to develop their actions. In that sense, my detailed knowledge of the context is central to drawing conclusions from the material gathered, particularly the case study (Yin, 2003).

## 3.2 Research Objectives and Research Questions

### 3.2.1 Research objective

The overall objective of the research is to answer the question: What is the role of the social practice of planning law in the built environment of three municipalities of Santiago? This objective is related to the understanding of ways in which ways the legal constitutes the built environment and how relations between actors and between actors and place, space and built environment reinterpret planning law. This approach indicates a methodology and appropriate methods which are discussed in this Chapter.

### 3.2.2 Scope of the Research

The theoretical framework examined in Chapter 2 presented the concept of the constitutive role of the social practices of planning law in the built environment which is used to frame the research. The concept focuses on the actual practice of planning law in order to explore its relationship with the built environment of cities. This requires examining planning law from a multiscale perspective, from planning laws on legal codes that aim to regulate the whole nation to the manifestation of planning law in the city and in neighbourhoods and focussing particularly on the social practices of actors interpreting the planning law for concrete cases. Planning law is the result of legislative approval and national government enforcement, local governments design and enforcement by actors through the legal devices that are available in planning legal bodies. These aspects are studied in the three selected municipalities of Santiago to show how these different scales of planning law - national planning laws, planning law devices, ruling of Courts and actors - influence social practices at the local level.

The unit of analysis is the social practice of planning law in the local governments of the Providencia, Estación Central and Independencia municipalities of Santiago. I decided

to focus on these three local governments for three reasons. Firstly, the municipal (local) level is where two of the legal devices - construction permits and Land Use Plans - is practically enforced. These legal instruments are the main vehicles that transform abstract planning law rules and regulations to decisions by actors at the local level. Secondly, the time limitation of a four-year research project made it possible to study the different interactions that planning law generates in three areas (but not more). Finally, to use three municipalities at the same scale and in the same city but with different resources and social composition allowed comparisons of information gathered about the social practices of planning law in specific places, social contexts and forms of built environment.

### 3.2.3 Research aim, research question and definition of key terms

The research addresses the study of planning law in relation to actors' "ways of doing" in the built environment and the consequences of the enforcement of planning law. It documents the role of social practices of planning law in three cases of urban change in inner municipalities of Santiago

The research question is the following: How do social practices of planning law constitute the built environment of three municipalities of Santiago?

Two sub-questions structure the analysis:

1. What are the elements that constitute the social practice of planning law?
2. How do actors use planning law for their objectives in the city?

The first question aims to identify the elements that describe "the social practice" of planning law. Researching these elements allows exploring in-depth actors' "ways of doing" that constitute the built environment and to identify the physical effects of planning law. The second question aims to identify ways in which actors - civil servants at different levels, private developers, residents and other actors relate to planning law and how these co-create the built environment. This question aims to uncover perceptions and discourses of how planning law contributes to the production of the built environment in the cities.

## 3.3 Methodological discussions

As discussed in Chapter 2, my research links scholars who address planning law in the literature of planning and the built environment to others who argue that law is a social construction co-constitutive of the social and the spatial. In this section, I present a methodology reflective of this standpoint, and consider the assumptions in, and challenges to this approach that it presented to my methods and data collection.

The first methodological challenge of my research is how to distinguish the materiality of social practices of planning law in the built environment from other relations and processes that shape cities. As I have argued, the law is constitutive of social relations in the built environment. However, social relations also happen in the politics of city governance, people develop life and choices according to cultural values, and economic decisions are integral to the urban development. Cities should be understood as “problems of organized complexity” and research needs to be focussed on social processes as networks, relationships and connections (Murray, 2017). Attention to the social practices of planning law in ordinary decisions needs to account for how these are distinguishable from other social relations.

According to Azuela (2016:11), there are three “conceptual warnings” that help make legible the broad and complex influence of the law in the multiple experiences and relations of the city. These warnings are: (i) the power of the legal language to establish things in the social world; (ii) the intrinsic ambivalence of the content of the law; and, (iii) the complexity of urban processes as a reason for the uncertainty of law in the city.

The first warning is in the consideration of the ability of language, not only to describe the social world, but also to establish things in it from legal descriptions. The performative power of language can be seen in legal phenomena because law primarily consists of discourses. Law, then, becomes a vehicle that is capable of defining the social, and creating representations of the built environment. A good example is how the discourse of a “map” designating a specific zone in the built environment has force and effect if it is a legally-created planning document (i.e., this zone is an industrial zone, and from this line is residential). Actions in the built environment are defined by the discourses of legal institutions that the law self-referentially develops: the legitimacy of policy, an action or a

zone can result in either its validation or not checking if actions were legal or not. The self-explanatory power of the law provides basis to establish things as obvious.

The second warning of Azuela to study planning law in the built environment is the “ambivalent nature” of city processes and their regulation. Any planning law rule or regulation can contribute to producing unforeseen (or, ironically, unplanned) social effects unpredicted when the law was expedited. The unpredictability of the effects and outcomes of law added to its performative power is relevant to understand the importance of planning law within the planning act. The act of planning (made by planners and any actor involved in urban development) is intrinsically a representation of the city that is regulated by planning law. Therefore, the ways that representations pass from an idea to be in a paper, or in a document are regulated by planning law. In that sense, the interpretations that planners and, in general, actors give to that planning law are constantly reinterpreting, discussing, arguing on the meanings and significations of these rules and regulations (Azuela, *Ibid*). Without denying the effect of the intentions of planning law that aims to regulate the urban, any research on planning law should be aware of the multiple ways in which rules and regulations can have effects in spaces and places that go beyond the original intention of those who developed them. As I argued in the literature review, my research focuses on the common understandings and ways of doing of actors using planning law.

The third warning is that understanding the complexity of the urban environment of cities is essential to understanding planning law. The processes of production of and disputes over the built environment give form and content to planning law and its social practices. The social also co-creates the legal, not only producing a formal change to planning law, but appropriating and reconceptualising legal concepts in practice (Azuela and Cosacov, 2013; Bennett and Layard, 2015). The transformations of the built environment are conflictive, and that makes regulation by planning law profoundly uncertain.

This third warning is deeply linked with the contextual spatial meaning of law. Behind legal rules and regulations of planning law there are different intentions and perspectives that represent political, economic and cultural visions. Legal codes are the product of political processes that conceal different standpoints, agendas and worldviews. At the same time, once rules and regulations exist, there are reforms that can partly modify specific legal rules, interlacing different agendas in the same legal codes. However, the transformations of these

rules and regulations contained in legal codes are also linked with social practices and configured by the local enforcement of rules and regulations of planning law (Valverde, 2012). Laws, regulations, ordinances, and policies at different scales are transformed in the mundane and everyday experiences of actors and their agencies. The spatial meaning of the social practice of planning law traces the experiences and actors in order to understand their constitutive role in the built environment.

To develop a research strategy consistent with this focus on ordinary interactions, Blaikie (2010) argues that it involves an aim, ontology, epistemology and methods. Blaikie's work proposes that there are four research strategies for social researchers with different ontological and epistemological assumptions: research questions can be answered by inductive, deductive, retroductive and abductive research strategies. An abductive research strategy involves producing understandings of social actors' "activities and meanings in the context of everyday activities" (Blaikie, 2007:89). The construction of theories is not tested in the world but taken from the everyday social relations. In effect, law and space are social constructions where social actors develop meanings and motives in their activities. In line with this, my research assumes that beyond the normative structure of enforcement or participation that planning law requires, there are mundane and ordinary mechanisms that influence the behaviours, objectives and strategies of each actor. The construction of the city is, according to this view, part of the *law in action* that explains the social construction of normative systems. An *abductive research strategy* seeks explanations that arise from the data gathered regarding associations and connections of the social construction of planning law in action in the built environment. This perspective on the relationship between planning law and how actors interact matches what has been called the social constructivist world view (Blaikie, 2006).

The research strategy takes into account the challenges of the study of social practices of planning law: for instance, it is problematic to identify exactly the scope of influence of law. This is because, on the one hand, social interactions are multiple, parallel and ongoing: politics, economics, cultural motivations are part of our world, and of our cities. On the other hand, the law itself is the sum of political beliefs and agreements, economic forces and cultural perspectives and behaviours. However, as Valverde (2012) argues, everyday experiences of living in cities suggest that law matters. Focusing on different actors' experiences of planning law is a way to distinguish its particular influence from other factors.

A research strategy is related to the discussion of philosophical worldviews that have framed the scope and limitations of this research. Research design is constructed not only by strategies for the research but through interaction with philosophical worldviews, strategies of inquiry -qualitative, quantitative, or mixed data - and specific methods to obtain that data (Creswell 2009). Regarding philosophical worldviews, the above explained abductive research strategy is linked to a social constructionist epistemology (Blaikie 2006: 155) . This perspective claims that knowledge of the social is the reinterpretation by social science scholars making sense of people’s encounters with the real world on an everyday basis. It assumes that is impossible for researchers to ‘objectively’ observe an external world, because the researcher is part of that world. The prior own knowledge, location in time and space of a researcher will influence how the world is viewed and interpreted (Mullins, 1999). This epistemology influences how my theoretical framework and data are linked. In this case, “*data and theoretical ideas are intimately intertwined; data and theoretical ideas are played off against one another in a developmental and creative process*” (Blaikie 2006:156). There is a permanent dialogue between the data and theory mediated by the researcher.

Following a social constructivist perception of the world, my research gathers evidence in the belief that, to examine and make sense of the external world, research should focus on the examination of the social relations in space. Rather than a specific set of methods, this research uses a range of procedures to understand the relation of social practices of planning law and the built environment of cities, and indicates answers based on mixed methods. Assembling partial pieces of knowledge can fit into a wider narrative to make sense of the external world. In that sense, this research uses the methodological reflections of socio-legal studies and social science methods to analyse planning law.

In terms of the research strategy, this is a convergent parallel mixed method approach (Creswell, 2009:266). However, rather than focussing my design on one specific type of information, I have relied on a range of evidence that allows understanding of the place of law from a holistic perspective. In other words, if I aim to understand different levels of the action of social practices of planning law through the built environment, as I argued in Chapter 2, different sets of data are required to provide answers to those questions. Accordingly, this research is an analysis that uses planning law legal rules and regulations focusing on: the instruments and discourses that actors construct on these rules and

regulations; quantitative information relating to rulings on planning law in the built environment; and the technicalities of legal experts of processes of planning law and in planning law legal case studies of planning processes.

Research methods that investigate law in action are connected with socio-legal and interdisciplinary studies (Banakar and Travers, 2013) mainly led by the use of social science research methods. The use of social science methods to address the content of law in action provides an opportunity to understand the content of law (Banakar and Travers, 2005). My research methods aim to unveil the concrete action of the social practice of planning law in urban processes. This will be conducted through a case study approach. Cases studies are “*a program, event, activity, process, or one or more individuals. The case(s) are bounded by time and activity, and researchers collect detailed information using a variety of data collection procedures over a sustained period of time*” (Creswell, 2009: 43). To that effect, case studies for this thesis are focused on practices followed in urban processes of planning to obtain data on the use of planning law by different actors in these urban processes. The research analyses these processes as spaces of conflict, negotiation and agreements that can represent different forms of outcomes in the built environment. Following these processes “*allows the unravelling of the normal hidden social and political dimensions*” (Yaneba, 2012:60).

### **3.4 Methods**

This subsection introduces the methods used in this research. It is organized as follows: it starts by explaining how the analysis of planning law legal rules and regulations is conducted, then the content analysis of rulings and the selection of case studies. It ends with outlining the methods of analysis used.

The order of the methods is deliberately designed as a process that goes from the general rules and regulations to its practical enforcement. An entry point to the research through an analysis of planning law allows understanding its practice through discourses and technicalities, which are followed through in the analysis of rulings from the CGR. This applied perspective on rulings provides a deeper understanding of technicalities and practices of planning law revealed in the case studies.

These methods start on an implication of any research of the constitutive nature of land on space: it is a continuous and perpetual process of resignification and creation. The research and the methods presented are a snapshot of this permanent process. Therefore, research and analysis of planning law respond to the context of Santiago and the case studies that were followed. The research focuses on how the relation between law and the built environment can take specific forms in the context of Santiago last 10 years. Any conclusion of the research that could be taken to understand other ways in which law constitutes space should take account on the social practices of planning law and the context in which relations take place.

#### 3.4.1 Analysis of the planning law rules and regulations.

The steps that organise this research is designed as an inductive process on the study of planning law in Chile. Firstly, a study of the formal planning law (bodies of law, which contain rules and regulations) in Chile is conducted. This will include scales from national planning law to the laws that regulate the zoning in municipalities. In this analysis, the action interpretations of planning law developed by actors working with these different bodies of law and legal instruments are discussed. This will be my entry point to understand the functioning of social practices of planning law.

An integrated research methodology uses the description of formal planning law rules and regulations as a first step to deconstruct its discourses and ways in which is concretised. This approach coincides Valverde's (2012) and Hatcher's (2014) perspectives using the law as an "entry point" for the research and then adding different approaches. In this way, the problem of taking 'legality' for granted can be overcome (Fernandes and Varley 1998; Valverde 2012). However, this research analyses rules and regulations not as fixed elements but elaborates on the practical interpretations that actors give to them. This aims to understand planning law in its urban context. Specifically, it discusses the technical dimensions of planning law: its mundane uses, the ordinary interpretations that enforce construction permits and land use—the technical interpretation of rules and legal documents (Riles, 2005) – are part of what has been conceptualised in this thesis as the social practice of planning law and its role in the production of the spatial. This technical aspect of planning law provides an analytical layer to researching the city and urban processes: it allows me to research links of legal codes with everyday experiences on how cities work.

The analysis of planning law rules and regulations also allow showing how planning is performed in the context of Chile. Planning is in a part a product of the competences and legal devices that planning law creates for public and private actors. The study of these legal rules and regulations aims to show what legal powers and institutions public actors, at different scales (from the State to local governments), have to shape and justify their own interpretations and actions (Valverde, 2012). At the same time, the description of the “legal architecture” of the state administration and its legal planning instruments such as construction permits reveals the starting points of the technicalities and interpretations of law. A focus on social practice and technicalities requires an understanding of the spaces for interpretation that planning law provides for legal technicians, civil servants and even non-legal actors and to reflect on what objectives, “ambitions and fantasies” are encapsulated in the technical use of planning law (Riles, 2004:976). Planning law legal bodies define the objectives and limitations that law offers to the social practice of planning developed by different legal and non-legal actors.

The examination of planning law codes that frame what is possible for planners to design as desirable futures for their local areas, also pays attention to the discourses that planning law rules and regulations creates. These discourses are not only technicalities, but also allow development of the positions and strategies of a number of actors that converge in the built environment. For that research objective, the discourses that planning law legal rules and regulations creates are also analysed in terms of how they constitute arguments and justifications for these actors. Particularly, these discourses can be reflected in the devices that planning law creates (the Construction Permit and the Land Use Plan). The analysis of the devices of planning law allows the interpretations that actors give to the use of planning law to be identified.

This method also responds to some of the limitations encountered by the study of planning law. Firstly, planning law is a branch of law largely undeveloped and absent from the socio- legal debates in Chile. And analyses of planning have not particularly considered legal devices such as Construction Permits or Land Use Plans. The technical aspects of planning law have not importance for legal debates in the Latin American context (Azuela, 2016). Secondly, the study of the social practice of planning law is restricted: legal methods for understanding the law in everyday practices are limited and the effects of law on its

contexts are considered to have no interest for legal doctrine (Delaney, 2014, Riles. 2012). The assumption of this research is that every legal device and planning law has the potential to have effects in the built environment through the social practices developed by actors. Understanding the social practice of planning law means understanding the law, not only at a “professional” or “jurisdictional” level, but in mundane and apparently meaningless decisions that actors make in the built environment.

### 3.4.2 Content analysis of rulings on planning law

After concluding an examination of how I explore planning law rules and regulations, I develop a study of legal decisions in the Chilean system in rulings that interpreted planning law. A number of planning law decisions on zoning plans or controversies about the interpretation of the law are subject to revision by the Contraloría General de la República (CGR, an equivalent to an Administrative Court which is explained in depth in Chapter 5). After reviewing the particular position of the CGR in the Chilean Legal system, administrative jurisprudence in decisions that involved planning laws is analysed. The objective is to understand how the social practice of planning law relates to the technical perspective of the administrative legal system. As Meneses (2016) argues, the comprehension of the limits of a planning system - including law- is enriched through an analysis of rulings that express the implementation of urban policies. And, as Hall and Wright (2005) suggest, systematic content analysis of judicial decisions is a methodology particularly useful ‘in studies that debunk conventional legal wisdom’.

The examination of administrative decisions can uncover how a formal interpretation of planning law by an administrative authority relates to the meaning of the *legal* in planning and the consequences of the social practices that any claimant uses in these processes. The decisions of CGR are characterised as legal decisions that focus exclusively on the formal interpretation of the scope of authority and attributes of the legal planning institutions and devices. Legal decisions made in formal terms reveal how technicalities of planning law have effects on what planning is and what it is capable of doing. Studying these decisions also provides evidence of how common understandings of planning law are used in these discussions.

The examination also provides the space to grasp a series of discourses of the law involved in the enforcement of its rules and regulations. The examination of planning and urban processes under the formal interpretation of the law allows understanding what the discourses of the planning law mean for urban processes. These discourses constitute aspects of the social practices that actors develop in everyday experiences in relation to the built environment. The analysis on the content of rulings of planning law intends to explore in a systematic way: interpretations of planning law; groups of actors' common and contradictory understandings; and how the CGR provides arguments for its decisions which confront the positions and arguments of actors; and the level of success in their petitions. This analysis will also help to describe what type of controversies are settled in the CGR, and who has more possibility of obtaining a positive outcome. Lastly, the data of the content of the rulings identifies the legal arguments that contribute to the social practice of planning law in the built environment.

The examination of the legal cases in the decisions of the CGR is not confined to a doctrinal analysis of legal reasoning of the ruling, or the views of the administrator in how applied the law for the specific case. As Bennet and Layard (2015) argue, legal spatial analysis considers the interest of actors in, and situational influence on the ruling. This is partly based on what has been called the "interpretivist turn" that looks for discursive analyses of legal practice and the meanings of legal knowledge and technicalities, against an analytical understanding of law posed by positivism (Clark, 1989). The CGR cases also enrich the reading of planning law spatially, analysing the assumptions and biases of legal actors about what planning and the spatial should be. Reading cases spatially uncovers the conceptualisation and techniques which show how the social practice of law produce, and are produced by, the spatial.

### 3.4.3 Case Studies

After unpacking the content of planning law rules and regulations and the decisions of the CGR on planning law, on I undertake case studies of planning processes in three municipalities in inner Santiago. However, although the decisions of Contraloria and case studies are in the same time period, they do not follow from each other. My objective is to describe the practicalities of planning law, the consequences of its technicalities and how social relations are constituted through its significance in the built environment. I also

examine these social practices to identify which legal discourses sustain actors' decisions. To do this, I designed a case study approach to understand how laws, rules and regulations and discourses have effects in the interactions that constitute the city every day. "*Law quietly shapes both the built space and the social interactions that take place in it. And as it does so, certain cultural values are literally built into the urban fabric*" (Valverde, 2012: 21). Similarly, Bennet and Layard (2015: 413) reflect on the importance of case studies for the understanding of the production of the legal and the spatial:

*Fieldwork is an intuitive and productive method in legal geography, particularly when it includes an understanding of how spaces and places are themselves co-produced – legally and politically as well as socially and spatially. Immersive, site level enquiry seeks to investigate precisely how (and why) sites are framed, managed or used in the way that they are. This spatial detective work emphasises the importance of materiality, asking how the spatio-legal is implicated in the making of place and how it plays out amidst the embeddedness of humans within a world of physical things and the resistances and affordances that they represent.*

Following that trend of thought, I conducted case studies in order to obtain data that allows me to understand through place the constitutive role of the social practice of planning law in the built environment, in the case of the three municipalities of Santiago.

There are challenges in inquiring into urban processes: the city involves many related but independent actors (residents, officials, private developers) directly or indirectly shaping the built environment which in its turn, constitutes physicality, buildings, neighbourhoods, streets, etc. and institutions such as municipalities. At the same time, the city as a concept is difficult to frame. Although a good characterisation of society is that it is increasingly urban, cities have always been difficult to define, are increasingly intricate and "difficult to generalise" (Amin and Thrift, 2002). To overcome this limitation, urban studies have tended to research particular cases on specific topics (i.e. Yaneba, 2012, Birch, 2012, Alexander, 2016). In this case, the context of the inner municipalities of Santiago (Chapter 6) and background information are necessary to understand the findings of on planning law and its constitutive role in the built environment represented in these Municipalities.

It is important to note that the administrative jurisdiction of the city has no legal status, and there are no regulations that enforce the city as a whole in Santiago. Municipalities are the legal and enforceable scale where Land Use Plans are elaborated. This is similar to the US cities perspectives discussed by Frug (1980) where such absence is interpreted as the deliberated undermining of cities against the uprising power of the central state. In the case of Santiago, although this has not been argued publicly, the calls for putting Santiago under one administration -such as the Major of London- have been ignored. The absence of this authority in the administration of Santiago, means that municipalities make decisions locally and it is difficult to have coherent policies for the whole city. Therefore, I focused on three municipalities that:(1) allow comparison of the results of similar national laws; (2) have had similar processes of urban development over since 2010.

Accordingly, the selection and number of case studies are heavily influenced by the political-administrative organization of the particular case of Santiago. The capital lacks an administrative authority for the city as a whole. That role is divided between a Regional Government and municipalities. Also, the Central Government and all its Ministries are in Santiago and the central authorities have significant influence on the policies relating to the city. Santiago is governed then by: (1) the location of the central government itself; (2) an “*Intendente*” (Regional Governor) in charge of the Metropolitan Region, chosen by the central government, has coactive power but lacks the budget that Central Government secretaries have; (3) the 34 municipalities within the urban limit of Santiago. Municipalities are spatial divisions of the city each with a democratically elected Mayor and Board of Councillors.

The objective of the selection of three case studies in Santiago was to obtain data to understand how the social practice of planning law constitutes places at the most local, municipal level. The scale of the case studies had to represent a level where planning law could be traceable. Municipalities, as I will explain later, have a number of powers to zone and to control the development of urban processes. These powers are the expression of the planning law influencing the different decisions made in the Municipalities. Land Use Plans and Construction Permits are heavily influenced by the views and approaches of authorities and civil servants in the municipalities where they are applied.

The next step was to select the particular three case studies of three municipalities from among the 34 that exist within the urban limit of Santiago. To obtain cases that could be compared for their similarities and differences, I firstly examined municipalities that represented similar urban contexts. Since 2000, several municipalities in Santiago have been experiencing rapid redevelopment. This phenomenon has been characterised by a growing number of high-density developments in the inner centre of Santiago, that is, the areas surrounding the Santiago Centre Municipality (Lopez-Morales, 2009) (See Figure 2). Having identified these processes taking place in inner Santiago, I selected municipalities in which relevant rulings of CGR cases were developed. The basis of selection of municipalities was similar urban context and relevance of the available data.

FIGURE 2 SANTIAGO MUNICIPALITIES



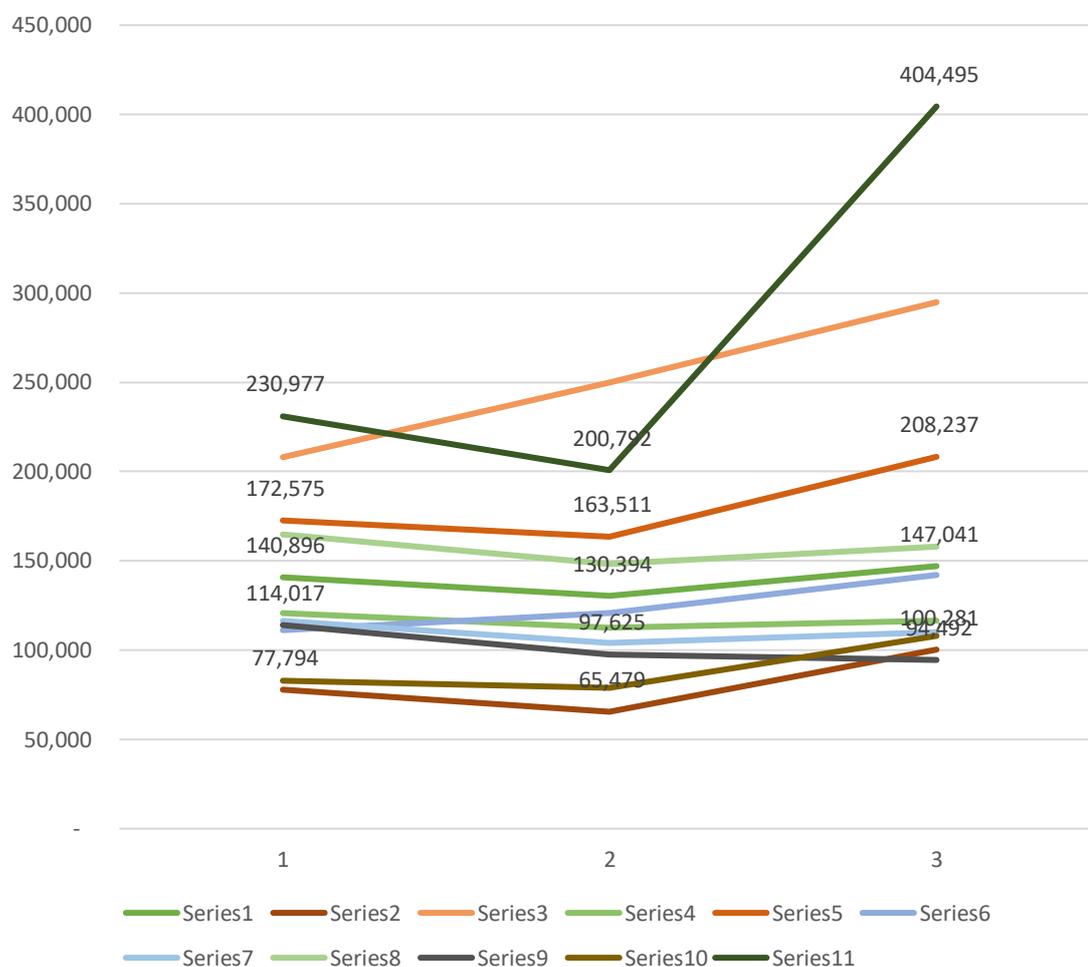
Source: MHDU.

The chosen municipalities were *Providencia*, *Independencia* and *Estación Central* Municipalities. In the last decade, these three municipalities witnessed the construction of large high-density projects. Although differing in location and social characteristics reflected in their social characteristic index (Table 1), the processes of redevelopment had some commonalities. The three municipalities surround Santiago Centre Municipality which has the highest rate of redevelopment, and in the three cases, the municipal

authorities and planners reacted after these processes were triggered. The population of these municipalities was static or declining between 1992 and 2002, but between almost all of them reversed this situation, receiving more population than other “peripheral” municipalities of Santiago (Figure 3).

While, there are strong similarities between these inner municipalities in terms of real estate development and location within the city, there are significant differences between the social contexts of each area. The built environment of Providencia is characterized by a number of medium and high-income neighbourhoods combining residential and commercial land uses. Independencia experienced much change in social composition in the period between 2005 and 2014, receiving new families and immigrants seeking a location closer to the centre of the city. Finally, the built environment of Estación Central is low-rise with a social composition of low-income families that recently has received more attention . A more detailed description is provided in Chapter 6.

FIGURE 3: POPULATION OF INNER CENTRE MUNICIPALITIES OF SANTIAGO ACCORDING TO CENSUSES OF 1992, 2002 AND 2017



Source: INE

TABLE 1: SANTIAGO MUNICIPALITIES SOCIAL PRIORITY INDEX AND POPULATION

Municipality	Social Priority Index	Population
Lo Espejo	72.37	120,014
Lampa	72.27	86,975
Renca	71.54	151,500
La Pintana	71.53	212,656
San Joaquín	70.9	104,327
San Ramón	69.79	99,749
Cerro Navía	68.92	158,299
Lo Prado	66.82	112,879
Conchalí	66.15	141,089
Tiltil	66.05	17,599

Melipilla	65.36	116,680
Isla de Maipo	65.2	35,298
La Granja	65.16	143,237
San Bernardo	63.56	297,262
Recoleta	61.88	168,342
El Bosque	61.52	193,915
Curacaví	61.5	29,641
Alhué	61.28	5,728
El Monte	61.17	35,673
Estación Central	60.37	144,982
Pedro Aguirre Cerda	59.5	122,304
María Pinto	59.04	12,901
Buín	58.82	83,211
Quinta Normal	58.6	114,958
Independencia	58.19	83,059
Pudahuel	58.14	233,252
San José de Maipo	57.87	15,003
Puente Alto	57.76	610,118
San Pedro	57.68	9,621
Huechuraba	57.36	95,912
Quilicura	57.36	209,417
Colina	56.09	121,233
Cerrillos	55.93	85,349
Peñaflor	55.12	89,892
Peñalolén	54.68	242,766
Padre Hurtado	54.37	55,909
Paine	53.82	66,855
Pirque	52.83	21,998

Source: INE

There are several added reasons for choosing the three inner municipalities. Firstly, the three municipalities were struggling with processes of urban renewal motivated by the interest of developers to build new projects. The instruments and limitations of the reactions of actors are more easily understood if the phenomenon on which they react is the same, since comparison can find commonalities in the analysis. Secondly, the municipalities represent territories where public, private and civil society actors are present and – sometimes - involved in public controversies. Thirdly, the fact that these municipalities were confronting similar processes of urban renewal and redevelopment made it possible to introduce variables

for richer comparisons such as comparing their capacity in human and capital resources that could explain differences. Finally, I focused on these three cases from a practical perspective: they were ongoing urban processes during my fieldwork.

I approached the cases in two ways. On the one hand, I developed an examination of the enforceable planning laws at a local level in municipalities that were current during the fieldwork as expressed in their Land Use Plans. Secondly, I contacted actors involved in cases I had identified in these rulings (see Chapter 5) and conducted interviews with relevant actors from the State, private sector and civil society and documented cases of planning processes. From this information, I could describe the cases of urban renewal in depth and document their relationship with practices in the territories where the cases occurred. This connection also permitted linking data obtained in interviews that appeared in published press relevant to the followed cases and with actors and spatial effects in the built environment.

After I had completed my fieldwork, the case of *Estación Central* appeared at the centre of the urban debate in Chile and heavily influenced the analysis. As described later (Chapter 6), this case became something of a national tragedy: many questioned how it was possible that the Chilean urban system allowed this kind of high dense buildings with no regulation. This is a limitation because the case was significant as the worst expression of the Chilean regulation of planning (Orrego). A long list of preconceived descriptions and alarming headlines were expressed, and the case was labelled as “vertical ghettos” by the press (Chapter 6). This gives the impression that *Estación Central* is unique and is not similar to any other case in Chile. Although this makes it less comparable with the other case studies in terms of impact, I argue that the media attention was only another element of the discourses that have developed around planning law. I also argue that the social practices of planning law were deeply involved in the constitution of the spatial result in *Estación Central*.

#### 3.4.4 Linking the points: Methods for Research Analysis

This subsection aims to answer the challenge of linking the data obtained in the three methods outlined above. The research design has accounted for three elements: firstly, an analysis of planning law rules and regulations, looking for the conditions in which planning is possible and the legal devices that planning law creates for actors to pursue

effects in the built environment. Those interactions and positions of actors in planning law are described in the examinations of rulings of the CGR. After that, a case study of three municipalities is conducted. Relevant data is obtained, such as the perspective of community, public and private actors that were involved in the urban processes, besides documents from legal procedures, making the understanding of the role of the social practice planning law in space richer and denser. Yet, the question of providing an account of the ways in which social practices constitute the production of space is still limited. What kind of method can provide an account of the constitutive role of law on space?

The data obtained is considered under the logic of a “reflexive interpretation” (James, 2012) of the social practice of planning law. The reflexive interpretation aims to link the different types of data described in the Chapters 4 to 6. In that sense, the conclusions of the analysis of the planning law rules and regulations are the basis for the analysis of the rulings of the CGR, as the rulings of CGR provide elements of interpretation of law that are detected in the discourses of actors in the case studies. The case studies assume that part of what social practice of planning law is comes from the evidence and conclusions that were gathered in CGR and in the analysis of planning law. The reflective interpretation of the social practice of planning law expands the field of a positivist and doctrinal understanding of the law and aims to uncover discourses that are reciprocally constituted in legal texts, rulings and in practical decisions.

The interpretation of planning law is enriched by paying attention to place and context. The perspective of the discipline of Legal Geography provides an analytical tool for understanding the action of law: how the law is part of the social production of space, in this case particularly how planning law has a role in constructing, organizing and legitimating the built environment through its social practice. Legal texts and language have meanings outside the rulings and legal decisions:

*A contextualist [attentive to place and law] analysis of the law requires both an understanding of the meaning of particular legal texts and an understanding of the context in which these texts are produced. This includes recognition that legal terms, legal language, and legalistic logic are often employed in spheres outside the legal system. This is not to say that any of these authors formally appeal to a contextualist view, but rather that the treatment of place and law in this work falls within the boundaries of this perspective. Indeed, Gordon Clark makes a*

*similar point when he argues for the primacy of interpretation as a “mode of argument” over positivistic, analytic methods for studies of the law in social science. (Forest, 2000:6).*

A difficulty with the inclusion of ‘place’ in an account of social practice of planning law is the open texture of concepts of *place* or the *social*. For instance, the interpretation that I develop of the interpretative practices of legal techniques and legal knowledge of actors could result in a vague description of the social practice of planning law. It could mean anything, particularly in the case studies.

In order to diminish the effects of this limitation, I was partly inspired in what is called a “process-tracing” method in order to evidence how social practices could affect the production of the space. This method is defined as “*the analysis of evidence on processes, sequences, and conjectures of events within a case for the purposes of developing theories about causal mechanism that might causally explain the case*” (Pedersen and Collier, 2016:23). The method is similar to developing a historical explanation for how the identified social practices of planning law fit into a constitutive production of the built environment through “putting in order” discourses, technicalities and other practices. Particularly, the development of the *inductive* aspect of process tracing uses evidence from within a case to develop hypotheses that might explain the case, the latter hypothesis may, in turn, generate additional implications in this case or in other cases (Pedersen and Collier, 2016:8).

The chosen research strategy is not entirely consistent with a process tracing method: the abductive research strategy is linked to a social constructionist analysis that intends to make sense of the real world through the perspective of humans, where process-tracing aims to make general conclusions from specific cases -a deductive research strategy. However, I use some of the reflections of process tracing to analyse evidence as “intermediations” that explain how law constitutes the built environment. The inspiration for process tracing assumes that both concepts - law and space- are relational and variable in their constitution. Bennett and Layard’s (2015: 407) call for “becoming spatial detectives” argues that the traces and effects of law are “embedded within places”. Coincidentally, process tracing can be used in interpretive approaches discerning the steps by which an actor contests or adopts social structures such as law and, for example, its discursive practices (Bennett and Checkel, 2015). Particularly, Pouliot (2015) calls for a

“practice tracing”: the contexts that give (legal) practices - as ways of doing - their generative power.

In this thesis, “practice tracing” is used to order the evidence and to provide theoretical explanations for the processes of social practices of planning law in the built environment. It is focused on theory development through evidence of the enforcement, interpretation and “ways of doing” of planning law in Chile. The descriptions of social practice do not aspire to develop “abstractions” of analytical generality from empirical tracing, but seek to theorise the social practice of planning law in ways that can be of relevance to other social practices of the law in different places and contexts. The evidence of the action of planning law through legal devices and discourses and the results of the case studies are analysed by this method. Case study descriptions are unpacked as processes through which the social practice of planning law, its discourses and devices in the making of space explain the physical effects in the built environment.

### 3.5 Data

This section describes in detail the data that was obtained by the methods explained above. Up to this point, I have explained that to analyse the constitutive role of the social practices of planning law in the built environment I developed: an analytical review of planning law rules and regulations; an analysis of rulings on planning law; and a subsequent examination of actors’ social practices in relation to planning law through three case studies of municipalities in Santiago. In this subsection, I discuss in more detail the information and data I obtained in order to answer the research question.

The data collection was done in two stages. The first phase was gathering rulings on planning law from the CGR between October and November of 2016. The second phases were a fieldwork where I followed the case studies and was conducted between December 2016 and March 2017, and interviews between December 2016 and June 2017. After that I analysed the evidence and started the writing up process (Table 2: STAGES OF THE RESEARCH Table 2).

TABLE 2: Stages of The Research

Research Stage	Dates	Objectives	Activities
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Identify trends, actors and discourses in CGR rulings	Oct-2016 Nov-2016	Understand current controversies, discourses of planning law, identify potential cases	Content analysis of rulings from CGR  Coding
Fieldwork	Nov-2016 March-2017	Gain knowledge of the social practices of planning law in three case studies	Interviews, observation, gathering of documents.
Interviews	January-2017 June-2017	Confront data of documents and case studies with perspectives of actors	In depth interviews
Data Analysis: Rulings of CGR	June 2017- November 2017	An in-depth analysis of the rulings of CGR in terms of discourse and quantitatively measure the action of CGR.	Statistical analysis of the rulings
Data Analysis: Qualitative	December 2017- May 2018	Obtain a qualitative understanding of the role of social practices Planning law in the built environment of Santiago	Qualitative analysis and practice tracing
Writing	June 2018- June 2019	Develop the chapters of the Thesis	Writing up

SOURCE: AUTHOR

However, these phases are influenced by two factors. The first is that a large amount of the knowledge of the bodies of Chilean planning law is based on my prior experience as a legal practitioner, particularly from my work in the Ministry of Housing and Development prior to this research. Without that knowledge, I would have had to expend a very long time researching the logic and limits of planning law in Chile.

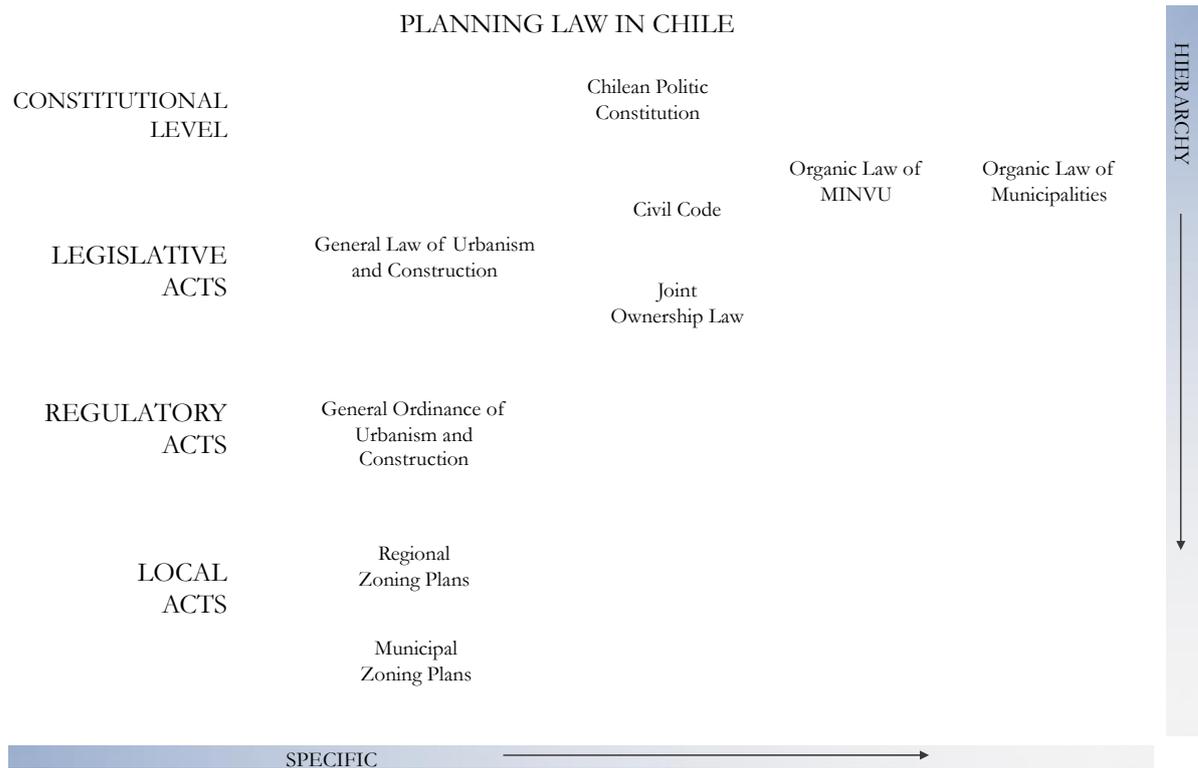
The research was approved by UCL Ethics under the Project ID Number 9779/001. All interviewees received an information sheet and signed a consent form. All the data and information of the research project was treated strictly confidential and handled in accordance with the provisions of the Data Protection Act 1998. Specifically, all interviewees agreed to be recorded and it is handled during this thesis with coding

references to anonymise their opinions. With regards to ongoing legal cases, I clarified that I could not take part directly in the outcomes of the cases nor giving legal advice or legal representation.

### 3.5.1 Rules and Regulation of Chilean Planning Law

The analysis of Chilean planning law included all those rules and regulations aiming to regulate the process of planning. There is no explicit description of planning law in the legal system of Chile and no particular body of laws can be defined as “the formal planning law”. According to Rajevic (2000), Chilean planning law is constituted by the rules and regulation aiming to regulate the territorial planning of human settlements and the urban use of the land (Rajevic, 2000). Therefore, planning laws need to be identified by their objective in formal terms: these are different bodies of law that aim to shape the possible future of the built environment of cities. A number of bodies of laws at different legal levels fit this description (FIGURE 4): from the Constitution, Organic Law (bodies of law that regulate essential elements of the Administration and that require 3/5 of the Congress to be approved), Legislative and Regulatory Acts. All these bodies of laws that include rules and regulations of planning law can be seen at: [www.leychile.cl](http://www.leychile.cl).

FIGURE 4: BODIES OF PLANNING LAW



SOURCE: AUTHOR

The legal analysis of the planning law rules and regulations was focused on examining its main organs and the legal devices through which planning law functions. The data was organized in order to provide an insightful description of the process of planning in planning law. This description serves two objectives. The first is to explain the normative positions and discourses of the planning legal system - the institutions, objectives and legal devices of planning law. Secondly, the analysis of planning law serves as an entry point to understanding the objects and limits of planning in Chilean cities. These discourses and the aims and limits are useful for comprehending how the rules and regulations relating to planning are practiced and interpreted by planners, authorities, developers and Courts.

Finally, analysing the norms of planning law allows an overview of the different instruments – “the legal toolbox” - of planners that exist in order to “plan” a city. This “toolbox” is available for officials at different levels of government -particularly at the municipal level - to regulate the production of the urban environment.

### 3.5.2 Analysis of rulings on urban planning by Contraloría

A second source of data was the rulings of the CGR that interprets planning law and comprised three elements: selecting cases, coding them and analysing them.

*Selecting:* I reviewed all the rulings issued by the CGR between 2007 and 2017. The reason for starting with 2007 was that data from rulings from prior years does not conform with public accounts (that were not published by the CGR before that year) or with the data given on the CGR webpage. The first filter for selection was rulings that refer to planning law rules and regulations: a total of 966 cases processed by the CGR considered the use of planning law. The following step was to determine which rulings represented urban planning processes: each of the 966 cases was analysed to identify arguments for changes to a planning law device or decision in the context of a planning process. There were 470 cases between 2007 and 2017 that were characterised as decisions on urban processes. Within those rulings, I identified a set of potential cases that could be followed up in the fieldwork. I finally choose three cases based on the proximity and similarity of the conflicts, based on new urban development.

*Coding:* The online review of CGR rulings provided the decisions - the “resolutive” part of the ruling- and arguments -the “reasoning” part- provided to make that decision. Rulings also provided information that allowed me to develop different data sets as part of the analysis. I captured the following information, which was organized in Excel sheets (Annex 1) that coded the following information:

1. Case number;
2. Year in which the case was decided;
3. Type of legal challenge;
4. Municipality;
5. Details of the controversy;
6. Outcome of the case, (if applicable): Confirms or overturns lower official decision;
7. Geographical identification;
8. Types of legal issue;
9. Basis of the decision (which provided arguments and discourses)

*Analysis:* The analysis of the data obtained from the rulings was structured in two parts. Firstly, I analysed the quantitative results, to understand the general aspects of the rulings of the CGR: who were the actors whose cases reached CGR; and what were the main cases and typical solutions. Secondly, I considered how cases were interpreted and decided by the CGR. Attention focussed on the main discourses and how the law was used and applied. In particular, I centred my attention on how formalism in the interpretation of planning law created technicalities and discourses.

### 3.5.3 Fieldwork

The fieldwork objective was to gather data to describe and analyse case studies. It consisted of a combination of different activities in the city of Santiago. (1) Interviews and observations of the projects that represented the urban processes were conducted in the three municipalities; (2) interviews with authorities, representatives of different civil society organisations, private developers and academics; and (3) the collection of secondary data - the three municipalities' planning objectives, zoning ordinances, construction permits and documents - that showed the processes of planning.

During the fieldwork, no assistant or collaborators were used in the data gathering. All interviews and data were in Spanish language. All data in Spanish was transcribed and translated to English by me.

#### a. Planning Law: Chilean context

I started my fieldwork with the intention to setting the context of actors and their understanding of the planning law in their ordinary practice. To that purpose, I conducted:

- i. A review of the planning law rules and regulation and official documents that discuss about their history and objectives
- ii. Review of the zoning plans of the Metropolitan Region of Santiago
- iii. Interviews
  - a. Officials of the Central Government
  - b. Representatives of Real Estate Developers

- c. Representatives of the Chilean Chamber of Construction
  - d. Representatives from the CGR
  - e. Legal practitioners of planning law
  - f. NGO representatives
  - g. Community Leaders
- b. Data obtained from municipal areas

The case studies were selected from municipalities experiencing redevelopment renovation processes (see Chapter 6) and that had relevant cases decided by the CGR between 2007 and 2017. Although the case studies were not about the controversy that was ruled on by the CGR, they were used as entry points to indicate the dynamics of urban processes, zoning, and planning law in each of the municipalities.

The methods used in the fieldwork were:

#### *Interviews*

In order to examine the processes that the planning law creates in the built environment, and the objectives and effects of law for different actors, a number of semi-structured interviews were conducted. These interviews included: (1) local authorities; (2) planners; (3) community leaders; (4) legal practitioners in each of the three municipalities. The interviews were focussed on respondents' understandings of urban processes, their positions and their personal appreciation of how the law was functional for their objectives in the built environment. These interviews enabled a comparison between the experiences of respondents and their agencies in the built environment.

The interviews allowed me to gain a general understanding of the perceptions and discourses of interviewees on what planning law and urban planning should be. The interviews were analysed for their discourses, to show how the visions of planning law are determined by respondents' positionality. I also gained conceptual understanding of how particular actors have vision of what planning law should be and what the expectations on its practice are.

The selection of participants responded to two considerations. The first was the expertise in fields that are subject to planning law, such as real estate development, planning, drafting regulations and local government. For each of these interests, actors were identified for interviews:

- a. Civil servants from the State, Regional and Local levels
- b. Academic Experts
- c. Representative of NGOs
- d. Real Estate Developers

A second group was constituted by participants who had experience at the local level in the case study areas.

- a. Neighbours
- b. Representatives of local organisations
- c. Civil servants from the Municipality
- d. Real Estate Developers

In total, 70 potential participants were contacted, and 46 interviews were carried out. The interviews are listed in the Table 3:

TABLE 3: LIST OF INTERVIEWS

<b>N</b>	<b>Position</b>	<b>Sector</b>	<b>Relevance</b>	<b>Level</b>	<b>Reference</b>
41	Academic	Academy	General	n.a.	Acad1
12	Academic	Academy	General	n.a.	Acad2
13	Academic	Academy	General	n.a.	Acad3
14	Academic	Academy	General	n.a.	Acad4
45	Local representative	Civil	Estación Central		Ec1
36	Neighbour	Civil	Estación Central		Ec2
33	Civil Servant	Publica	Estación Central	Local	Ec3
37	Neighbour	Civil	Estación Central		Ec4
7	Civil Servant	Public	Independencia	Local	Ind1
22	Civil Servant	Public	Independencia	Local	Ind2
9	Lawyer	Private	General		Law1

5	Lawyer	Private	General		Law2
6	Lawyer	Private	General		Law3
8	Private Developer	Private	General		Law4
24	NGO	Civil	General		NGO1
31	Local representative	Civil	Estación Central		NGO2
34	NGO	Civil	General		NGO3
4	Private Developer	Private	General		Priv1
10	Private Developer	Private	General		Priv2
26	Private Developer	<u>Private</u>	<u>General</u>	-	<u>Priv3</u>
16	Private Developer	Private	General		Priv4
23	Expert	Private	General		Priv5
27	Private Developer	<u>Private</u>	<u>General</u>	-	<u>Priv6</u>
29	<u>Expert</u>	Private	General		Priv7
32	Expert	Private	General		Priv8
35	Private Developer	Private	General		Priv9
40	Neighbour	Civil	Providencia		Prov2
39	Local representative	Civil	Providencia		Prov3
3	Civil Servant	Public	Providencia	Local	Prov1
17	Civil Servant	Private	Providencia	Local	Prov4
18	Civil Servant	Public	Providencia	Local	Prov5
38	Local representative	Public	Providencia	Local	Prov6
1	Civil Servant	Public	General	National	Pub1
28	<u>Lawyer</u>	Public	General	National	Pub10
19	Civil Servant	Public	General	National	Pub11
25	Civil Servant	Public	Regional	Regional	Pub12
2	Civil Servant	Public	General	National	Pub2
11	Public Official	Public	General	Regional	Pub3
20	Civil Servant	Public	General	Regional	Pub6
42	Civil Servant	CGR	General	National	Pub7
15	Civil Servant	Public	General	National	Pub7
43	Civil Servant	CGR	General	National	Pub8
44	Civil Servant	CGR	General	National	Pub9

I produced “reference” identification to indicate how an interview is cited throughout the thesis.

The interviews were developed through a guide to conducting semi-structured interviews. However, the main objective of the interviews was to openly discuss their views on what planning law was and what it should be. The interviews were recorded, transcribed

and anonymized in order to protect sensitive issues such as critical opinions on currently ongoing legal issues.

### *Observation*

During my fieldwork I spent a number of days in each municipality. As most of the interviews were conducted in the same territory as the urban processes being researched, this allowed me to see and experience how neighbourhoods were established and municipalities experienced and to compare the aims of zoning plans with their results, to understand expectations and frustrations of residents and authorities and their perceptions of the built environment. I also took photographs that set the context of the built environment of municipalities that were studied.

It is difficult to overestimate the importance of observation to the understanding of law and based on the idea of “becoming a spatial-legal detective” quoted above, I tried to connect the procedures of planning law that were being analysed in the fieldwork, the views of interviewed actors and their place in the built environment that was being observed. An emphasis on planning law and considerations of the Land Use Plans were contrasted with their physical meaning.

### *Secondary Data*

The fieldwork also allowed me to have direct access to secondary data. Many documents and much information on the territory of the municipalities were not available online. The fieldwork allowed me to obtain files and documents through my contacts and interviewees, and to request physical copies of Land Use Plans Regulations, and documents from academic institutions and the central government. This data included information regarding the zoning plans for each municipality, the consultations that were made in drawing up the plans, the political discussions around the LUPs and the implementation that allowed the constructions permits that were followed. All the providers of this information were informed that I was collecting data for academic purposes

#### 3.5.4 Writing up and organisation of the empirical chapters of the thesis

Once the data was analysed, the results were used to answer the research question and its sub-questions. Consequently, the next three chapters provide an organized narrative of the social practices of planning law and their constitutive role of the built environment. The procedure that I used to merge data collection and the analysis for each chapter is illustrated in Table 2.

Different parts of the data analysis are used in the three evidence chapters and there is no particular specificity between the three data sources and each chapter. The organization of the chapters intends to provide a sense of a narrative in the description of the social practices of planning law in the three municipalities. In accordance with this aim, each chapter provides an examination of a different scale: Chapter 4 focuses on the planning law rules and regulations that regulate planning processes in Chile, and how planning is conceptualised through legal devices and the discourses of actors. Chapter 5 examines the actions of the CGR in the interpretation of planning law in specific rulings and provides an overview of how discourses, technicalities and actors' strategies result from these cases. Chapter 6 focusses on the scale of municipalities, examining the social legal practices of actors through case studies of planning processes. The presentation of research evidence in these chapters is followed by an analysis (Chapter 7) which brings the evidence together and provides answers for the research questions.

### **3.6 Conclusion**

The chapter has explained the chosen methodology. The research design is a qualitative study that makes use of quantitative data alongside three qualitative methods: an analysis of the planning law rules and regulations; content of rulings by a legal institution; and three case studies in Santiago. The chapter outlined how this research is designed from a social constructivist perspective, which is central to the decision to gather information from multiple sources. Social constructivism suggests that the law constitutes the social world through a continuous process in everyday practices. These practices are describable by a researcher as part of the research encounter, producing a subjective account of the world, which in this case, rejects the idea of the objectivity of law.

The rest of this thesis examines the social practice of planning law in three municipalities from the design that was developed in this Chapter. Chapter 7, finally, will

reflect of the different manifestations of social practices planning law and the constitutive role that they have in the built environment starting from the collected evidence. The results that were discovered in the case study how are related to the discourses, technicalities and ways of doing that are described in the prior chapters.

## Chapter 4. Planning Law in Chile

### 4.1 Introduction

This chapter describes and examines planning legislation in Chile. Adopting the definition of planning law as “*the rules from different legal bodies aiming to regulate the territorial planning of human settlements and the urban use of the land*” (Chapter 2) and taking in consideration the Chilean legal context, I seek to explain the planning law rules and regulations, its main legal devices, their objectives in the built environment and how actors construct discourses and practices in planning law. The main task is to provide an understanding of planning law in Chile.

The chapter continues the exploration of the overall objective of understanding the constitutive role of social practices of planning law in the built environment of Santiago. I have examined current debates that I argued are useful in conceptualising the notion of planning law (Chapter 2): (i) the challenges of planning in Chilean cities (ii) debates on the study of law; and (iii) the lack of attention to planning law in debates about planning. This chapter examines planning law in Chile from a spatial perspective, focussing on the legal devices designed to deploy planning law spatially. The chapter provides a point of entry - an analysis of the rules and regulations of planning law - to understand how formal planning law is modified through interpretations in everyday mundane decisions that constitute the social practice of planning law. It describes legal institutions and the legal system for planning in Chile which draw on planning law in decision-making, as a starting point for understanding the constitutive role of planning law of the built environment in Chilean cities.

The chapter is organized as follows. First, I introduce a discussion of the context and discourses of planning law that relate to the Chilean legal system. Secondly, I examine the main institutions and history of the bodies of law that go to make up “planning law” and its rules and regulations. Thirdly, I describe how the planning processes that are enforced by planning law are developed, focusing on the legal devices regulating urban and spatial development: Land Use Plans and Construction Permits. I also discuss how planning processes are deeply influenced by the legal context. In the last section, a reflection on the significance of the Chilean legal system for planning law is developed.

The chapter concludes that the legal context limits the ability of planning law to accomplish the objectives that actors seek. A legalistic understanding of law provides sees law as independent of its spatial effects. The rationality of coherence behind legal formalism restricts the ability of planning to guide the future of Chilean cities. Consequently, all actors pursuing objectives in the built environment are forced to use formalistic interpretations of planning law. I also reflect on why this context is relevant for the outcomes of this thesis.

## 4.2 Planning Law in the Chilean Legal System

### 4.2.1 The Chilean Legal System

In this section, I introduce core elements in an understanding of the legal context in which Chilean planning law is located. The elements are related to discursive forms that characterise the Chilean legal system.

Describing the function of law in society and in the experience of actors has been a constant debate in legal theory. Bobbio (2002 [1958]) argues that the best way to describe the experience of law is to consider law not as single legal rules but as a *system of legal norms* or legal system: a set of legal norms that, traditionally, is associated with the following elements: a set of norms is

- unitary: legal norms have a common basis in the validity of all the legal norms that integrate the legal system; these norms have a hierarchical structure;
- coherent: legal norms are compatible with each other, and if not, the legal system provides the procedures to solve its incompatibility;
- fullness: legal norms dismiss the possibility that issues cannot be solved through specific legal norm or its contradictory legal norm (Bobbio, *ibid*).

Thus, Chilean legal system is based on the object of providing a unitary, coherent and full legal system.

The legal system in Chile is based on what is known as the civil law tradition, where main principles are codified in the Political Constitution that functions as the primary source of law. It is based on codified legal systems such as the French, Italian or Spanish. The decisions of Courts have an effect only for the case itself and are not, by themselves, a formal source of law.

From a systemic perspective, the unity and the hierarchical structure of the Chilean legal system are based in the Political Constitution that sets basic human rights, the main democratic institutions and the sources of law. The first level of hierarchy is the Political Constitution itself. The second level are the legislative acts which are contained in “Laws” or “Codes” (i.e. Civil, Criminal, Commercial) and which are divided in which quorum of the Congress is required to reform them. The third level is statutory or regulatory, which are the acts of the government that specify matters of the law or regulate when the law does not address certain issues. The unity of the system is based on the fact that the Constitution is the common ground of validity of the legal norms that integrate the legal system.

The core ideological ideas of the Chilean legal system and its sources of law are traceable in spirit to the French Revolution, in which the legal system is based on the idea that human reason can provide social transformation and justice, guaranteeing liberty, equality and legal security for the people (Cordero, 2009). These principles of the new liberal state provided the form for its legal norms: general, abstract and permanent, requiring formality and homogeneity in their composition. Rules in that context mean limits to the powers of any public authority.

These ideas confronted several challenges with the social changes that have occurred since the last quarter of the 19<sup>th</sup> century in Chile. The role of the state changed, aspiring to effective social justice, guaranteed rights and controlled economic power (rather than a limited by law State). One of the instruments to achieve these changes were precisely legal norms, that represented the power for political change: giving new powers to the State. This occasioned a legal system that provided more “prodigal, contingent and fragmented” legal norms (Bobbio, 2002 [1958]). A proliferation of legal activity through the creation of multiple and contingent laws generated a more fragile and voluble legal system and the increment of new attributes for the state. In words of Carl Smith (1950), this was

characterized by “motorized legislation”: an incommensurable number of legal norms and scope of authority that varied in scope, quality and that created legal insecurity.

The influence of the Constitutional State has also been deemed central to a description of the Chilean legal system. The Constitution has replaced the law as the guarantee for the “rule of law”: The Constitution that establishes the main features of the legal system, the recognition of sources of law and basic human rights. Accordingly, the unity and validity of the legal system in Chile is based on this principle recognised in the Constitution and this means that all public officers must act in conformity with the legal system<sup>3</sup>.

Summarizing, the Chilean legal system is founded in a civil law tradition that intends to provide certainty through codified legal norms. This tradition represents an ideology of the liberal state that directs the development of rules and regulations and their relationships to social and political change. The next step is to understand how this construction of the meaning of law gives the context to planning law, to examine the role of practitioners and recipients of law. In the next subsection, I unpack the law in relation to its role in Chilean society.

#### 4.2.2 The Chilean Society and the law

In the previous subsection (4.2.1), I outlined the core elements of what constitutes formal law in the Chilean legal system. In this sub-section, I describe how the law is perceived and used in Chilean society. As argued in earlier in the introduction and the literature review, the legal system is also composed of the social practice of law including the technicalities put to use by its practitioners and final recipients.

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<sup>3</sup> CP, Art. 6° and 7°. “*Artículo 6°: Los órganos del Estado deben someter su acción a la Constitución y a las normas dictadas conforme a ella, y garantizar el orden institucional de la República. Los preceptos de esta Constitución obligan tanto a los titulares o integrantes de dichos órganos como a toda persona, institución o grupo. La infracción de esta norma generará las responsabilidades y sanciones que determine la ley; Artículo 7°: Los órganos del Estado actúan válidamente previa investidura reglada de sus integrantes, dentro de su competencia y en la forma que prescriba la ley.*” (Article 6°: The action of the bodies of the State must be subject to the Constitution and to the norms enacted in conformity therewith. Both the incumbent officers of said bodies or members thereof, as well as all persons, institutions or groups, are bound by the precepts of this Constitution. The breach of this principle shall generate responsibilities and penalties to be determined by the law; Article 7°: The bodies of the State operate validly within their field of scope of authority, and in the manner prescribed by law, after their members have been properly invested. No judicature, person or group of persons may assume, even on the pretext of extraordinary circumstances, any other authority or rights than those expressly conferred upon them by the Constitution or by law. Any act contravening this article is null and void and shall give rise to the responsibilities and penalties indicated by law).

Unlike positivist scholars, the *realist* literature is interested in the social effects of the law, focusing their attention on the everyday practices that law produces. This interest, however, has not been prominent in the study of the Chilean legal system. Legal theory in Chile has focused on general theories that respond to the positivist paradigm, researching and reflecting on the legal system normatively; that is, matters of interpretation and doctrine regarding the nature of the law and its different branches.

A core characteristic of the Chilean legal system is that its Institutional order is based in a formalistic interpretation of the law which sees the law as intelligible and internally coherent (Weinrib, 1988): it is not required to justify its decisions by “external” ethical, political or religious considerations. Chile has been called as a legalistic nation that traditionally strictly respects the power of legal instruments (Fuenzalida, 2003) and where it is considered that law is exhausted in the enforcement of the rule (Atria Curi, 2018). Chilean legal culture is formed around exegetic readings from positivist legalist perspectives, and the idea that judges should mechanically apply the law (Squella, 2001; Orrego, 2002). Law, according to this notion, is the manifestation of reason and justice, whereas politics - and deliberation - are interest and passion (Atria, 2002). Obedience to the law is perceived as one of the most significant elements for the evaluation of how an authority exercises its power.

However, this institutional and legal order was severely interrupted by the military coup in 1973. Between 1973 and 1980, the *de facto* government ignored the Constitution and laws, and the Courts ‘disappeared’ thousands of Chileans. Nevertheless, even the dictatorship pursued its legitimisation through the creation of “law-decrees” in keeping with Chilean legalistic tradition. The return of democracy in 1990 had a new Constitution established during the dictatorship (Viveros, 2002). While the new institutional order slowly gained validity, the legalist tradition continued in the practices of legal and non-legal actors (Fuenzalida 2003).

Actors interpret law based on the supposition that a legalist interpretation of law has a uniquely correct legal answer to legal questions. Although understanding formalism as judges only using legal commands to make legal decisions is a limited and flawed understanding of legal adjudication (Shapiro, 2011), formalism is still a relevant way to

understand actors *interpretation methodology* for legal texts: not by its objectives but with its plain meaning. The formalist interpretation made by most legal actors is that : “*To follow a rule entails doing what the rule requires without factoring in other possible considerations or the consequences that might follow*” (Tamanaha, 2017, p. 111). Legal formalism becomes a feature of the professional culture of lawyers, civil servants and non-legal actors: actors benefit from an intricate system of knowledge and modes of reasoning that allow them to gain advantage in professional legal practice, translating social problems and discourses into successful legal terms (Tamanaha, 2017).

An example related to the formalist character of actors’ legal interpretations is how a formal interpretation of law can produce unexpected effects. The formalist notion of law has created forms of non-compliance that elude the enforcement of the authority. An example of how these rules and regulations are used is this: there is a rule for improving the density of urban projects if 2 land plots are merged, in order to benefit larger projects. With this rule, however, a number of projects took one land plot, subdivided it and merged it again in order to profit more for a land plot (for this case, see (Schlack and Vicuña, 2011). In this case, after this law was crafted and regulated, actors use and somehow manipulate the law for objectives that do not correspond with its spirit (McBarnet, 1988, in Atria Curi, 2018). Interestingly, however, these actions inscribe themselves within the discourse of strict respect for the law. The notion of *creative compliance* was developed to describe practices that can be defined as perfectly legal and at the same time eluding or ignoring the intended effect of the law (Atria Curi, 2018). The figure, used mostly in the analysis that question the effects of tax-law, depends on two elements: an attitude to laws that subjugates the interest of law to personal interest; and the active construction of innovative and alternative arguments, interpretations and legal technicalities (McBarnet, 2001).

Formalism also is related to the perception of law as one of the main means available to governments for achieving political objectives. The use of law as an instrument for accomplishing different government objectives was increased with the Constitution of 1980. This has resulted in a large number of laws and the increasing complexity of the Chilean legal system. There are different levels of competencies, created in different times frames which can have overlapping and contradictory legal decisions. Contradictory rules, competing authorities, areas with uncoordinated planning investment and the inability to coordinate are linked with the *institutional fragmentation* of the state (Tello, 2013). A centralist

logic and uncoordinated responsibilities of each Ministry of State drives policies, making it difficult to develop an integrated perspective for the government. This deficit of the State is replicated in urban policies, where each branch of the State plans with different regulations, as is showed in the Table 4:

TABLE 4: LEVELS OF PLANNING IN CHILE

<b>Level/ Area</b>	<b>National</b>	<b>Regional</b>	<b>Subregional</b>		<b>Communal (Municipal ity)</b>
<b>Infrastruct ure</b>	<i>Plan Director of Infrastructure</i>  MOP	<i>Regional Plan of Infrastructure</i>  MOP	<i>Special Plans</i>  MOP	<i>Regional Investment Plan of Infrastructure and Public Space</i>  REGIONAL GOVERNMENT	<i>Communal Investment Plan of Infrastructure and Public Space</i>  MUNICIPALITY
<b>Transports</b>	National Transport Policy  MTT		Urban Transportat ion Master Plans SECTRA		
<b>Urban Developm ent</b>	Urban Developm ent National Policy MINVU  National policies for Territorial planning and Urban and Rural Developm ent  COMICIV YT	Regional Plan for Land Government  SUBDERE/G ORE  Coastal Use Plan  GORE	Intercommunal Land Use Plan  REGIONAL GOVERNMENT		Communal Land Use Plan  MUNICIPALITY
<b>Territorial Developm ent</b>		Regional Strategy for Development  REGIONAL GOVERNMENT			PLADECO  MUNICIPALITY

Source: Author, adapted from Tello (2015)

In summary, the Chilean legal system bases its institutional arrangements on a Constitution and in a number of sources of law. A formalistic use of the law is considered to be the correct way of interpreting and debating law and applying government legislation. The use of legal rules and regulations is even more complex when each branch of the State has own rules for planning and implement public policies. In the next subsection, I will examine how planning law fits with this system.

### 4.3 Conceptualising Planning Law in Chile

The previous descriptions have provided elements for understanding the context in which planning law has been developed in Chile. In this section, I describe planning law and its position in the legal system. I begin by discussing Chilean legal scholars research into Chilean planning law. This is followed by the history of Chilean planning law, explaining the institutions of planning which are then described in the following section. I describe the planning process focusing on Land Use Plans and Construction Permits to examine the spatial role of planning law. I finish this section with an analysis of the relation of planning with the Chilean legal system.

#### 4.3.1 Chilean Planning Law

There are a number of insightful descriptions of planning law in Chile. Scholars have examined Chilean Planning Law (see Cordero Quinzacara, 2007, 2017; Jimenez, 2008; Ochoa Tobar, 2012; Rajevic, 1995, 2010) and made proposals to improve its quality and effects. The objective of those scholars was to understand the capacities and limitations of planning law from a legal perspective. Although this focus is valuable and underlines critical debates that will be noted during this section, it has a static view of the spatial context in which planning law is created and of social practices of planning law, such as the discourses of formalism and the significance of specific legal institutions for different actors. The constitutive role of law in the built environment remains an uncharted area in these discussions: descriptive examinations of planning law do not tackle ordinary social practices of planning law.

On the other hand, from a planning-focused perspective, academic reflections have largely neglected law as an important variable in the study of urban problems (Valverde, 2012). In my experience, Chilean scholarship has been generally consistent with this description, but there are insights into the importance of law in the built environment that are valuable for the development of this chapter. Vicuña (2014) has examined how planning law has been functional in a shift of strategy by the state in the administration of the urban, concluding that planning regulation is a central element in the hybridity that characterises neoliberal urban development in Santiago. Planning law rules and regulations have also been critically analysed. One example is an analysis of how the morphology of Santiago and the configuration of planning law loopholes and exceptions are related (Schlack and Vicuña, 2011). Another example is an analysis the ability of developers to use normative interpretations in their benefit (Alcaino, 2011). Finally, the capacity of planners and authorities to adapt to non-legal ways of developer obligations to plan the Chilean cities has been studied (Mora & Burgos, 2019). However, these reflections have focused on specific rules and regulations of planning law and their effects but have not considered the role of actors' social practice in their analysis.

A core element of an examination of planning law in Chile is the law's relevance as an instrument for the objectives that have been debated in the political discourse on cities. In the last decade, the planning system has been under academic and political review (MHDU, 2013; OCDE, 2013) and several proposals were presented by the *Comisión Nacional de Desarrollo Urbano* (CNDU – the National Commission for Urban Development, an institution created in 2014 by the state to develop proposals for policy changes) specifically on new land policies (CNDU, 2015). Practically all the political and technical proposals made by the Commission involve reform on different levels of planning law, through processes of approval of new planning law rules and regulation or the reform of regulation decrees. Some of the proposals that have reached the stage of discussion in Congress also reveal different positions of actors and the objectives and narratives that are behind the planning law.

But these academic and political discussions of Chilean planning law have not taken into account the “performative” aspect of planning law in the built environment through the development of meanings and discourses. As Azuela (2016) argues, legal devices generalise a number of representations of the built environment. Legal categorisations -

such as “public and private”, “Construction Permits”, “land uses”, and scales of administration - configure the urban environment by their materiality. The built environment is also shaped by the discourses of legal institutions that the law self-referentially develops: legal justification of policy, an action or a zone as an entity in legal terms could produce either its certification or invalidation in the spatial constitution of a city. The complexity of planning law is an effect of the complexity of urban processes that also informs the understanding of planning law. These processes of disputes, power relations and production of the built environment also give form and content to planning law and its social practice.

In Section 4.2, it was argued that description of the legal tradition that has constituted the law in Chile is also important to understanding what kind of planning is possible in the Chilean context. An examination of the legal traditions of different countries allows understanding of how practices and formal law entangle with the possibility of planning (Booth, 2016). Consequently, the act of planning the built environment starts from what formal planning law makes possible, giving prerogatives and procedures to develop planning practice. These are practical considerations of planning law that planners and civil servants must confront when planning is performed. At first glance, in countries with a civil law tradition like Chile, planning seems to be a reproduction of “*national legal rules in a spatialized context*” (Booth, 2016:12). In contrast, in countries with *common law* traditions – such as the UK- planning is developed through indicative rather than prescriptive exercise. In theory, countries operating in this paradigm have developed reliance on the importance of customs, precedent and practices to understand what is possible in planning law.

In this subsection I have highlighted current discussions of Chilean planning law and how the of planning law can be related with the desired planning objectives. A performative notion and the legal context are useful to understand how planning law is related with the public policies of planning In the light of these debates, in the next subsection I describe the main formal sources of planning law and its institutions in Chile. I then focus on the two main legal devices for planning the city that planning law provides. Finally, I discuss how the legalist context is deeply connected with the understanding of planning law in Chile.

#### 4.3.2 Formal Sources of Planning Law

Planning law contains a set of rules and regulations that create processes and rights in the built environment aiming to regulate land use and the planning of cities. The act of planning by local, regional and national civil servants is possible because of the recognition given to civil servants to plan cities: law legitimizes planning. However, it is less clear to what extent law and legal process shape the nature of planning and planning practice (Booth, 2016). In practice, planning law is the sum of different rules and regulations which set out the prerogatives, rights and duties of private actors and competencies and limitations of public actors. The development of these rules is the sum of different visions and the accumulation of objectives that different legislators at different times had in mind for regulating the development of Chilean cities.

This means that it is difficult to conceptualise where planning law fits in the Chilean legal system: planning law is the result of different legal traditions. On the one hand, planning law derives from the civil code regulation of property. Before the creation of modern planning, the uses of property were limited by nuisance laws in a way that attempted to reconcile competing owners' interests with each other or with the public interest (Fernández, 2003). Elements such as easements and rights of way were necessary to the enjoyment of private property. However, the tendency of the State to improve its competences in public policies has included planning law as an expression of law that regulates the action of the state and their civil servants: Administrative Law (Rajevic, 2000). Most of the planning competencies and objectives depend on civil servants with a recognised scope of authority to make planning decisions, policies and regulations, which all come from different organs of the State.

This modern conception of planning law as a part of Administrative Law assumes that under Administrative Law: (1) most of the rules and regulations aim to regulate the actions of civil servants and public institutions; (2) the organs of public administration must limit its scope of authority to the stated and limited public goals and competences; and (3) planning is part of the administration of the state and incorporates typical administrative legal techniques like sanctions, orders, prohibitions and hierarchies (Jimenez, 2008). Jimenez (2008:21) argues that as an expression of Administrative Law, planning law is distinguished from general administrative law by two 'moments': (1) a "*static*" moment, in

which planning is produced, for instance, in a Land Use Plan; (b) a “*dynamic*” moment at the point of construction of what is planned, for instance, development allowed by Construction Permits. Both moments are regulated by planning law. However, as argued below, a consideration of legal devices in relation to the spatial, questions whether there are, in fact, “static” elements in planning law.

There are different legal acts that were developed to configure planning law in Chile. The most important is the General Law of Urban Development and Construction (Ley General de Urbanismo y Construcciones: GLUD) which applies nationally and contains the principles of urban development; the creation and attributes of Planning Institutions and their role in the processes of urban development; rights, responsibilities and sanctions for institutions, civil servants and individuals in the processes of urban planning and urbanisation. The GLUD is divided into five chapters: (1) the Institutions and their fields of competence; (2) the process of urban planning; (3) constructions; (4) social and economic housing; and, (incorporated in 2015), the (5) system of public space contributions.

Under the authority and limitations of the GLUD, a General Ordinance of Urban Development and Construction (Ordenanza General de Urbanismo y Construcciones: GOUD) regulates specific administrative procedures, planning processes and technical standards for land use planning and Construction Permits. The GOUD is a technical and specific regulation which is controlled by MHDU. It includes rules and regulation regarding (1) definitions of planning; (2) the process and design rules for planning; (3) urbanisation and construction processes; (4) architectural definitions for any construction; (5) construction processes; and (6) social and economic housing. An example of the different roles of GLUD and GOUD is that while the GLUD creates and defines the ability of Land Use Plans to define land uses, the GOUD establishes the possible land uses that Land Use Plans can elaborate. There are also technical norms that delineate standards for urbanisation and building, materials and security.

However, planning law is not only constituted through those acts that deliberately aim to regulate the process of planning. There are different bodies of law that have other objectives but which include rules and regulations influencing planning processes and Construction Permits:(1) “organic laws” of the administration of public matters, the term

organic comes from a Constitutional definition which gives them a higher quorum to be reformed; (2) laws that regulate private property; (3) laws that are related with construction permits and Land Use Plans, in the sense that they require actions but they are not directly intended to regulate planning.

In the first group – organic laws the Organic Law of Municipalities (*Ley Orgánica de Municipalidades*: OLW<sup>4</sup>) sets different attributions for local government, setting out the roles of: Mayor, the Municipal Council and the public officers in charge of granting Construction Permits; the Directorate of Municipal Works (*Dirección de Obras Municipales*: DOM); the scope of authority in planning matters and administrative and jurisprudential procedures to be followed after any actor decides to confront an administrative decision. At the same time, the Organic Law of the Ministry of Housing and Development (*Ley Orgánica del Ministerio de Vivienda y Urbanismo*<sup>5</sup>) establishes the competencies of MHDU in urban development. There are also Organic Laws for the Regional Branch of MHDU and the Service of Housing of MHDU<sup>6</sup>.

In the second group the regulation of private property - there are laws that play a role in how planning relates to housing and private property. The first relevant group of rules is the Civil Code that defines what private property is and the associated rights and limitations - in relation to the public good - and regulates the procedures for the purchase, sale, renting and contract on land. Land is a central element of the Civil Code: the category of goods is divided into movable and immovable (basically land) property, with different methods for acquiring property for each group. The Constitution also regulates *the fundamental right to property* for any kind of goods. Property can only be limited through laws based on the “limitations and obligations” that derive from the social function of property<sup>7</sup>. The Constitution also prescribes that property can be expropriated for common good or the national interest as defined by law. In addition, the Joint Ownership Law regulates the joint ownership of housing and commercial property.

Finally, the third group of laws are regulations affecting how planning processes are conducted. The Law of Environmental Requirements (*Ley de Bases del Medio Ambiente*: LE)

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<sup>4</sup> Law N° 18.696, “Organic Law of Municipalities”.

<sup>5</sup> Law N° 16.391, “creates the Ministry of Housing and Development”.

<sup>6</sup> Decree Law N° 1.305, “Restructures and reorganizes the Ministry of Housing and Development”.

<sup>7</sup> Political Constitution of Chile, Art. 19 N° 24.

and the Indigenous Consultation System have demanded changes to land use planning processes to include the standards and new procedures that these bodies of law require. All these groups of laws and regulations work as a jigsaw both in the so-called “*static*” moment - the elaboration of plans and regulations – and in the “*dynamic*” moment of development in accordance with Construction Permits.

Formal sources of planning law are, then, the sum of different rules and regulations of law which represent political efforts of governments to regulate the urban environment directly - the GLUD and the GOUD- and bodies of law that are intended to regulate other matters, but which have effects on how urban planning is conducted. These bodies of law also differ in motivations, political and social contexts, in their implementations and the specific reforms that different governments have developed. The creation of bodies of laws and their subsequent reforms represent successful political efforts but are not necessarily consistent. The “in force” planning law is the sum of those laws that have successfully been approved by political processes. Therefore, to accomplish a description that allows understanding different discourses that planning law produces in the built environment contains, I continue the exploration with an examination of the political objectives represented in planning laws.

#### 4.3.3 Looking to planning history in order to understand planning law today

Planning law and its development in Chile respond to the particular context of the urbanisation processes of a developing country. The different reforms and political perspectives have resulted in a formal planning law that only received attention from legislative processes with the return to the democracy in 1990, and this has resulted in a complex mix of rules and regulations in relation to planning law.

The creation of the first planning laws in Chile aimed to regulate specific aspects of the biggest Chilean cities at the end of the 19th century. Santiago, Valparaiso and Concepción were the spatial objects of laws that regulated water and sewage works, that were progressively incorporated to the legislation of Municipalities<sup>8</sup> (Rajevic, 2016.). The first systematic legal act of planning law was a direct consequence of the 1928 earthquake in Chillán, which revealed the importance of improving construction techniques, in both

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<sup>8</sup> Law N° 2.960.

quality and speed. This Act<sup>9</sup> authorized the President to enact “General Ordinances” in planning law and was followed by at least four acts of systematic regulations between 1931 and 1973 relating planning law rules and regulations for construction of projects and zoning.<sup>10</sup> During these years, planning law had an administrative character with no involvement from the legislative apparatus. The objective of the regulations was to deliver legal security for the different constructions that were beginning to appear in Chilean cities, along with technical and security standards.

In 1965 the Ministry of Housing and Development<sup>11</sup> was created, assuming all the scope of authority of the Ministry of Public Works, where most of planning practice had been developed. The main political task of the MHDU was, however, to reduce the housing deficit. Nevertheless, under the MHDU, a number of Land Use Plans were developed, particularly in Valparaiso and Santiago. The first ideas of modern planning were implemented under this regulation, based on the belief that cities must adjust to an image projected by planners (Poduje 2003:). The model of rational planning is probably the best way to categorize the objectives of these Plans. Around the same time, the limitation of urbanisation was created through the *Plan Regulador Intercommunal de Santiago* (1960) which started a pivotal debate over the extent to which Santiago should grow and the capacity of planning to limit that growth. Chilean Planning started to use the concepts of zoning, urban expansion and the provision of infrastructure that sustained the urban growth.

The whole legal system was reformed by the 1973 military coup and subsequent 17 years of civic-military dictatorship. The legislative apparatus was shut down and the logic of the state and the administrative powers were reformed in a scheme that lasts to the present. Beyond the profound changes in the public and private sectors, inaugurated by the neoliberal economic regime (Lechner, 1992), new codes of planning rules and regulations contained in the *Ley General de Urbanismo y Construcciones* was enacted through a *Decreto con Fuerza de Ley* (decree with force of law) in 1975. The new content of the GLUD did not differ much from the previous laws. However, a number of changes in relation to the new neoliberal conception of development influenced how planning was performed. Firstly, the withdrawal of the state from the direct execution of projects changed who performed planning and how it was undertaken. The role of the state, particularly the centralized

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<sup>9</sup> Law N° 4.563.

<sup>10</sup> D.F.L. N° 345/1931; D.F.L. N° 224/1953; D.S. N°1.050/1960; D.S. N° 880/1963.

<sup>11</sup> Law N° 16.391.

Ministries, was prominent in the building of the city before 1973 and most urban and infrastructure projects had been developed by the state. The dictatorship incentivised the actions of private actors in urban development. This increased the presence of private developers as main actors of city redevelopment and renovation.

The repositioning of public and private developers also reformed the scale of planning. While public officers had pushed for a projected image of the whole city, planning was now performed at a project-by-project scale by private developers. The reasons for these changes are twofold. On the one hand, the public powers of public administration, particularly the MHDU, were diminished. Before the dictatorship, the powers of public administration and interventions in urban development were mainly activated through the Ministry of Public Works and after its creation, the MHDU. Accordingly, the first law of MHDU (1965) assigned development in social housing, urban development and planning to organizations dependant on the MHDU and state intervention. After 1973, although the legal system of planning did not change dramatically, powers for direct state intervention were limited and not used after the reorganisation of MHDU in 1975. The structure of the state was limited according to the narrative of a *subsidiary state*, public intervention only occurred in those areas where it was not profitable for the private sector to operate (Lechner, 1992). The capacities of the MHDU and other public organisations for direct public investment or expropriation were limited or eliminated (Mora and Zapata, 2004) and the planning system was modified in order to be functional for the interests of private actors. Land Use Planning, then, developed in an instrument mainly to regulate private developers, planning by case-by case through private-led development.

On the other hand, a number of deregulations and pro-market reforms were developed by the change to seeing land as a commodity. Planning authorities of the MHDU aimed to introduce market schemes for the provision of land and housing. In 1979, the first National Urban Development Policy (NUDP 1979) - under the provisions of the GLUD - was enacted by the MHDU. The NUDP 1979 placed private developers at the core of urban development. Along with this, it contained the argument that *the land was not a scarce resource* and advocated the elimination of an urban limit, putting both rural and urban land “in the same market” (p. 5). Although this policy only was *enforced* for five years, it allowed the derogation of the urban limit of Santiago between 1981 and 1994, providing

an additional 150.000 ha. for urban development. According to Sabatini (2000), this scheme was part of an effort of deregulation that the dictatorship pushed in most of its public policies. Even though Poduje (2007) disputes the real effects of the elimination of urban limits, he agrees that the way planning was performed was severely influenced by these policies. Certainly, both National Policies were clear that the action of private developers was the main factor for urban development and planning had to serve the purpose of enabling this.

Since the return to democracy in 1990, an emphasis on drawing up Land Use Plans for the whole country at the Municipal and Regional level has been realized. The return to the democracy represented the return of planning law to the standard democratic process, where general laws are approved by Congress. The 1974 Act, GLUD, has been modified 50 times since 1990. Modifications have ranged from eliminating obscure and little-used passages of law to the incorporation of new systems of developers' obligations. However, there has not been a whole and systematic revision of the formal source of planning law, which has led to a complex and not-entirely consistent body of law.

Regarding the planning of Santiago after 1990, the limit to urban expansion and the limitation of certain activities have been at the core of the effort to institute planning in most of the country. The idea of a *compact city* appeared in the Regional Land Use Plan of Santiago in 1994 (PRMS). This Plan represented a return to the idea of the desired image of the city, in this case, the dense city (Poduje, 2007). Similarly, the idea of planned subcentres of cities was recovered from the 1960 Plan. However, the PRMS has been amended in 1997, 2001, 2004 and 2016 to allow the expansion of Santiago by non-negotiable conditions for private actors established by the PRMS, such as parks and social housing. However, in practice, most of these conditions have not been met. In fact, the regulations of the PRMS were not well connected with the data available at the time, and have not been implemented (Poduje, Ibid).

There are two core elements that summarise the state of planning law in Chile in 2019 which are traceable in its history. Firstly, until 1990, planning law Acts were the result of a *delegated administration* from Congress to the governmental power. This means that the rules and regulations of planning law have emanated from a governmental effort that generally has eluded public discussion and political checks and balances. The executive

branch of the State has a central role of requiring of planning to be undertaken, and also in the design and implementation of its rules and regulations: planning law is more related with decisions of the MHDU than the Congress. Although after 1990 the GLUD needed to be reformed through the legislative process, the GOUD allows wide latitude for decisions to be made by the executive branch of government. Secondly, the objectives of the GLUD have been established politically by subsequent governments in office. The multiple modifications that planning law has faced makes both the GLUD and GOUD an intricate set of planning law rules and regulations that include the intentions of many different legislators which are not necessarily coherent. Under the dictatorship, the GLUD was used as an instrument to incentivise urban development by private actors, providing legal security for their investments (Pub1, 22.12.16, Pub7, 12.01.17). Subsequent reforms of planning law after 1990 have not changed this status.

The importance of the executive branch and the discourse of protection of private investment are elements that help the understanding of the logic of planning institutions and legal devices. Both elements are reviewed in the next sections.

#### 4.3.4 Urban planning Institutions according to planning law

The GLUD creates and regulates the institutions of planning along with the processes of planning. It also regulates the hierarchical relation of planning institutions, setting the scope of authority and responsibilities of each public office. The GLUD assigns a number of jurisdiction and duties to different local, regional and national scale public officers. In this subsection, I introduce those institutions and their role in Chilean urban planning. After that, I analyse the process of planning, particularly in the case of the legal devices: Land Use Plans and Construction Permits.

The Ministry of Housing and Urban Development (*Ministerio de Vivienda y Urbanismo*: MHUD) is the most important institution regarding urban planning in Chile. It is in charge of drawing up the public policies that refer to urban planning and housing according to its organic law<sup>12</sup>. The GLUD also allots specific tasks to the MHUD: (1) to make modifications to planning law required for urban development, with the approval of the Congress; (2) to modify and keep up to date the GOUD; (3) to request the state to

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<sup>12</sup> Law N° 16.391, art. 1.

initiate criminal prosecution against major breaches of law; (4) to undertake urban planning at a national level and to regulate processes of planning at regional and local levels. The GLUD also establishes a National Office within the MHUD structure, the Urban Development Division (*División de Desarrollo Urbano (DDU)*). The DDU has the scope of authority to provide interpretations of the GLUD and GOUD that must be followed in the planning and construction process. These resolutions are disseminated through “DDU Circulars” and have produced a sort of doctrinal knowledge in order to apply planning law.

The Organic Law of MHDU created 15 regional branches (one for each region of Chile) named Regional Ministerial Secretariats of the MHUD (*Secretarías Regionales Ministeriales del MHDU: SEREMI*) delegating some of the functions of the MHUD to its representatives at the regional level. The SEREMI is in charge of supervising the regional planning process, developing Regional Plans and interpreting legal rules and regulations of municipal Land Use Plans. Each region has also a *Servicio de Vivienda y Urbanización (SERVIU)*, that was created to replace the operational side of MHDU in housing provision. However, housing policies have shifted to a subsidy model, converting SERVIU from being an administrator of payments and controls for private developers.

The GLUD has an important role in municipal planning and construction processes. Chile is divided into 358 municipalities which are the local Councils in charge of the public administration. The Metropolitan Region has 52 municipalities, and 34 of them are within the urban limits. Municipal responsibilities include the management of public spaces, waste, education, communities and planning; planning is mainly carried out through the development and enforcement of Land Use Plans. Municipalities depend on central government for the major parts of their budgets and for investment funding. Municipalities are also dependent of the resources that MHDU gives for the development of Land Use Plans. In 2002, resources were created by the central government in order that each Municipality could draw up a Land Use Plan. By 2018, 58% of municipalities in Chile had a Land Use Plan, but more than half had not amended or modified their Plans for over 10 years.

GLUD creates planning administrative posts, key players for urban development in each municipality. For urban planning, the main actor is the *Director de Obras Municipales (Director of Works: DOM)* who is a public officer located in the municipal structure

mandated to investigate the background of an urban project; to issue Construction Permits; to receive information regarding legal claims on projects; and give final approval of the projects<sup>13</sup>. A core characteristic of DOMs is that even if they depend administratively directly on the Mayor of a municipality, their interpretation of the law is subject to potential revision by SEREMI. However, to remove a DOM, SEREMI must ask a Mayor to start the process of removal. This situation has given DOMs important room for manoeuvre, particularly in interpreting planning law to grant Construction Permits with independence of Mayors and SEREMIs, as I show in the case studies. The importance of DOMS is mainly related with the importance of the accomplishment of planning laws in order to develop urban projects. The GLUD makes clear that all these authorisations must comply with planning laws included in the GLUD, GOUD, Zoning Plans, and Statutory Regulations of MHDU. Also, all the Municipalities that have more than 50.000 habitants and have a Land Use Plan must have an Urban Advisor in charge of study new modifications of the Land Use Plan.

There are other institutions critical for the process of planning. Although Congress does not play a part in the creation of planning laws, their modifications reveal the importance of the political process in relation with the importance of rules and regulations of planning law. Each of the modifications of the GLUD needs to be checked by the Congressional Commission for Urban Development, Housing and National Lands Since 1990, this Commission has analysed over 120 modifications to the GLUD, of which 72 have been proposed by MHDU. One non direct actor in Chilean planning law is the Contraloría and the Courts, as I explain and expand in the Chapter 5 of this thesis. The GLUD reminds us<sup>14</sup> that when public officers know that there has been a contravention of the planning law, the CGR must be informed. Construction permits are subject to the revision of administrative terms when any actor believes that laws have been ignored by public authorities.

#### 4.4 Planning processes and the law: the devices of Construction Permits and LUPs

I have briefly described the role of the public institutions with relevance to planning laws. I shall now describe the planning process in Chile and the role of rules and

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<sup>13</sup> GLUD, Art. 8.

<sup>14</sup> GLUD, Arts. 13 and 15.

regulations of planning law in its configuration. In this subsection, I explain how planning law frames the planning processes in the city through two legal devices: Land Use Plans and Construction Permits.

The description of legal devices provides a practical perspective on planning law in the built environment. The GLUD and GOUD are made evident to citizens, developers and civil servants through the devices that the planning law creates. Rules for urban development are settled through Land Use Plans, which reflect the sum of participation processes within the legal system. Land Use Plans are also sets of urbanistic rules that can be enforced and spatialised through Construction Permits.

#### 4.4.1 Land Use Plans<sup>15</sup>

The processes of urban planning in Chile are divided into three levels (Figure 5). The national level is developed by MHDU through the GLUD and GOUD and related policies. In the second level, inter-municipal and Metropolitan Regulating Plans guide the urban and territorial development of those areas integrated in an urban unit. It defines the urban limits; the transportation network; designates land for future expressways, critical roads and parks; sets standards for specific production activities; and fixes the maximum density for each municipality of the urban unit.

FIGURE 5: LEVELS OF PLANNING IN CHILE

<b>Level</b>	<b>How</b>	<b>Who</b>
<b>National</b>	Urban Planning through the GLUD and GOUD	MHDU

<sup>15</sup> A Reform to rules and regulations of land transactions included changes in the procedures and requirements of LUPS in 2018. These modifications were motivated by political pressures for transparency and good practices in the political system in Chile. In the case of planning and land, the request for the MHDU was to reform GLUD in order to make the decisions of land uses more transparent for the community. However, MHDU officials did not limit the reform to this matter. A battery of rules and regulations that were included in the Reform were directed to make the process of planning itself more transparent. These reforms included a time limitation to the validity of land use plans; the development of mandatory procedures that allows the community to understand better the design of the plan; the creation of principles for the planning authority to develop land use planning. Many of these reforms are directly linked with the processes that are analysed in this chapter. However, the Land Use Plans analysed in this Thesis were developed before these rules were approved in 2018. Therefore, they are excluded from the analysis.

<b>Regional</b>	A number of municipalities that constitute an “urban unity” through general provisions	SEREMI
<b>Local</b>	The planning of the administrative zone of a municipality	Municipality

SOURCE: AUTHOR

The Local level is in charge of the *harmonious development of the local territory*, through the Land Use Plan (*Plan Regulador Comunal*, LUP)<sup>16</sup>. The LUP is a legal instrument composed of urbanistic rules (a subset of planning law rules and regulations) about safety standards and urban spaces, and of the *functional relation* between residential areas, workplaces, infrastructure and leisure zones in a specific territory. The LUP provisions include land use or zoning; location of communal equipment; transport infrastructure; parking zones; urban limits; density; prioritisation of the development of new land; and other urban aspects. An LUP must include a review of social and economic conditions and potential for development and studies of the baseline and objectives of the planned developments; a feasibility study of water and sanitation services for future expansions; a local Ordinance with the specific building rules and floor plans that graphically express the provisions of urbanistic rules.

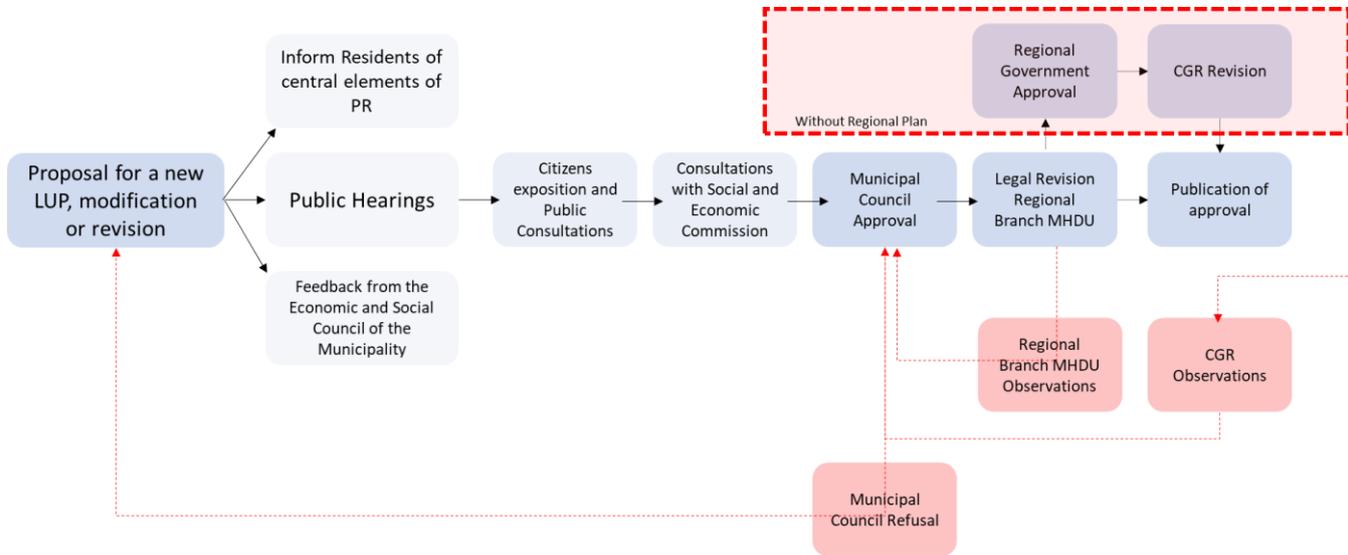
The process for developing and approving a LUP is mostly contained in the GLUD and GOUD (Figure 6). Local governments are in charge of designing LUPs, considering the opinions of citizens, and translating planning proposals into urbanistic rules that will be enforceable for future urban developments in the territory of the municipality. Local governments also control the process of exhibitions, hearings and approvals required before approving a LUP. The process starts with the design stage, where studies and a proposal for an area of the territory of the municipality is developed. After hearing the opinion of residents and organizations, the Municipal Council approves or dismisses the proposed LUP or its modification. Citizen participation is not binding, and the Municipal Council has the final say. However, organised communities have been able to change LUPs, particularly in reducing building heights (Poduje, 2008). The LUP is then analysed

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<sup>16</sup> GLUD, Article 43.

by the SEREMI in terms of its conformity with the Regional Plan. If there is not a Regional Plan, the CGR assesses the legality of the LUP.

FIGURE 6: PROCESS OF LUP APPROVAL ACCORDING TO GLUD



SOURCE: AUTHOR, FROM GLUD.

Once Land Use Plans are approved, they are announced and published through the “*Diario Oficial*” (similar to the “Government Gazette in the UK which binding to effect their preventions the regulations included in the Ordinance of the LUP and the land uses established through *maps of land use*) (Figures 8 and 9, which are illegible in this format but help to understand the complexity of these instruments). Once the *Diario Oficial* is published, the LUP regulates any private development in the municipality. Neither the LUP of the GLUD enable discussions, participation or negotiation once the LUP is in force: the only way to change conditions is by developing a new proposal for changing the LUP. The participation of residents is, therefore, then limited in time and is under the political control of the municipality and it is expressed in the language of planning rules and regulations included in the LUP, which normally appear in action when landowners start the development of the Construction Permit.



FIGURE 8: AN EXAMPLE OF A LUP (PROVIDENCIA, 2007).



SOURCE: WWW.OBSERVATORIOURBANO.CL

The planning process relies almost exclusively in the rules and regulations of LUPs. Regulations decided in the LUPs are important for urban development and construction permits, in the sense that objectives and visions of citizens in the planning processes are expressed in LUPs regulations. And there is not much more. The GLUD does not recognize guiding principles for the planning process: Article 27 of the GLUD vaguely stipulates that “*urban planning is (...) the process which takes place to guide and regulate the development of urban centres in function in line with national, regional and local policy for social and economic development*”. At the same time, Article 43 observes that local planning must be *harmonious*. These references have not met the need for principles for the planning process which could guide the process and the subsequent decisions of planning. This can be observed in the number of documents from the MHDU that recognize this gap and have tried to develop a group of principles to guide officials from Municipalities in the design of LUPs (Pub7, 12.01.17, Pub2, 22.12.16). Instructions and circulars disseminated by the

DDU<sup>17</sup> have tried to meet this need, recommending guiding principles for the elaboration of LUPs. LUPs should

- Be guides for future development;
- Be a continuous process;
- Be based on the existing conditions and their projection;
- Constitute the best instrument for the form of urban development for which it is designed;
- Seek justice and equity;
- Be integrated with other public and private initiatives.

Beyond these recommended principles, DDU 227 functions as a guide for planners to develop LUPs. The central idea of DDU 227 is that LUPs have as a main objective the “*limitation of the ownership*” (p. 28) in relation to the “*common good and rights of the citizens*” (p. 28), through control and rights over the use, subdivision and construction over private property. In other words, LUPs operate through the control of private actors’ decisions about the implementation of urbanistic rules. The operation of Land Use Plans, and therefore the influence on the built environment of the GLUD and GOUD, mainly serves to regulate and limit the exploitation of private property. According to DDU 227, the limitation of private property has four functions: (1) to correct externalities generated by activities; (2) to ensure benefits from the positive externalities of investment and public goods; (3) limit the use of land protected because of its natural or patrimonial value; and (4) to generate security for residents and owners<sup>18</sup>.

Consistently, LUPs have a number of measures to limit the development in private land according to the objectives that are settled by the municipality. The main instrument to control the development potential of each piece of land are *urbanistic rules (normas urbanísticas)*. These are a set of rules and regulations that set limits on future urban developments in a particular area to a number of physical possibilities (Figure 9). Urbanistic rules are, in planning terms, a set of regulations that limits how property owners can develop and use their land. LUPs divide the territory into zones with different requirements

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<sup>17</sup> DDU 227, enacted the 01.12.2009

<sup>18</sup> DDU 227.

for developers' decisions in specific land plots. They also allocate green areas for parks and roads and future expropriations required for them.

FIGURE 9: TYPES OF URBANISTIC RULES

<b>Land Use Rules</b>	<ul style="list-style-type: none"> <li>- Urban Limit</li> <li>- Public roads net</li> <li>- Publicity and marketing rules</li> <li>- Underground land of public property</li> <li>- Land Uses (Residential, Equipment, Production, Infrastructure, Public Space and Green Areas)</li> </ul>
<b>Intensity of Use</b>	<ul style="list-style-type: none"> <li>- Coefficient of Construction</li> <li>- Coefficient of Land Construction</li> <li>- Maximum Density</li> </ul>
<b>Building Envelope</b>	<ul style="list-style-type: none"> <li>- Alignment of Constructions (Terraced, Detached, Semi-Detached)</li> <li>- Minimum Land Subdivision</li> <li>- Maximum Height</li> <li>- Detachment and "Terracment"</li> <li>- Entrance Garden</li> <li>- Shape of 8</li> <li>- Wraparound course</li> </ul>
<b>Public Use Duties</b>	<ul style="list-style-type: none"> <li>- Parking slots</li> <li>- Public use Declaration</li> <li>- Restriction zones for the urban development: Non development zones, Risk Zones, Protection Zones</li> </ul>

*Source: Author*

The publication of Land Use Plans gives local government urbanistic rules that limit possible urban development. LUPs set the conditions for a number of decisions in the built environment of each municipality. These legal conditions on land are among other factors - material condition, location, price - taken into account by urban developers in relation to profit as the key factor in understanding decisions to invest.

Any new urban development requires the approval of the DOM to be implemented through a Construction Permit. The approval of the DOM depends on the developer achieving a project that complies with the restrictions and limitations established by the LUP, GLUD and GOUD. These provisions are contained in the "Certificate of Previous Information" (*Certificado de Informaciones Previas*: CIP) which sets out the legal conditions for a private developer to develop a piece of land according to the Land Use Plan. The right of

use of private property depends on the interpretation of urbanistic rules and technical knowledge and that DOMs certify, as explained below. The correct interpretation of norms and how that interpretation is performed by public actors is a critical element in urban development.

Although LUPs function on the basis of limits to the private property, they also act as a protection for the landowner. A new development's compliance with urbanistic rules approved by a DOM theoretically ensures and guarantees that the municipality *must* issue a Construction Permit. This is a central element of the planning system: the conformity of projects with urbanistic rules set by a LUP mandates DOMs to approve an urban development. The scope of action of public officers depends on the law, not only in the generation of LUPs -limiting how planning can regulate private property – but by requiring that a civil servant approves a Construction Permit. At the same time, this limitation not only works for the landowner or developer and the municipality: residents, community associations and other civil society actors are limited by the intangibility of LUPs once they are published. It is very difficult to stop a Construction Permit being issued for an urban development that complies with the required urbanistic rules.

Therefore, the interpretation of urbanistic rules and their conformity with planning law becomes a critical element in the production of the built environment. The understanding of urbanistic rules can determine the legal and material viability of urban development projects. This is different from planning systems where developers must negotiate with the local authority, or which assume that construction permits need being approved by a meeting of the elected local Councillors (through local administration). In Chile, a Construction Permit provides legal recognition of a project that is unnegotiable and unalterable.

In practice, LUPs have been described as an outdated and insufficient instrument to regulate the urban environment. Problems have been documented regarding the scope of faculties and the procedure of LUPs. Regarding its capabilities, the Organisation for Economic Co-operation and Development describes the lack of ability to deal with transport, infrastructure and economic development as limiting the possibility for an integrated approach to cities or municipal areas (OCDE, 2013). The LUPs lack a set of tools to regulate the placement of critical infrastructure for transportation and public

spaces or to regulate infrastructure provision. Many of these limitations are linked to the scope of the urbanistic rules relating to private property. In addition, the limited powers the LUPs have in relation to public property (delimitation of public roads, legal designation of public interest of land for roads and parks) are limited by the lack of municipal funding. In practice, transportation planning is developed by the central government Transport and Public Works Authority and the Regional Development Branch of the Ministry of Government (Pub1, 22.12.16, Pub2, 22.12.16).

At the same time, LUPs react slowly to changes in the built environment of local territories. In practice, the procedures for Land Use Planning have gained complexity over the years and it has become increasingly difficult to publish a LUP (OCDE, 2015; Ind1, 16.12.16). The first reason is that new legislation, not at the core of planning law, has used the procedure of Land Use Planning to provide other elements of participation. This is the case for Strategic Environmental Evaluation (EAE), which was implemented through changes in the environmental law with the EAE being conducted through the LUP procedure. This gives Land Use Plans two moments of citizen participation with different scopes. At the same time, the procedures for participation and timings for implementation have gained complexity, with expected timelines regularly being overrun. On average, from the time of their proposal to the community, Land use Plans take seven years to be approved (MHDU, 2014; CNDU, 2015). A number of respondents for this research stated that Land Use Plans are “born dead” since the motivations for changing the LUP are completely forgotten 7 years after, when they are approved (Pub2, 22.12.16).

LUPs have also been used by organised communities in order to prevent changes in neighbourhoods or to fight against specific projects. In practice, there are two legal procedures to prevent the surge of new Construction Permits. The first is that in the context of a new proposal for a LUP, the local government decides to *freeze* the granting of new Construction Permits<sup>19</sup>. This intervention lasts between three months to a year, which is insufficient for the average time that a LUP takes to be approved. After that, even though the new proposal for a LUP has not yet been completed or approved, development can take place as if no plan was being considered (i.e. without regard to and restrictions the plan might be going to put in place). A second instrument is to declare specific places or buildings as having patrimonial interest. Communities have enforced these mechanisms in

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<sup>19</sup> GLUD, Art. 118.

order to protect themselves from the actions of real estate developers. However, this measure has also been criticised in the sense that it forbids any kind of new urban development, leaving many landowners with economic losses.

A growing number of actors have raised their voices to express their expectations and their visions of the city and territories (Hernando and Razmilic, 2015). Despite the limited powers of LUPs, many of these actors mobilise their expectations, demanding changes to LUPs covering their territories (NGO1, 25.01.17: Acad1, 05.03.17). At the same time, different bodies of law that aim to regulate the territorial aspect of development have modified either the process or the intended results of the regulation of the built environment of cities through LUPs. Planners can only deal with community expectations and the requirements of bodies of law within the limited sphere that planning law, and particularly urbanistic rules, provide. The interpretation of planning law becomes critical to understanding the act of planning that officers can produce.

After reviewing the LUP and some of its practical features contained in the urbanistic rules, both for the design of the LUP and for the subsequent discussions on development project, I now continue describing another feature of LUPs and urbanist rules, and of the planning law in Chile: Construction Permits.

#### 4.4.2 Constructions Permits

A Construction Permit is a legal document that certifies that a property development fulfils the legal requirements of LUPs, GOUD and GLUD provided by DOMs. Article 116 of the GLUD sets out the different legal consequences of the Construction Permit and the process of legal fulfilment of a project:

*Article 116: The construction, reconstruction, reparation, alteration, expansion and demolition of buildings and urbanization works of any nature, being urban or rural, require a permit of the Municipal Works Director, on request of the owner, with the exceptions that GOUD establishes. The Municipal Works Director will grant the Construction Permit or the authorization if, according to the attached documentation, the project complies with the urban rules, against payment of the relevant duties (...)*

*Urbanistic rules are those that are contained in the GLUD, in its Ordinance and in the territorial planning instruments that affect buildings, subdivisions, fusions, batches and urbanizations, in regards to land uses, land transfer, alignment of construction, coefficient of construction, coefficient of land use, minimum land subdivision, maximum height, detachment, entrance garden, shape of eight, wraparound course, maximum density, parking bays, land plots bound to public utility, risk and protected areas.*

Construction Permits are the consolidation of the urbanistic rules in the territory through an official certification given by DOMs that entitles to the person who requires it to start a development in the course of three years. For Chilean legal scholars, these are administrative decisions contained in a resolution whereby the authority authorises the owner develop the land on the basis that the project is consistent with urbanistic rules (Figueroa and Figueroa, 2006). The Permit is not, however, the opinion of the authority about the desirability or effects of the project, but the decision of the authority to *certify* the legality of urban development on a piece of land. The landowner's right to construct (or *ius edificandi*) depends on authorisation and certification by the DOM. The Construction Permit is a licence that proceeds from the fulfilment of urbanistic rules and is not the consequence of negotiation nor decision by the DOM. The most important effect of a Construction Permit is that the owner of the private land gains the recognition of an acquired right which previously was merely expected.

From the granting of a Construction Permit by DOMs, the incorporation of the rights to develop are protected as if they were property of the developers, enforceable as a human right by the Constitution (Art. 19 N°24 PC) and the free use of it (Rajevic, 1998). A Construction Permit also assures the developer the *consolidation* of the conditions for land development for a given period of time. According to planners in Providencia, the moment that the Construction Permit is issued, the possibility for public intervention by the Municipality ends (Prov1, 05.01.17). The force of the Construction Permit allows the building of the development even if there were legal mistakes in the granting of it which were detected afterwards<sup>20</sup>.

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<sup>20</sup> Supreme Court, Constitutional Action "Muñoz con Directora de Obras de la 1. M. de Concepción", 22.10.1992.

The Construction Permit process starts with the filing of the proposal with the Municipality by a private developer. The act of filing the proposal produces a practical consequence: urbanistic rules are suspended for the land on which the project will be developed while an evaluation is undertaken by the municipality. In other words, subsequent modification by a LUP could not alter the development of that piece of land. Once the proposal has been filed, the DOM has 60 days to make comments, after which the developer has 30 days to amend the proposal. The DOM then has another 60 days to decide. In practice, these procedures can take much longer, as long as a year, to be completed.

The procedures to obtain a Construction Permit are also difficult to detect by residents and neighbours. As Article 116 of the GLUD expresses, the notifications for the public only proceed after the Construction Permit is granted by the DOM. This means that residents, communities and even the public authorities can react to a Construction Permit only after it has been issued and urbanistic rules are ensured at the start of the Construction Permit procedure. The municipality does not have formal tools for negotiating with the developer or even knowing how the developer will use and interpret the urbanistic rules that were drafted in the planning process for a LUP. As I explain in the case study (Chapter 6), it is only the fact of a private owner applying for a Construction Permit to the DOM when the effects in the built environment start to act. Planning law contrasts the open but slow processes of LUPs with the silent and rapid Construction Permits processes.

The revisions of Construction Permits by DOMs are subject of reconsideration by superior administrative and judicial levels to assess their legality. On the one hand, the Regional Branches of MHDU receive claims from private developers who had their applications for Construction Permits rejected<sup>21</sup>. Regional branches have 15 days to decide the legality of the rejection and can order DOMs to issue Construction Permits. However, Regional branches only know about Construction Permits processes when private developers complain about DOMs who did not issue them. This line of appeal is not open to other actors such as residents who argue that permits were issued against the law. For these kind of legal actions against granted Construction Permits, a broader line of appeal is the process of *voiding* administrative decisions. This process allows any interested party or by initiative of an authority to seek to invalidate acts which are “contrary to the rule of

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<sup>21</sup> GLUD, Art. 118.

law”. If the void is not granted, the interested party can claim against DOMs hierarchic superior (SEREMIs or Mayors). The action of illegality claims that the resolution that granted the Construction Permit was against planning law, on the general interest of the Council or the particular interest of a citizen. However, the perception of the voiding process is that Mayors tend to confirm what DOMs have granted. From consultation with 10 Municipalities of the Region Metropolitan, the number of illegality procedures in which Mayors decided against Construction Permits were zero<sup>22</sup>.

The legal procedure to combat undesired urban development granted in a Construction Permit requires proving its illegality in Courts and in the CGR. In these legal procedures, the discussion of urban projects focuses on the planning law rules and regulations and legal interpretation of the processes that granted the Construction Permits, the compliance with urbanistic rules and how DOMs examined the application for the Permit. In this way, unwanted effects and undesired consequences of new developments are fought through legal procedures. The discussion is legalised, proving illegality being the only way that unwanted projects can be stopped. In practice, a large number of residents and associations start their litigation in the CGR in relation to the issuing of Construction Permits. The objective of these parties is to obtain an order by the CGR for the municipality to change its interpretation of the planning law (NGO1, 25.01.17) and order the Municipality to start the voiding process.

The role of Courts deciding on controversies has shown increasing levels of activism in politically relevant cases over the last 10 years (Couso and Hilbink, 2011). This has been the most commonly used procedure to invalidate Constructions Permits (see Chapter 5). Many of these actions have been by organisations of residents or NGOs such as “Defendamos la Ciudad” employing arguments which centre on revising the legality of Construction Permits. Many of the legal complaints are based on the belief that developers seeking Construction Permits have used the obscurity of some legal rules and regulations to their benefit in obtaining gains (NGO1, 20.01.17) such as increasing the amount of construction allowed on land plots if they can be subdivided and then re-amalgamated (Alcaino, 2008).

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<sup>22</sup> Annex 3.

On the other hand, the security of investment provided by Construction Permits is central to the discourse of urban developers. Private developers have publicly argued the need for legal security for investments which is threatened by an “over court interference in Construction Permits” (Priv1, 13.12.06). Private developers argue that Construction Permits give security for investment and show that investment priorities have been adjusted to meet legal requirements (Priv3, 10.03.2016). This view has been supported by the legal association of DOMs<sup>23</sup>. The judicial revision and potential derogation of Construction Permits create legal uncertainty to the business of real estate. The argument about investment uncertainty can be made to override the challenges by community associations and public officers in different trials and courts that seek to contradict or change decisions contained in Construction Permits. However, legal opinion takes the view that:

*the doctrine of the Courts and the CGR has been consistent with the notion that if an authority makes a mistake in an act in its competence, this could not carry the nullity of the act, because it would affect third parties that, in good faith, trusted State Institutions to acquire legitimate rights to their estate. The rule of law rests on the foundation of the principles of legal security and certainty (...) and institutions must give full guarantees that this base will be followed strictly (La Tercera editorial, 27.08.2018)*

The position has been supported by the Chilean Chamber of Construction (CCHC), the Real Estate Development Association (ADI, Asociación de Desarrolladores de Inmobiliarios) and other representatives of real estate developers. This discourse is used not only when projects are under the scrutiny of the public, but the CCHC has also argued for a “new urban social contract” in which developers “must guarantee that their acts are strictly under the current rules and regulations”<sup>24</sup>. Private developers also recognize that they have acquired experience on developing projects that have a major probability to succeed in the “complex legality” of planning law (Priv1, 13.12.2016). However, the demand is for “clearer rules” rather than the failure of legal instruments (Priv3, 10.03.2016). According to a representative of the CCHC, these critics are not asking for

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<sup>23</sup> Interview to the President of the DOM association, published in “La Tercera”, 28.10.2017, available at [<https://www.latercera.com/noticia/presidente-la-asociacion-directores-obras-chile-algunas-direcciones-obras-cajas-negras-queremos-resolverlo/>] (consulted: 10.07.19).

<sup>24</sup> “Opinion: to a new urban agreements”, Sergio Torreti Costa, President of the CCHC in “El Mercurio”, 01.12.17, archive obtained from [<https://twitter.com/vteburgos/status/958465716986015744/photo/1>] (accessed, 10.07.19).

more spaces for negotiation but for clearer and simpler rules for the granting of Construction Permits (Priv1, 13.12.2016). The same actor argued that without Construction Permits, banks would not give loans to private developers, putting all urban development “in jeopardy”.

Civil servants also have constructed discourses based on the certainty of Construction Permits. The Association of DOMs has also argued for the protection of legal certainty of Construction Permits. The President of the Association argued that the institutional standing of DOMs would be weakened if Construction Permits were questioned. “Construction Permits were always understood as *res judicata*. It produced acquired and tangible rights”<sup>25</sup>. Former authorities in the DDU recognise that through Construction Permits, planning law protects rights to develop rather than rights in the city: the rights of residents and citizens are overlooked in these processes (Pub1, 22.02.2016). The administration has announced legal reforms to provide clear online procedures for applying for and obtaining Construction Permits because, it has been argued “that the uncertainty affects all of us”<sup>26</sup>.

These two sections have been dedicated to describing Construction Permits and Land Use Plans, conceptually and in practice. The next section provides an analysis of the legal devices of the planning processes and their linkage with legal interpretation.

#### 4.5 Legalism and planning law: discussion of LUPs and Construction Permits

In the previous sections, I examined the rules and regulations of Chilean law relevant to planning in two ways. Firstly, I analysed the legal system through which planning takes place, and secondly, the main objectives and devices of the laws, paying attention to practical aspects and the discourses that actors have constructed through these instruments. In this section, I finish the analysis of rules and regulations of planning law providing a discussion of how planning in Chile is framed by the legal system in which it is

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<sup>25</sup> Interview to the President of the DOM association, published in “La Tercera”, 28.10.2017, available at [<https://www.latercera.com/noticia/presidente-la-asociacion-directores-obras-chile-algunas-direcciones-obras-cajas-negras-queremos-resolverlo/>] (consulted: 10.07.19).

<sup>26</sup> “In January, MHDU Will present a Bill to give legal certainty to Construction Permits”, “El Mercurio”, 14.12.2018, available at [<http://www.economiaynegocios.cl/noticias/noticias.asp?id=529840>] (Accessed, 10.07.2019)

located. The aim of this section is to bring together the issues that have been described in this chapter.

The role of planning law in how planning is performed is related to the possibilities that legal instruments provide for planners. The scope and limitations of planning rules and regulations shape the way in which planning is produced. As Booth (2016: 344) notes:

*From the beginning, I recognised that spatial planning was legitimated by law, in that what I did as a planner was as a result of the law instituting a requirement to plan and fixing the ways in which that requirement might be met. But for a long time, my understanding of law was entirely instrumental. Without the law I realised rather dimly that I might not be exactly what I was. More obviously, the law made possible certain things and prevented me – sometimes irritatingly, I thought – from doing others. There were rules that were created by law which we were required to obey and apply, and there could be conflict about both application and obedience which ultimately might be resolved by the wisdom of judges (...) [L]aw is more fundamental to the practice of spatial planning than just the application of rules, and that legal thinking has done much to shape the way we conceptualise planning.*

According to Booth, planners and planning are very much controlled by planning law rules and regulations defining what planning is: from its legitimisation as a policy to its procedures and instruments it is configured by its recognition of law, but also legal “thinking”, the techniques to ensure that planning complies with the legal system. To plan an intervention in the city which is normatively correct and through the legal system transforms the act of planning. The way that planning is legitimised - what is considered to be legal and what is not - deeply influences the way that planning is done. In that sense, planning law *canalises* the process of planning: it establishes its course and limits through LUPs. In practice, both LUPs and Construction Permits are dynamic because the interpretation of LUPs and Construction Permits changes with different discourses and is constantly disputed.

As has been shown in this chapter, most of the planning in Chile is based on developing urbanistic rules to be set out in LUPs in a long and bureaucratic process of approval. Through the prescriptive urbanistic rules of LUPs, planning configures the legal conditions in which actors make decisions. Planners do not have space for different

planning decisions after the Land Use Plan and zoning is produced, other than suspending the conditions of the LUP in order to introduce a new modification. The aims of planning - such as population objectives, characteristics of built form, and urban development- are canalised through urban norms that operate in each project through Construction Permits and “single-case urban norms”: they cannot prevent different rules and regulations for different situations, according to the administrative jurisprudence of law from CGR. For example, LUPs cannot plan that every land accessing a 15 meters wide road will have these urbanistic rules: each plot needs to have the assigned urbanistic rule. T

These limitations that channel the planning process in a particular direction limit planning law, not only in the characteristics that future urban developments should have but also *the times at which* planners have the capacity to control the production of the built environment. As will be shown in Chapter 6, the reaction of planners against unwanted urban processes or urban developments is, formally, to change the LUPs and the urbanistic rules. However, this is a long-term process, which needs to be translated in legal terms and, most importantly, cannot limit granted Construction Permits.

Any discretion that institutions of the urban planning system have depends, in principle, on the room for manoeuvre that the law concedes. As has been explained, the legal system in Chile is a formalist system, in which legal decisions must conform with and be assessed on the internal normative logic of the law. Therefore, the drafting of urbanistic rules by public actors is also limited by the same conception of law. Each decision in a LUP must be clearly fitted to a prerogative that GLUD and GOUD provide to the public officers, under the control of the CGR. The same happens with reforms to GOUD and GLUD. Planners and the planning laws have been increasingly audited with legality checks by the CGR, that is, for their normative formal logic. Public officers are assessed (e.g. for promotions and success) on how well their decisions have accorded with on the legal reserve of public acts, recognised in the Constitution<sup>27</sup>. The GLUD is not an exception on this principle: it is explicit in insisting on the conformity to the law that any decision in planning must have.

One of the benefits of a prescriptive legal system is that actors are able to have confidence in legal consistency and legal security. The principles of the administrative

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<sup>27</sup> Supra note 4.

system expressed in these limitations aim to prevent partiality and seek to limit abuse on the legal duties of any authority (Cordero, 2006). Legal security is a discourse that is repeated at different levels of planning law and is linked with legal formalism (see Chapters 6 and 7). However, planning law is a complicated sphere of complexity and contradiction in the interpretation of the law. Many actors interviewed for this research argued that planning law should be “clearer” or “simpler” (Priv1, Pub1, 20.12.16, Ind1, 16.12.16, Prov1, 05.01.17) coinciding with the description of planning law in Chile as a “jungle-like” system of scope of authority (Sierra, 2006). Planning laws open the gate for ambiguity and multiple interpretations.

The need to reduce ambiguity and the scope of possible interpretations links with the request of clearer rules manifested by different actors. The reasons, however, vary. Private developers argue that only clear rules and regulations allow investments to succeed; community organisations argue that clearer rules and regulations mean that participation in zoning process can deliver transparency and better urban developments. Lecturers and experts also claim that managing cities and urban processes deserve clarity through reformed and modern rules and regulations that adapt to each reality. The clarity of rules seems to be the wish of many actors and nobody advocates obscure and impenetrable rules. However, the clarity of planning law rules and regulations as a means can serve different perceived ends.

Nevertheless, if governments rely on the legal system and formalism to conduct the process of planning, the evidence shows that actors will interpret the law based on their own interests. The process of actors promoting their interests through the law seems very similar to an instrumental perspective of law: “*that law— encompassing legal rules, legal institutions, and legal processes — is consciously viewed by people and groups as a tool or means with which to achieve ends*” (Tamanaha, 2008:6). The argument for clarity assumes not only that planning law could be simpler and “more secure”, but that obscurity leads to there being losers and unwanted results in urban development. An analysis of the process of planning and legalism allows understanding that the possibility of interpreting planning law rules and regulations also allows actors to accomplish their aims in the city.

Formalism, in the case of rules and regulation of planning law, and particularly urbanistic rules, enables creativity and craft in compliance by private actors to be certified

in Construction Permits. These techniques have effects in the discourses of actors and effects in the built environment (see Chapters 5 and 6). However, this attitude towards planning law must not be confused with evasion or committing illegal actions, which are condemned by most respondents in this research (Priv2, 10.01.17M Priv3, 16.10.17). The discourse of private actors claims legality for a number of actions that ignore the expected aims and effects of law but deemed by them to be “completely legal”.

The legal knowledge of planners and its core role on planning is not simply fixed by a formalistic interpretation of the law but rather, is enmeshed in the possible interpretations and technicalities with which actors encounter planning law rules and regulations. A formalistic approach to law affects the production of planning laws and urbanistic rules through LUPs not only to make them comply with the legal system: a formalistic approach also assumes that actors will have interpretations to avoid unwanted consequences for their objectives. As one public DDU official recognised: *“Every law has its loophole and our duty is to prevent those”* (Pub7, 12.01.17). This position acknowledges that there will always be the possibility of different interpretations and that civil servants in the DDU are in a constant state of chasing and closing these loopholes in practice. Consequently, planning decisions and LUPs have increasingly specified planning law rules and regulations, making them even more complex. Technical actors in the DDU and local governments are very aware that actors could manipulate the law and not comply with its spirit.

In this context, MHDU has tried to develop improvements to the procedures of LUPs. Particularly it has developed new methodologies for the design of Land Use Plans that provide achievable “vision results” for LUPs and timeframes for their implementation. The planning law rules directing the design and drafting of LUPs certainly influence the process (see chapter 6). When plans are proposed, the legal limitations are assumed as rules of the game by experienced planners in order to have their LUP successfully approved (Ind1, 16.12.16). Law is also present in the process of participation, establishing not only the procedures but the framework into which proposals must fit. Finally, the consideration of the approval of the SEREMIs and the intervention of the CGR (Chapter 6) limits planners to making decisions under the conditions of legality.

Nevertheless, the gap between the purpose of LUPs and their effect in the urban environment is increased through the interpretation and enforcement of the law by

different actors and contexts. Even if the scope of planning law rules and regulations is clear - planning and the development of the built environment - the rationale remains unclear (Twinning & Miers, 2009). Sources of planning law make scarce reference to the rationale, objectives or principles of planning laws. Although the GLUD recognizes the existence of principles for planning, these were only incorporated in a 2017 reform to the land markets and they are not mandatory<sup>28</sup>. As we will see in Chapter 5, planning law is mainly enforced and limited by the principles of administrative law, through the interpretations and technicalities of lawyers, actors and finally, Courts: general legal principles are enforced in the sphere of planning. This enforcement of the law has effects on the built environment that also will be analysed in Chapter 6.

The debates discussed in the literature review regarding urban planning, diversity and economic forces are grounded in Chile in a complex legal institutional arrangement that is slow and incapable of providing alternatives to the primacy of private property. Planning law and the legal system influence planning in latent ways: the legal devices - LUPs and Construction Permits - are also limited by the legal interpretations, discourses and practices that are enforced through them. There are limited possibilities for urban planners in Chile to resolve competing interests, antagonisms and controversies that happen in the city. It has been argued that planning can be a tool to mediate the conflicts that are essential to the development of the urban (Forester, 1987). The emergence of actors and agendas in Santiago have challenged the processes and actions of planners because planning law has proven too limited and obsolete to deal with those conflicts and the need for public participation.

Is there a vision for the city or objectives for planning in Chilean planning law? The description above may suggest that if visions of the city are embodied in the planning law, then there is not only one vision. The sum of different legislations, attributions, authorities and new actors have converted the reasons and causes of legislation to their own intentions. A number of respondents in this research claimed that planning law lacks a “vision” of the city (Priv1, Pub2, 22.12.16, Pub1, 22.12.16). After a review of the main institutions of planning law, I argue that is not a lack of “a vision: but the clash of different perspectives that are somehow allowed by the different interpretations of planning law.

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<sup>28</sup> Supra Note 4.

## 4.6 Conclusion

This chapter has examined Chilean planning law in terms of its context in the legal system context and the rules and regulations relating to planning. It has provided an overview of the main features of the Chilean legal System, particularly focussing on the impact of legal formalism in Chilean society. As planning law gains importance in the social and political agenda for the built environment, Chilean planning law and the challenges posed by different actors seem to overlook the influence of a legalistic system in the creation of LUPs and planning laws. A conceptualisation of planning law was elaborated tracing its main institutions, history and the legal devices of planning: Land Use Plans and Construction Permits. The chapter ended with a discussion of the relation of planning law to its legal context, describing how legalism is central to understanding the motivations of planners.

Through the overview of history and discourse, I argued how the objectives of planning law have changed over time, altering the roles and discourses of actors. LUPs and Construction Permits reveal how planning law operates in planning processes, with a specific role for certainty in law and in the expectations of different actors. I described how legalism is present in a series of practices that shape the way that planners and other urban actors make decisions in the built environment, that influence the outcomes of planning. Although the transformation that planning underwent during the dictatorship gave private actors a central role in urban development, many challenges in the planning system are also related to the fact that planning law is made and practiced by different actors.

This chapter presented the Chilean context of planning law that canalises the social practice of planning and the discourse of actors to what is considered legal. I am now able to explore the consequences and implications of the social practice of planning law, both in legal procedures and its technicalities and case studies. The next chapters describe the role of social practices in planning law in the built environment through rulings and case studies.

## CHAPTER 5. An analysis of the influence of *Contraloría General de la República* in planning law

This chapter examines the role of the *Contraloría General de la República* (CGR) in planning law through its interpretations of the law. The analysis examines the rulings on planning law made by the CGR as a legal actor. Taking into consideration the legal devices of planning law in Chile explored in the previous chapter (Chapter 4), I aim to understand how planning law is interpreted in the context of an administrative court. Concepts like legal certainty and a formal interpretation of law are analysed in action. The main task of the chapter is to examine how the social practice of planning law is influenced by the interpretation of official institutions which respond to general principles of law through the example of the CGR. This will allow me to follow these interpretations spatially in the built environment in the next Chapter and to expand the idea of canalization.

As I show in this chapter, an examination of the rulings allows an understanding of how different discourses of actors are linked with functional interpretations of planning law - how the legal strategies and technicalities are linked with the rationales of actors in the built environment. At the same time, an analysis of rulings can produce quantitative assessment of the controversies over planning law and the action of CGR. Particularly, examining which technicalities and strategies encounter better possibilities of success in the CGR shows which interpretations of planning law are encouraged by the legal system. Decisions by the CGR do not end with the specific controversy: a legal interpretation by the CGR determines the legality of spatial actions in the built environment and informs actors - particularly civil servants, which must follow the decision of CGR - how to proceed in the future.

The chapter is structured as follows. Firstly, I describe the operations of the Courts and interpretations of planning law by the CGR and their increased importance for spatial results in the built environment. Secondly, I discuss how an analysis of legal decisions by the CGR can be useful for understanding the role of social practices of planning law in the built environment. This allows me to show how I analyse the action of the CGR in planning controversies. The third section describes the role of the CGR in the legal system; and the fourth section presents statistics derived from the collection of 10 years of data of rulings by the CGR. Finally, I complement the quantitative analysis with a qualitative

analysis of selected cases and actors' strategies that illustrate the legal and spatial content of the results of legal controversies. I conclude that the legalist approach to the resolution of cases by the CGR has permeated the legal strategies and technicalities that actors use in controversies.

The chapter concludes that, in the periods between 2007 and 2017, the CGR enforced a formalistic interpretation of planning law. The increasing controversies around the built environment have motivated a larger number of actors to resort to the CGR. Consequently, actors pursuing spatial objectives in the built environment appeal to a formalistic discourse of planning law in order to accomplish their objectives. I also reflect on the significance of this context for this thesis, particularly that the actions of the CGR has spatial effects but these are not recognised in the application of law.

### 5.1 CGR rulings and planning law

The importance of Courts and the CGR in planning law can be illustrated by two decisions that happened in December 2017, after the fieldwork for this thesis had been completed. In that month, a paradigm shift of administrative law and planning law occurred. The Supreme Court ruled in favour of the claimants, after a six-year procedure, the as-known "*Mall Barón*" case. In this case, the Court ruled that a Construction Permit granted by local authorities that does not fulfil legal requirements is not enforceable, even if that non-compliance was revealed after the award of the permit. The judgement considered that a Construction Permit was illegal if rules and regulations of planning law were not complied with, even if a municipal authority had issued the Construction Permit in error. This ruling went against previous broad jurisprudence that a Construction Permit approved by a DOM (whether incorrectly or not) was enough justification for the real estate developer to finish the project. This had been based on the logic of *legal certainty*, seen by different actors as central for urban and economic development. The non-revocable condition of the Construction Permit was also protected by the administrative interpretation of law by the CGR.<sup>29</sup>

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<sup>29</sup> I.e.: CGR Rulings 45.301-2008, "*Cámara Chilena de Construcción / Municipalidad de las Condes*"; 52890-2014, "*Particular / Municipalidad de Coyhaique*".

The non-revocability of the Construction Permit is an interpretation which argues that any illegality detected in a permit after it is granted cannot diminish the right given to the developer, because this should not be allowed to affect the right of a party obtaining the permit in *bona fides*. The *Mall Barón* case ignored this jurisprudence and represents an important U-turn regarding the analysis of planning law: the Supreme Court concluded that the DOM Construction Permit had been illegally issued with a mistaken interpretation of planning law, and it was declared null and void six years after it was given.

In the same month and in the same spirit, the CGR ruled that 47 Construction Permits in *Estación Central*<sup>30</sup> Municipality were subject to new interpretations by the authority. The CGR ruled that municipalities could advise developers of the retrospective illegality of the DOMs' original interpretation of the planning law by in issuing these Construction Permits. In other words, the Construction Permits as granted were not protected against representations by local authorities questioning their legality. This case is explained in the next Chapter.

What was the reality in the years to prior these rulings? The non-revocable condition of Construction Permits based on “legal certainty” was broadly supported by the CGR and the Courts. The rulings described above are an anomaly in what had been the relation between the planning system and its law. Since the return to democracy in 1990, urban development had been grounded in the protection of ownership, the right to private property and the right to entrepreneurial freedom (see Chapter 4; also Rajevic 2010). According to Vicuña (2013), the neoliberal agenda based on prioritising the decisions and actions of private actors' was implemented by planning law in Chilean cities, with Construction Permits being a keystone in the operation of land markets (Sabatini, 2000). The growing number of urban developments require the contradictory conditions of simultaneous deregulation with legal security for their investments (Swyngedouw et al., 2002). Legal certainty for Construction Permits is a central element of a pro-investment context.

The significance of the new rulings by the Supreme Court and the CGR – and therefore the interpretation of law - becomes a central element for the possibilities of urban planning. This interpretation of planning law can potentially bring down an approved urban project and can declare null the ordinances of LUPs, Construction Permits and

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<sup>30</sup> This case is analysed in depth in the next Chapter.

planning law. Particularly, decisions by civil servants – actions of administration - feature prominently in public discussion and decision-making for the built environment. Although the Ministry of housing and Development through the DDU has the authority to interpret planning law, the system of Courts and the CGR are responsible for interpreting and implementing planning law in urban matters or controversies. The legality of administrative acts is defined by the CGR, and the final interpretation of law is made by the Supreme Court. Both interpretations these forms of case-by-case interpretations are used by different actors as precedents for future decisions.

As explained in the Methodology Chapter (Chapter 3), the research unpacks the role of the administration of justice in order to understand different aspects of the role of social practices of planning law in the built environment. The CGR has specialised in the interpretation of planning law, which is directly linked with administrative law - being principally about the scope of authority of public institutions (Chapter 4)- and the CGR is the most active institution for the interpretation of planning law<sup>31</sup>. For actors without the resources or time to hire lawyers, a requirement to the CGR is cheaper, quicker and with a greater possibility of obtaining a substantive answer compared with going to Court. At the same time, the CGR implements a *preventive* legality control of acts of administration and decrees by public institutions: the accordance of the acts by administrative actors with the law is analysed by the CGR. This control has created a robust amount of *administrative jurisprudence*, which is mandatory for administrative entities such as DOMs, SEREMIs, MHDU. The CGR rulings are critical for public authorities: according to the Principal of the DDU, the CGR establishes what policies for urban development can include and what they are not (Pub2, 22.12.16).

FIGURE 10: COMPARISON BETWEEN CGR AND COURTS FROM THE PERSPECTIVE OF A CIVILIAN.

	<b>CGR</b>	<b>Courts</b>
<b>Interest of the claimant</b>	Diffuse	Claimants must have active legitimisation (must be affected)

<sup>31</sup> I am not arguing that the CGR has a jurisdictional role, nor that the CGR replaces the jurisdictional role of Ordinary Courts. Administrative law courts oversee the performance of public officers without various elements of the jurisdictional role: due process, impartiality and appellation procedures. However, the action of the CGR is still based on an interpretation of law.

Type of procedure	Unformalised	Formalised
Need a legal representative	No	Yes

Source: own elaboration

However, the opinion contained in rulings of the CGR is not only relevant for civil servants. These rulings shape the discussion of planning law through the definition of the limits of planning law (setting the trajectory of the canalisation), and which actor is entitled to what in the construction of the city. Accordingly, as described in the next sections, there has been an intense presence of actors demanding reinterpretation of planning law in the rooms of CGR. On the one hand, neighbours and local organisations have reached the CGR to argue for the illegality of Construction Permits for large urban development projects. An NGO called “Defendamos la ciudad” (Defend the City) has constantly asked the CGR for the *restitution of legality* of different public authorities, with the objective of limiting or ending urban development projects. The same has happened with neighbourhood associations that go to the CGR to block the implementation of specific urban developments, normally questioning the Construction Permit or seeking a reinterpretation of the LUP. At the same time, real estate developers have also invoked their interpretations of planning law through the CGR, also seeking the restitution of legality when residents succeed in stopping projects through activism and political pressure or defending the questioned Construction Permits. For this research, the arguments of both groups of actors are reviewed and assessed in terms of their intentions and success through legal actions.

The analysis of the action of the CGR and its decisions allows examination of the techniques and strategies that are elements of the social practices of planning law. Legal arguments, strategies and technicalities (explained in Chapter 1) are expressions of legal actors’ legal tools in disputes over spatial results the built environment and conflicting perspectives on the city. The production of the built environment is a political process in which the law can be a resource for maximizing particular interests: actors engage in ideological contest, and judges will validate one discourse over another, constituting social power (Delaney, 2003). Disputes among actors referring to the built environment can be settled by authorities through the interpretation of planning law. The intervention by the CGR is a procedure where legal actors search for certainty of spatial results in the built

environment. The support of the CGR in the interpretation of planning law is an important way of resolving differences in the interpretation of planning law to secure a particular spatial result. The adjective '*legal*' provides validity to a spatial result such as a building, the certification of a street or the division of land in zones through a LUP.

In the next section, I introduce some elements that need to be considered to develop a framework for analysis of the importance of CGR rulings in the built environment.

## 5.2 The role of the CGR in the legal system and in the built environment

As explained above, one method to unpack planning law in the built environment is to illustrate the role of legal institutions in the interpretation of planning law, in order to analyse how discourses of the "legal" define the spatial. Azuela (2016) suggests ways to follow the power of legal institutions and how to trace their footprint in the built environment by: (i) looking for the discursive power of legal decisions; (ii) assuming that meanings of law are ambivalent, rules that in one context mean one thing, can function differently in another; and, (iii) and by seeing that the complexity of the spatial not only makes the procedures of legal institutions controversial, but also makes planning law profoundly uncertain. The relevance of a legal institution like the CGR can be traced through the way it constantly interprets planning law in legal decisions that contain discourses with legal and spatial meaning for actors. At the same time, reading the decisions spatially - discovering assumptions and abstractions that define the built environment - provides the opportunity to reflect on discussions beyond the legal (Layard, 2018).

The role of the CGR in the Chilean legal system involves a large amount of interpretation of planning law. The Constitution requires the CGR to analyse and interpret the law in order to check the legality of administrative decisions<sup>32</sup>. The CGR can act retrospectively when it is required to interpret the legality of administrative decisions after they were implemented: an actor can request that the CGR analyses the legality of an administrative decision (such as a LUP or a Construction Permit) in order to dispute their effects. These requests for reassessment of legality of administrative decisions form the

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<sup>32</sup> CP, Article 102.

basis of the controversies examined in this thesis. The CGR can also act prospectively when approval of CGR is required by law to check whether a proposed administrative decision or action is legal.

The legal interpretation by the CGR of administrative acts of planning law that have spatial relevance is related to the importance of the civil servants in the processes of planning. These administrative decisions are subject to examination regarding the legality of the action or omission on any administrative decision by a governmental institution. As I argued in Chapter 4, almost any decision on the built environment is directly or indirectly linked to an administrative decision by a public official: Land Use Plans, Construction Permits, interpretations of the GLUD and GOUD, and public investment decisions are all administrative acts. When a public official makes any administrative decision, any affected actor can request the CGR to check the legality of the administrative act, introducing arguments about why it should be considered to be illegal. After the administrative process of decision-making, the CGR rulings provide to different public officials either support or not of the legality of their action.

The understanding of a legal system includes what is demanded of a legal institution, the institution's responses to those demands and the effect of those decisions in society (Friedman, 1969; Banakar and Travers, 2013). The decisions that the CGR makes on the basis of its interpretation of law do not only frame the spatial effect of the law in the built environment for each case, but informs lawyers, practitioners and other actors whether a particular action is legal or not. In that sense, the legality of an action in the built environment represents a power position that could be enforced in future decisions. An analysis of the legal interpretations made by the CGR also reveals the techniques by which planning law acts in the built environment: how the language of law enacts elaborate discourses, decides upon ambivalence and moves on the uncertainty that rules in the built environment.

Understanding how the CGR interprets the law enables the detection of discourses and patterns of law in the production of the built environment. Rather than a doctrinal or "black-letter law" analysis, this research looks for the interpretation of the spatial through techniques and discourses as a process that redefines planning law and space (Layard, 2018; Harm, 2014). Particularly, I discussed how rulings defined the legality of Land Use Plans,

Construction Permits and the legal logic in which these are defined. The revision showed that the spatial effects were not included explicitly in the argumentations of the CGR and of actors involved in particular decisions. On the contrary, the spatial seemed just an element on legal decisions. At the same time, the number of characterisations and conceptualisations of the built environment provided by the CGR and other actors contribute to understanding rules and regulations on the built environment as ambivalent and uncertain, with spatial manifestations traced that are in the case study (chapter 6).

As Meneses (2016) argues, whenever a planning controversy is analysed, a reflection on the content and limits of planning law in the production of the built environment is developed. In effect, an analytical deconstruction of legal decisions enables an understanding of how law is interpreted: legal discourses in planning law have spatial meanings for actors in specific cases. As discussed in Chapter 2, the process of adjudication shows that interpretations of law can be strictly formalistic or determined by other elements such as the objectives of rules or moral grounds. The conditions and effects that the CGR allows in planning law can be analysed from the perspective of the spatial readings and effects that interpretations have.

In what follows, the chapter identifies general tendencies of the CGR with the objective of registering how legal interpretations respond to urban controversies. It reflects on these tendencies with regards of the significance of the social practice of planning law in the spatial configuration of the built environment (following Azuela, Herrera and Saavedra 2016). A systemic study of the legal interpretations of the CGR in urban controversies shows what solutions are allowed by the law (Von Der Dunk *et al.*, 2011). The interpretation of planning law in specific rulings indicates the contested elements of the law and the decisions that the CGR has systemically taken. The doubts and spaces for interpretation of planning law can be considered to have been resolved after consistent interpretation by an institution. In that sense, the CGR tendencies also create planning law through spatial controversies.

In the context of a formalistic approach to law, and a positivist perspective, the legal support to ensure the conformity with the law of a public action by a governmental institution is a core element to support an administrative decision. Thus, the existence of a decision, such as on the legality of a Land Use Plan or a Construction Permit depends, in

principle, on their conformity with law that is checked by the CGR. At the same time, a CGR decision not only fixes the role of the administrative Institutions of the State in the built environment. It also influences the future interpretation of the limits on DOMs' grants of Construction Permits, and the MHDU's interpretations of LUPs when conflicts appear over urban urbanistic rules. The CGR's definitions also matter for civil organisations, neighbourhood associations or residents intending to use the law to limit the real estate development through the invalidation of public decisions. Finally, real estate developers use planning law to certify their actions in future conflicts.

In this research, I analyse the CGR decisions on conflicts that mobilise members of a community affected by developments, uses, or activities that unfavourably modify their surrounding environment (following Azuela and Mussetta, 2009) and who use any element of planning law in their arguments. A description of the rulings of the CGR on controversies is relevant to continue conceptualizing how planning law canalizes planning. The first level is how law is interpreted in favour of, or against, specific actors' demands. The case-by-case study of rulings describes how law favours some spatial claims over others. I identify consistencies that show how planning law gives power to some actors and limits the action of others in the built environment. At the second level, an analysis of the arguments that actors present in legal discussions on procedures at the CGR hearings contributes to examining the discourses that actors put through planning law and the discourses of the CGR itself. Each ruling contains an interpretation of law developed by the CGR, which are mandatory for public officers and an argument for future actions for other actors.

Previous examinations of the rulings of the CGR in Chile have focused on the relevance of the interpretation of law in the Chilean Legal system (for instance, see Vergara and Zuñiga, 2008; Aldunate, 2010; Ruiz Tagle, 2015) without paying much attention to planning law. There are analyses of planning law jurisprudence by CGR by Cordero (2007) and Rajevic (2016) based on specific cases. However, there has not been a systemic analysis of legal rulings by the CGR in urban matters. Although statistics and quantitative methods do not feature in legal education (Dow, 2004), some authors have begun to use quantitative methods to illustrate conditions of legal systems in Latin America. In a review of 10 years of activity of the Courts, Maldonado (2011) draws conclusions regarding the confidence that Supreme Courts enjoy in Latin America. Meneses (2016) argues that a reflection on the

practical implications of the decisions of a legal institution is possible, not only from qualitative perspective, but also from quantitative analysis of those decisions. Azuela, Saavedra and Herrera (2016) and Meneses (2014) have evaluated the behaviour of Mexican Courts in the light of urban matters to found what “normally” happens in Courts and which provides questions to follow on future case studies. These works have informed the analysis that is developed in this Chapter.

In the next section I describe the specific role of the CGR in the legal system in Chile. After showing its idiosyncrasy, I examine the different elements that have expanded its influence. I argue that the increase in the number of urban developments and their externalities, the appearance of more actors and paradigmatic cases have increased the activity and the importance of the CGR’s decisions in spatial terms.

### 5.3 The role of the CGR in the Chilean legal system

The CGR is an independent and autonomous organ represented by one person (the “Contralor”) that monitors and checks on the action of public institutions and safeguards the use of public funds. The CGR monitors the legal compliance of public authorities, or in common law terms, conformity with the rule of law. This mainly concerns the Constitutional principle – the “golden law” of the public system - whereby a public authority can only act when the law allows that action. The Art. 6 of the PC states:

*State organisations must submit their action to the Constitution and the norms laid out for its conformity and guarantee the institutional order of the Republic. The precepts of this Constitution apply equally to those who compose those organizations as well as any [other] person, institution or group. Any infringement of this rule will produce the penalties and sanctions that the law determines* “(Article 6 of the Constitution: own translation).

At the same time, the CGR defines as one of its duties “*deciding about the constitutionality and legality of Supreme Decrees and resolutions of Services Chiefs*”<sup>33</sup>. Consequentially, most administrative actions of public offices of planning law - from the state to the

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<sup>33</sup> Law N° 10.336, Organic Law of the CGR

municipalities - are under the control of the CGR. These controls can be invoked in relation to any action that public officers perform, on the request of another party or on its own initiative. The CGR reviews administrative decrees and their compliance with the Constitution and with the Law, and the conditions of validity under which the administrative exists. As a “control institution” of the state administration, the CGR has a comprehensive range of roles: control of the legality of administration of state decrees and acts; auditing public revenues and expenses; and ensuring accountability for the nation. Compared with similar institutions in South America, the scope of authority of the Chilean CGR has been historically robust.

The origin of CGR as the institution that we recognize today lies in its history, which is closely related to the history of Chile as a republic. Administrative control of expenses - “Accounts Courts” -began in 1820, only 10 years after the first Chilean Republic came into existence (Cordero, 2006). Audit control was a permanent fixture, although taking different forms during the 19th Century. In 1925, the Chilean government hired an International Commission (the Kemmerer Commission) to re-organise and modernise different Institutions and procedures for public administration in Chile (Aldunate, 2005). This Commission concluded that increased audit controls and the reorganisation of state finances were needed. The creation of the CGR is a direct consequence of that reorganisation. The Chilean government developed these recommendations into different laws, and created the CGR in 1927 (Rajevic and Garcés, 2009)<sup>34</sup>. The new institution combined audit control, the Audit Court and monitoring the legality of expenses, but also included legality checks on any administrative act, a duty inherited from audit legality controls by the Ministry of Finance.

The CGR was constituted as a control institution with a wide range of functions, wider than the Commission’s recommendations that served as their inspiration: the control of legality of administrative acts, the audit of public income and investment, audit controls, and ensuring the accountability of the State. The Constitution of 1980 consolidated these functions. This range of functions has been labelled as a ‘hypertrophy of functions’ which exceeds the role of other Audit Institutions in Latin America (Vergara and Zuñiga, 2008). The CGR is an Institution with a critical role in relation to the control of public

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<sup>34</sup> DFL N° 400 bis, issued the 26.03.1927

administration. From originally being a public entity responsible for auditing public expenses and budgets, it has transformed into having a key role in government administration, being constitutionally recognised as ensuring the legality of the performance of public entities.

Since its creation, the CGR has developed most of the doctrine and legal theory regarding administrative law in Chile (Cordero, 2007). When a determined subject that is competence of the State has no regulation or legal lagoons the CGR has been the institution that has interpreted the law. In that sense, the CGR is perceived as having a “stabilizing role” in the Chilean system (Cordero, 2007). This role has meant that the CGR fills in the absence of legislation by the Congress or the absence of decrees by the state. For instance, regarding planning law, the CGR has intervened when regional or local governments have failed to develop rules and regulations for the environmental approval of planning instruments.

However, in interviews for this research, some respondents raised the question of whether increasing intervention by the CGR in decisions of planning law have intertwined with the responsibilities of municipalities or the MHDU. A legal advisor to the MHDU argued that the suggestions of the CGR in should focus on *formal* aspect of the law and that recently it has analysed the merit of certain law or decision (which are *substantive* issues outside of the jurisdiction of the CGR) (Law3, 14.01.19). This idea has been argued in some jurisprudential decisions that the Supreme Court has made to solve controversies between the CGR and other actors, where the Court has said that is the Municipality or the MHDU who should decide on substantial matters (Cordero, *ibid*). However, the line between the formal positive law and its substance is, at least, blurred in the concept of modern law (Atria, 2016). At the same time, the idea of ensuring legality and public control of law has been justified through substantive reference to democracy (Silva Cimma, 1994). Therefore, although possible conflicts with the public administration duties, the role of the CGR keeps being central to understand how the public polices and regulations are applied in Chile.

More recently, the role of legal auditing of administrative acts has been assigned to the CGR with particular force. The Chilean Constitution (has mandated the CGR “the

control of administrative acts” (Art. 99 CC)<sup>35</sup>, and the CGR has preventive powers over any decree by the public sector (Art. 99 CC). However, the main legal rule that sustains the CGR’s control of legality Article 6 of the Law of Organisation and functions of the CGR (Law N° 10.336).<sup>36</sup>: “*The CGR will be exclusively responsible to audit on (...) the functioning of Public Services under its competence, to the effects of the correct implementation of the law and decrees that rule them*”. The first element of the Article is what scholars have called “Verdict Power”: the *preventive* or *ex ante* control tool of the legislative powers of the administration (Evans and Poblete, 2012). This has allowed the CGR to instruct public actors on how to interpret the law, to revisit that interpretation and to reject or limit the effects of legislative administrative actions. This legal control - “*toma de Razón*” - is what distinguishes the CGR from similar audit offices in other Latin American Countries -and can be translated as “Recording, or taking note of, reasons”. This preventive control has increasingly examined the legality of LUPs. The increasing length of the process of approval of zoning instruments in recent years is the result of legality checks by the CGR (Gutiérrez and Peña Cortés, 2011), supported by NGOs and real estate developers (NGO1, Priv3).

In addition, the CGR has also a *subsequent* or *post hoc* control tool. The rulings analysed in this chapter relate to the legality examinations by the CGR of already existing administrative decisions and acts: the exercises of “Verdict Power”. These procedures start with a submission by a public servant or a private individual arguing that a particular administrative act is illegal. After checking the formal legality of the action, the CGR requests the opinion of all the public officials involved in the controversy. It can also receive documents and opinions from third parties involved. The CGR then issues a deliberation and a decision in a legal document named *ruling*.

To consider the arguments of a ruling, the CGR is organised into different Divisions. The specialized unit that controls matters related to the built environment is called the Infrastructure and Regulation Division. In practice, this Division is made up of administrative lawyers who check the legality of both preventive and *post hoc* cases. However more recently the Division has hired architects specialised in urban planning. When an official of the Division makes a decision, the ruling passes to the Director of the Unit and if it is approved, it is submitted to the Comptroller of the CGR for final approval.

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<sup>35</sup> The CGR has many other functions, but regarding the objective of these work, will not be analyzed.

<sup>36</sup> Law N° 10.336.

That process ratifies the ruling, which is notified to the Divisions and actors involved: in most situations, the ratification includes instructions for the different public actors involved in the controversy on how to enforce the planning law in future cases. (These rulings are the documents that constitute the material for analysis in the following section.)

Nevertheless, there are limits on the CGR's administrative role in the legal system. For instance, if the matter of the procedure is a "litigious matter" (a controversy that has reached Courts) or does not involve a public authority, the CGR must declare its lack of jurisdiction to rule on the case. Another limit is that, in the case of post hoc rulings the CGR cannot directly invalidate an administrative act. It can, however, reach the same result by ordering the public body or civil servant to invalidate its own act (Evans and Poblete, 2012) for up to two years after the decision or the act<sup>37</sup>.

In the next section, I study the rulings of the CGR in relation to the location, characteristics and parties involved in the rulings in order to trace the discourses of legality in the rulings, discourses and techniques of the CGR.

#### 5.4 Conceptualising the controversies ruled by the CGR relevant for the planning law: quantitative analysis

This section analyses the interpretation of law by the CGR through rulings in planning controversies. The *judicial* activity of the CGR is mandated by the Constitution to check the legality of the acts of the administration. That *judicial* activity has increased, both in *preventive* and *post hoc* roles, according to the public accounts of the CGR for the years 2007 to 2017 (see Table 5: JUDICIAL ACTIVITY OF CGR PER YEAR). The number of these controversies related to "*housing, urban development and public infrastructure*" has increased in real numbers, but not as a percentage of overall cases which has remained at a steady 5% per year of rulings.

TABLE 5: JUDICIAL ACTIVITY OF CGR PER YEAR

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<sup>37</sup> Article 53, Law 19.880.

	“Toma de Razón”	Claimants	Rulings by CGR	Rulings on Housing, Urbanism, and Public Infrastructure	Use of planning law	Proximity cases	Others
<b>2017</b>	n/i	n/i	n/i	n/i	35	19	16
<b>2016</b>	26.868	19.575	16.594	n/i	77	33	44
<b>2015</b>	23.592	18.786	15.913	n/i	66	36	30
<b>2014</b>	22.977	19.215	14.888	898	71	31	40
<b>2013</b>	21.210	19.028	14.541	732	57	21	36
<b>2012</b>	21.801	17.972	13.235	708	119	54	65
<b>2011</b>	23.096	20.394	15.060	759	122	55	67
<b>2010</b>	21.654	19.886	13.913	759	106	50	56
<b>2009</b>	22.247	23.275	17.816	748	111	59	52
<b>2008</b>	26.068	20.125	15.915	564	119	65	54
<b>2007</b>	20.674	14.620	11.070	n/i	83	45	38

Source: Constructed with data of [www.CGR.cl](http://www.CGR.cl)

However, in relation to the aims of this research, rulings that the CGR considers on “Housing, Urbanism and Public Infrastructure” do not necessarily only include planning law. For instance, there are several cases related to budget expenditure, public contracts and civil servants’ issues which are not relevant to this research. Having in mind that the object of this research is to analyse how the social practices of planning law are constitutive of the built environment, there are two filters that distinguish relevant rulings. The first is the use of planning law in the decision, reliance on GLUD, GOUD or Land Use Plans in the case presented to the CGR. However, there are still cases of “Rulings on Housing, Urbanism and Public Infrastructure”, that use planning law but are not relevant to the aims of this research. For example, rulings drawing on planning law but that are related to subsidies, administrative enquires or similar matters. There are also cases relating to the built environment that are too specific for the scope of this research, such as rulings on specific laws (i.e. telecommunication issues).

The focus my research is on cases that intend a spatial change – or react to spatial change- in the built environment. These can be classified as *proximity controversies* -

environmental conflicts that mobilise members of a community affected by developments, uses, or activities that unfavourably modify the surrounding environment (Azuela and Mussetta, 2009). For this research, ‘mobilisation’ is a submission by any actor to the CGR, requesting a spatial modification in the surrounding environment using an interpretation of planning law.

Although the analysis is centred on rulings and spatial results, this method allows considering controversies that have not been examined by other means in Chile. The National Institute of Human Rights developed a map of “socio-environmental conflicts” that expresses the different environmental values held by different groups of people (INDH, 2012). However, one criterion for being included in the map is that the conflict must have “a public expression, demonstration, or judicial action”; and this is similar to the criterion for being included in the map of “urban conflicts” developed by the SUR Corporation (SUR, 2011). Focussing on the reasoning and decisions in cases considered by the CGR, allows the examination of mobilisations that do not appear in the media as protests or demonstrations, but which are, nonetheless, significant urban controversies.

The selection of cases resulted in 470 cases of interest (See Chapter 3, Methodology), and the analysis of these 470 rulings provides data for the systematisation that is explained in the next subsection.

### 5.1.1 Type of Controversies

Within the ‘proximity controversies’ of planning, different kinds of urban disputes have been distinguished: green spaces and public spaces, noise conflicts and land uses (Meneses 2014). However, using that framework is not useful for analysing the Chilean case, where most of controversies are described as *land use conflicts* (Table 6)

TABLE 6: Meneses’ (2012) TYPES OF CONTROVERSIES RULED ON BY THE CGR 2007-2017

<b>Land Use</b>	<b>377</b>
<b>Public Space</b>	90
<b>Noise</b>	3

Source: Constructed with data of www.CGR

This analysis of the rulings distinguished the type of conflicts according to the legal matter at issue relating to the objectives of the contenders. The type of issues which reach to the CGR for a legality check on planning law are shown in Table 7.

TABLE 7: TYPE OF CONTROVERSIES

Type of Controversy	Number	%
Construction Permit	162	34,47%
Land Use Decision	151	32,13%
Designation of Public Space for Private Land	89	18,94%
Process of Planning Instruments	39	8,30%
Heritage	12	2,55%
Demolition of Buildings	5	1,06%
Urban Use for Rural Land	4	0,85%
Environmental Authorisation	3	0,64%
Urbanisation Permit	3	0,64%
Public Space Use	1	0,21%
Final Acceptance	1	0,21%
<b>Total</b>	<b>470</b>	<b>100,00%</b>

Source: Constructed with data of www.CGR

Table 7 shows that from 2007 to 2017 the controversies range from questioning of declaration of public land by the authority through to specific planning decisions. The number of conflicts over the years analysed has tended to be steady (Table 5: JUDICIAL ACTIVITY OF CGR PER YEAR). The types of cases occur most often are:

- *Designation of Private Land for Public Utility*: These are mostly challenged by landowners who request the CGR to decide on the legality of the planning instrument that designated private land as “Public Space”.
- *Construction Permits*: Requests to review the legality of a Construction Permit. These requests are usually arguments for the illegality of a Permit made by residents or

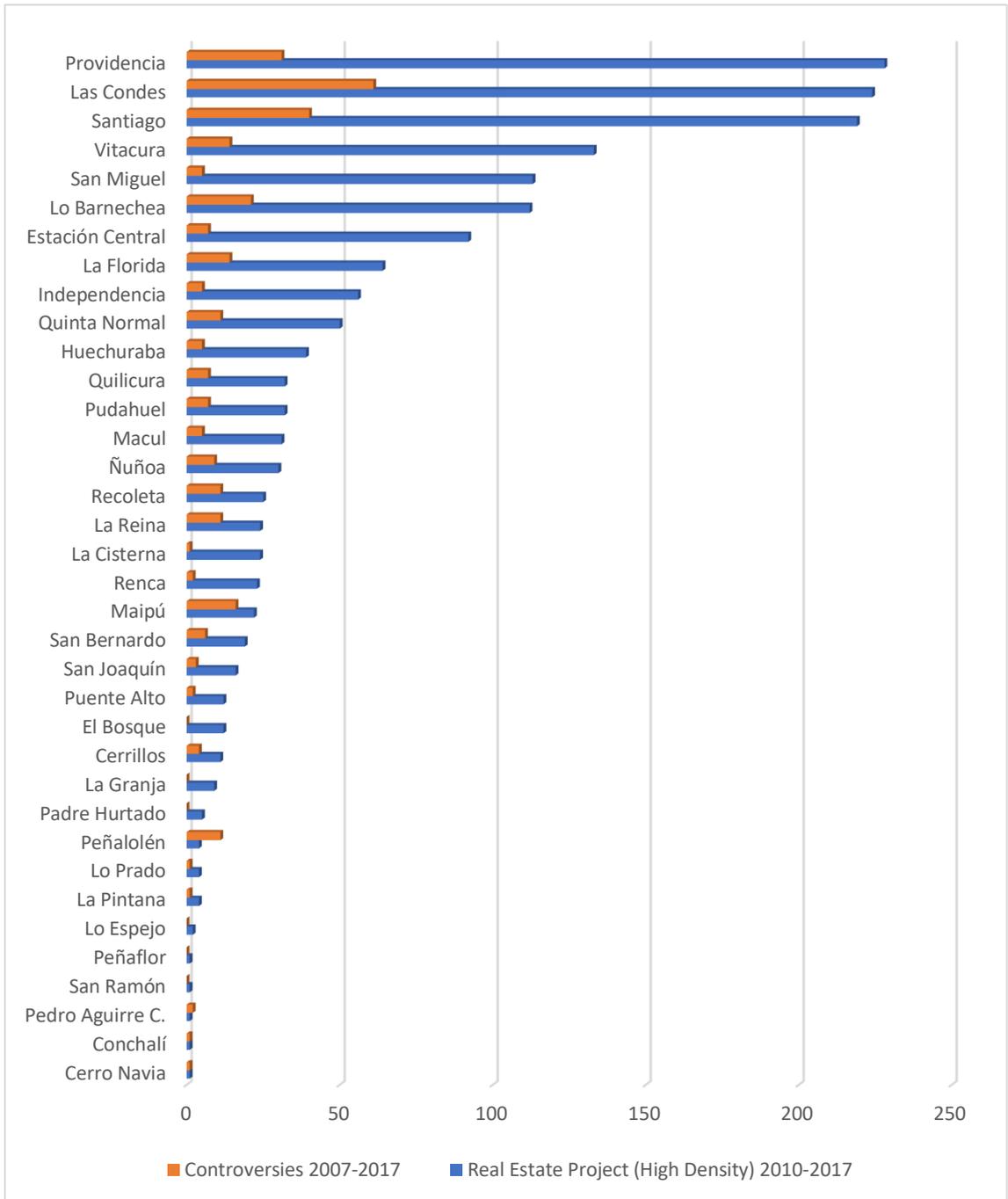
NGOs and arguments in favour of the Permit's legality made by private developers. As we will see, the request for a CGR decision on the legality of a Construction Permit is the main tool that residents have used against urban development.

- *Land Use Decisions*: These are proximity conflicts based on administrative decisions that forbid or authorise an activity. Contenders usually argue that the land use contained in the planning instrument does not permit the discussed activity which therefore should not be allowed.

### 5.1.2 The main geographical locations of disputes

The structure of the CGR means that controversies from all over Chile end up waiting for rulings on different subjects. However, the CGR has a Regional Branch in each Region of Chile, apart from the Metropolitan Region of Santiago, for which, until 2017, the central CGR decided all cases directly. For cases located in other Regions, the central CGR ruled on the case when: (a) a Regional Branch requested rulings on very complex issues; and (b) when a petitioner was not satisfied with the ruling of the Regional CGR and appealed to the National Office. This means that for this research, cases in the Metropolitan Region recurred directly to the CGR, when in the case of Regions, they could reach their Regional branch earlier. However, if we isolate the cases from the Metropolitan Region, the data allows to categorise which Municipalities have more proximity controversies. Those Municipalities with high number of controversies have also the most real estate development activity (Figure 11).

FIGURE 11: LOCATION OF CONTROVERSIES and DENSITY of BUILDINGS IN THE URBAN METROPOLITAN REGION



The data shows a slight but generally constant correlation between the municipalities with high levels of real estate activity and those with more controversies taken to the CGR. Furthermore, there is a link between those municipalities with higher socio-economic status and the most controversies. Cultural and socio-economic factors are important elements in the likelihood of a dispute being taken to the CGR. Of the 55 rulings that the *Defendamos la Ciudad* NGO has initiated, 42 are from the five highest income municipalities; and from the total of the Construction Permits challenged through the CGR, 90 of 130 cases were from the 10 highest income municipalities in Chile (such as Providencia, Santiago, Las Condes and Vitacura). At the same time, municipalities with lower economic status such as San Miguel, Estación Central and Independencia, with high rates of real estate development, do not appear to have a high number of cases before the CGR. This lack of legal activity in these municipalities raises questions regarding who can afford to reach Courts (see Chapter 6).

### 5.1.3 Which actors and what results

In the last subsection, I showed how controversies are mainly located in municipalities with the highest real estate activity and income. This, however, does not clarify *who* resorts to the CGR. To understand this, I have grouped and categorised the different actors that go to the CGR according their origin and interest.

#### I. Private Actors

- a. Real estate developers, including the Trade Association of Real Estate Developers, the *Cámara Chilena de Construcción* (CCHC).
- b. Enterprises other than real estate interests
- c. Small and medium business
- d. Residents with real estate interests (landowners which aim to sell housing)

#### II. Public Actors

- a. Regional offices of the Government
- b. National offices from the Government

- c. Municipalities
- d. Public agencies or public enterprises

### III. Community Actors

- a. Residents with neighbourhood interests
- b. Residents and community organisations
- c. NGOs

Table 8 shows that the groups most likely to take an issue to the CGR are real estate developers and residents and neighbourhood organizations. The number of petitioners is larger than the number of controversies, because several controversies involve more than one claimant.

TABLE 8 Claimants of urban planning controversies in Contraloría, 2007-2017.

Year	Real Estate Developers	Enterprise	S/M Business	Neighbour with Real Estate Interest	Regional Offices	National Offices	Municipalities	Residents Organisations	Residents	NGO	Public Agency	CGR internal affairs	Public Institution	Total
2007	2	2	0	0	2	1	2	3	1	7	2	0	0	22
2008	6	1	2	1	0	1	3	3	12	3	5	0	0	37
2009	5	2	5	2	2	0	3	1	11	10	1	0	0	42
2010	7	2	1	0	1	0	4	3	7	7	6	0	0	38
2011	7	3	0	3	1	0	1	2	4	1	0	0	0	22
2012	14	8	2	4	0	0	5	5	11	5	5	1	0	60
2013	16	8	2	5	2	0	7	7	6	6	5	0	0	64
2014	14	0	2	5	3	0	8	3	14	3	2	0	1	54
2015	16	7	0	6	0	2	5	9	8	9	1	0	1	63
2016	16	10	0	5	3	2	9	9	9	7	2	2	0	74
2017	17	4	0	4	1	0	9	4	4	7	0	0	0	50
<b>TOTAL</b>	<b>120</b>	<b>47</b>	<b>14</b>	<b>35</b>	<b>15</b>	<b>6</b>	<b>56</b>	<b>49</b>	<b>87</b>	<b>65</b>	<b>29</b>	<b>3</b>	<b>2</b>	<b>576</b>

SOURCE: AUTHOR

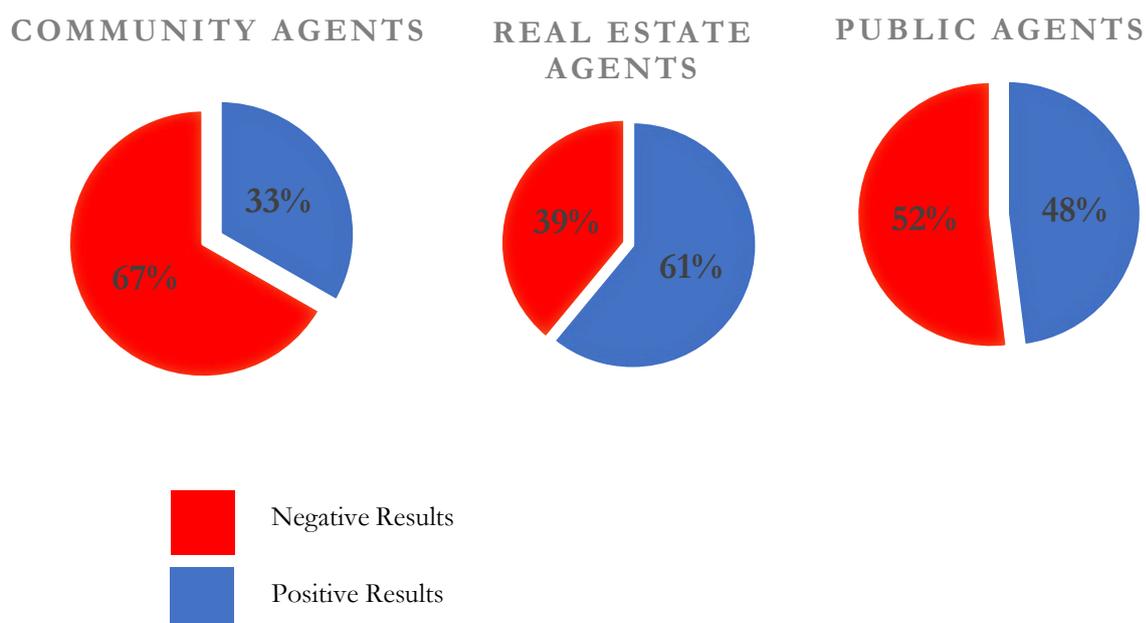


The typical category of petitioners looking for spatial effects through legal interpretations by the CGR are Real Estate Developers. However, if we add to them, Enterprises and Residents with Real Estate Interests, then 39% of petitioners have private interests in land. On the other hand, agents with an interest in resident or collective rights (Residents with Neighbourhood Interests, Resident and Community Organisations, and NGOs) represent 38% of petitioners. The remaining third are representatives of public bodies and enterprises.

The dataset also shows the results of CGR decisions given in the final official ruling. However, the rulings are difficult to codify as a single binary result. It is debatable who *wins* in a controversy ruled by the CGR. The ruling can agree with the petitioner/s, but sometimes the decision only recognise that things were not done correctly, without specifying how this should be corrected in practice. This is the case when the CGR declares that a procedure to obtain a Construction Permit was illegal, but construction has already started. But, there are also cases where the decision of the CGR can impact the built environment. The categorisation that I developed intends to recognise the different effects that a ruling of the CGR can have for the petitioner and in the built environment.

FIGURE 12 shows the groups obtaining positive results from a CGR ruling.

FIGURE 12: RESULTS PER GROUP OF CLAIMANTS



SOURCE: DATA OF WWW.CGR.CL

In examining the spatial result for each petitioner, I analysed how the ruling related to a spatial or physical outcome. For this purpose, results for each petitioner were categorised in four possible *winning* outcomes:

Result 1: The petitioner obtains recognition of the illegality of an administrative act. However, third party rights limit the effect of the ruling to a declaration of illegality, without having spatial effect in the built environment (or with the effect of leaving things as they are). This limitation is normally recognised in the ruling.

Result 2: The CGR ratifies the administrative act that was disputed. The petitioner who “*wins*” is the one arguing for that ratification. The ongoing spatial results are considered legal.

Result 3: The CGR recognizes the illegality of the administrative act, resulting in its modification with a spatial effect changing its material outcome in the built environment.

Result 4: The CGR recognises the illegality of the administrative act and changes the legal criterion that was used to make the original decision. This results in material changes which have spatial effects not only in terms of the controversy itself, but on the prospects of actors in future disputes.

According to these outcomes, Table 9 shows the following results:

TABLE 9: Petitioner Outcomes

	Positive Results: Total	Result Type 1	Result Type 2	Result Type 3	Result Type 4
Real Estate Developer	73	0	14	55	1
Enterprise	21	2	4	14	0
S/M Business	5	1	1	3	0

Residents with Real Estate Interests	13	0	1	12	0
Regional Offices	45	2	35	7	0
National Offices	11	0	7	3	1
Municipalities	188	3	168	11	2
<b>Resident Organisations</b>	23	6	3	14	0
Residents	31	7	4	20	0
NGOs	21	5	2	14	0

SOURCE: AUTHOR, WITH DATA OF WWW.CGR.CL

The data shows a tendency for controversies to be resolved in favour of particular groups of actors. This relates not only to the percentage of positive results (FIGURE 12: RESULTS PER GROUP OF CLAIMANTS) but also to the category of outcomes (Table 9). Accordingly, Real Estate Developers tend to win controversies in more than half of the disputes they are actively involved in (61%). When faced with legislation enacted to improve the living conditions of the urban working classes and giving government powers to control the use of property, land owners turn to the Courts to protect their interests with success, which has been described as an expected result from the action of planning law (McAuslan, 1980) as it has been argued that Chilean planning law is pro-development (Cordero, 2009). Furthermore, when private actors win disputes, no limitation of third-party rights are recognised in rulings favouring Real Estate Developers, and communal or public rights are hardly recognized in planning law.

In fact, the opposite outcomes are the case for parties representing community interests and for private actors representing interests other than urban development. These parties tend to win fewer cases and, for *community* agents, to have outcomes that do not change the spatial result (Results 1 and 3). NGOs, Resident Organizations and Residents only have positive results in a third of their cases. Of these, a significant number result in a *paper win* - meaning that the illegality of the disputed act did not interfere with the disputed material outcome. In the 18 cases with this

result, the “losing party” is a municipality that authorized a Construction Permit: even if in practical terms, developers were not involved in that controversy, they benefit from the limitation set by the CGR on the granting of Construction Permits.

Consistent with the experience of Mexico (Meneses, 2014) and other examples (Davy, 1997), the number of disputes reaching the CGR is slowly increasing throughout the years. The legality of the planning decisions is therefore an important element of urban planning. Moreover, the correlation between planning law controversies and municipalities with the highest real estate activity indicates that the legal system is activated increasingly when the activity of urban development’s rises. However, the observed tendency for real estate developers to obtain positive results from the CGR questions the meaning of this increased legal activity. There is also a clear tendency of actors related with communal rights such as NGOs and Neighbourhood Associations to have more weak results when they approach the CGR. In other words, the increased activity of legal actors such as the CGR has not reduced the real estate activity or majorly benefited the rights of residential organizations and NGOs. Positive results of decisions by the CGR can take the form of ruling that a Construction Permit is legal as issued (especially if construction has already started – that is, the construction is recognised as the status quo that needs to be certified in law).

In contrast, actors challenging the legality of permits as issued and asserting community rights in the built environment tend to lose their cases (because they are attempting to restore the status quo ante, but the CGR considers the previous state of the built environment to have already been legally changed).

This section does not examine some of the other quantitative research material, such as interviews or evidence about the openness of the CGR to change its criteria when petitioners insist: some elements of this statistical material are described in the following section. The focus of the next section is on qualitative material regarding the scope of rulings of the CGR in relation to their spatial effects in the built environment. The strategies of different actors, the opinions of the CGR, the outcomes of CGR decisions for public actors after the decision-making were examined.

## 5.5 Analysis: the influence of CGR rulings on the spatial significance of planning law

In this section, I complement the quantitative analysis that was examined in the last section with a description of the role of the CGR in the planning system by analysing the rulings and the discourses of the CGR through its legal decisions and technicalities in the interpretation of planning law.

The position of the CGR in the Chilean legal system is not relevant for planning law as such. But, according to research respondents, this position has come about through the increasing number of rulings relevant to planning law that CGR has set out over the 10 years from 2007 to 2017. This perception is supported by the material discussed in the previous section. Compared with 2007, more actors requested more issues be checked for their legality regarding actions in the built environment. Therefore, the demands of actors are an element in understanding the increasing prominence of the role of the CGR.

A critical element in this role is related to the relevance of administrative acts in planning law. Most of the urban planning decisions involve the authorisation or consent of at least one, if not more, public official, which automatically makes the CGR a critical actor. The potential illegality of an administrative act could stop an urban development or recognise the rights of a third party. These decisions of the CGR are based on an interpretation of how the original planning decision in question fits with the requirements of the legal system.

As different respondents recognized, a ruling by the CGR influences how public decisions are made. In the DDU, interpretation of law must comply with what CGR has resolved, even if it goes against the interpretation or intentions of the DDU or the MHDU itself (Pub5, 18.01.17; Pub2, 22.12.16). Regional Offices of the MHDU often do not resolve cases and prefer to redirect them to the CGR<sup>38</sup>. With this, Regional Level Directions (SEREMIs) have ignored the legal institution of the MHDU as set out in law and have directly asked the CGR for an interpretation of the law: the Chief of the DDU says that interpretation by CGR bypasses the legal competence assigned under the GLUD (Pub2; 22.12.16). In practice, the final interpretation of planning law rests in the CGR legality checks.

This increasing role in planning law is also the result of the increasing numbers of actors demanding legality checks. A decision by the CGR creates expectations of legal certainty for

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<sup>38</sup> I.e. Rulings N°45.217-2016, “SEREMI RM / Santiago Municipality”; N°50.843-2016, “SEREMI V Region / Municipality of Viña del Mar”

different actors. Real estate developers seek legal security for investors; and NGOs and residents seek rulings of illegality to prevent the execution of undesired projects. My review of cases showed that many actors have resorted to the CGR based on their expectations of the legal system. The informal manner in which requests for legality checks can be made to the CGR and the relative speed of obtaining a ruling have encouraged many actors to make such requests (NGO1, EC2) According to fieldwork interviews, the CGR provided the possibility of stopping ongoing projects that were more difficult and much slower in the Courts (Prov1, 05.01.17). Although the results were not always what residents wanted, the acts of requesting CGR checks on the legality of administrative acts indicates degree of activism aimed at the stoppage of undesired projects.

CGR legality checks can also provide a starting point for summary proceedings against public officials whose decisions and actions have been found not to conform to planning law. According to a former Chief of CGR, many actors use CGR legality checks in order to be able to act with certainty: The phrase “taking the records to the CGR for consideration” seems a requirement for public officers making difficult decisions (Pub3; 10.01.17). Politically difficult decisions can find support in the rulings of the CGR. But in contrast, municipal public officers describe the difficulty of planning the city with already complex planning laws which complexity is only increased by the interpretations of the CGR. According to one respondent, in the past “to act with confidence you had to search [through] everything that the DDU had said, and now you [also] have to look at everything that the CGR has said” (Ind1, 16.12.16). Due to this, planners have developed an expertise on the technicalities of planning law.

However, since 2010 the CGR has actively promoted interpretations of planning law that go beyond the procedures of “*toma de Razón*” and that have increasingly considered the post hoc control tools required to implement interpretation of planning law that formerly were made in the preventive control. There has been an active agenda for publishing CGR interpretations of planning law through compilations of rulings on the preventive legality checks on LUPs, stating the limits and grounds that legally support these interpretations. Between 2013 and 2015, the CGR also developed seminars to communicate their conclusions on legality checks and conducted practical workshops with public officers to “correctly interpret planning law” (Pub3; 10.01.17). Providing examples and cases of how urbanistic rules could be used, and how they could not. Accordingly, the use of planning law has gained a technical character promoted by the CGR.

CGR representatives have argued that the accomplishment of a correct implementation of law entails efficiency in public policies and promotes the common good (CGR, 2014). This has been supported with some authors arguing for a “guiding role” for the CGR in the creation of public policies (Israel and Oñate, 2012). In the case of planning law, the CGR assumes that the public agenda of interpretation of planning law has the role of collaboration to share the knowledge of the interpretation of law. This collaboration has been:

*Translated in shared training which aims for an effective information transfer through the country, in the particular area of compulsory urban norms [ ... ] with an emphasis to ease and optimize its enforcement and reduce processing through the giving of technical and professional knowhow (...) Our objectives are to facilitate the elaboration and approval of land planning instruments, underlying the most common mistakes in their development and in their content, and, on the other hand, give account of the necessity of uniform even updated planning law (...) We hope this document contributes to better communication between all the actors that intervene in the process of urban planning, also providing tools for citizens to solve the deficiencies of the Administration in this ambit, which fosters the generation of good governance”* (CGR, Practical Guide of Administrative Justice on Communal, Intercommunal and Metropolitan Planning Instruments and Regional Urban Development, 2012), own translation.

This view of the correct implementation of law - the discourse of the associated benefits of formalism - has had effects on the system of urban governance in Chile. The level of activity in legal interpretation opens questions regarding the limits of the CGR: is it filling the gaps in the existing regulations, or is it becoming a new legislator on planning issues? (Cordero, 2007). The level of detail of oversight of LUPs is similar to the judicial activism where Courts take on the role of urban planners (Maldonado, 2017)

This role has significant effects on the production of LUPs and planning law. The amount of official interpretation of law developed by the DDU, the day-to-day interpretations of DOMs and DDU and the long process of approval of LUPs has diminished the power of the state to comply with its own objectives. The interpretation of the law by the DDU, used by DOMs to issue Construction Permits and by municipalities drawing up zoning plans, is a central element of the competencies of the government to regulate the urban development. As an example, the DDU published a Guide to the Implementation of LUPs in 2009 aiming to provide

common ground and tools for the development of these instruments<sup>39</sup>. The DDU has been constantly limited by the CGR's interpretation of its role;<sup>40</sup> but more importantly, it has been replaced by the systematic reinterpretations by the CGR on the same issues. The interpretation of the CGR has reduced the oversight that the GLUD gives the MHDU to interpret the planning law: in other words, responsibility for planning law has been moved from a specialized unit on planning law rules and regulations to an administrative Court that measures the planning acts in terms of their legality.

The competence that the law gives the CGR for interpreting administrative law has, at the same time, given the CGR a central role in planning law and urban planning in Chile. As Cordero argues (2007), it has been given a pivotal role in public administration, especially when rules are non-existent and when the public officers follow rulings of CGR as mandatory precedents<sup>41</sup>. The CGR (2014:8) states that its mission is to “*reconcile the planning law and the built environment with the proper interpretation of rules and the rule of law*”. However, this *stabilising* reading has become a guidance role, where the CGR actively determines that legality is a criterion that needs to be actively advocated in planning. But this is a mission that –ironically- is not recognised by the law that regulates the CGR.

CGR interprets planning law through a formalistic understanding of planning. Among its competencies, the interpretation of planning law has traditionally been elaborated from a literal interpretation of the law or with general principles of the Chilean legal system. Legal adjudication between moves closed and formal interpretation and finalistic or consequential interpretation (Atria, 2016). In the case of the CGR, a formalistic analysis of planning law has constantly been used, actively looking for coherence of the planning system within the legal system. Many of the CGR rulings evaluated LUPs or opinions of the DDU by arguing that the legal system did not “provide instruments of legal interpretation that allowed the conclusions” that Divisions or municipalities had developed<sup>42</sup>. This formalistic interpretation does not consider spatial effects of the law. In fact, the text analysis of the rulings appeared to follow the same technical formal procedure: the CGR carried out a formalist analysis of each legal rule in order to support its decisions. This took the forms of a literal interpretation exercise on the express wording of the

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<sup>39</sup> DDU 227.

<sup>40</sup> Rulings CGR N°82.539-2014; N°73.004-2015; N°26.973-2016.

<sup>41</sup> Law N°10.336, art. 6.

<sup>42</sup> CGR Rulings N°1.780-2016; 94.146-2014; 63.910-2016; 28.162-2016; 33.958-2016, among others.

regulation, ignoring any spatial effects, except when necessary to fit with the legal categorisations provided by relevant rules and regulations of planning law.

The legalist interpretation has limited the planning powers of municipalities. This is a phenomenon that started after 2000 and that was noted in the period analysed in this research. Urban legal rules and regulations that historically, had allowed urban design by municipalities such as Providencia<sup>43</sup> or Las Condes, were declared to be not in conformity with the GLUD and therefore illegal by the CGR. During the period analysed, the CGR ruled 67 times – 16 times only in 2017- that the prevailing articles of LUPs were illegal. In those 67 times the declaration of illegality of the zoning plan was not part of the petition by claimants. The CGR argued that Municipalities had not the power to create rules that “*were not discussed in the planning processes*”<sup>44</sup> and outside the limited competences that planning law sets for local governments, and therefore should be modified in the interest of the legal security of inhabitants, even if it was not asked by the claimants.

In other words, the act of planning has gained legal complexity through the technicalities of planning law supported by the actions of the CGR. The interpretation of urbanistic rules by municipalities requires bypassing the legal checks that CGR develops. Interpretations by the CGR are based on a strict understanding of the competencies and duties of each civil servant according to planning law. As the CGR recognizes, a mistake in the drafting of a LUP can stop the procedure or even invalidate a whole process (CGR, 2014). For instance, the intention of planners to include *ex ante* definitions for all zones of a LUP is forbidden: each zone should contemplate a definition of its own rule, its own prohibition, making LUPs more complex and with more rules<sup>45</sup>. These kinds of technicalities have become an important standard for any LUP design. As I show in the next chapter (6), they also become central elements of spatial consequences.

Despite (or because of) the active pursuit of a standardised formal interpretation of planning law, CGR interpretations of LUPs impose limitations in their ability to regulate the urban environment. Interpreting LUP norms as illegal could have positive effects, such as

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<sup>43</sup> Providencia incentivised the development of Building that increased the public space and underground parking allowing increases of density for urban developers. Those incentives were declared illegal through the CGR ruling N° 2.358-2014, “*Real Estate / SEREMI RM & Municipality of Providencia*”.

<sup>44</sup> CGR Rulings N°26.793-2016, “*Enterprise / Municipality of Macul*”, N°37.606-2017 “*Real Estate / Municipality of Providencia*”.

<sup>45</sup> CGR Ruling N° XXX -2016.

increasing public space or encouraging different types of construction. But legality itself does not assure desirable effects (as I showed Chapter 4 in the example of using “*legal procedures*” to overcome height limits, an issue of profound concern for communities in LUPs processes). Many of the urbanistic rules considered to be illegal by the CGR had been in existence for decades. The result has been a decrease in local powers for municipalities to regulate their territories through zoning. Interestingly, in interview, the Chief of the CGR questioned whether a legal analysis based on technicalities was justified enough to overcome local legal rules and regulations: this seems to contradict the stated position of a prior chief of CGR that strict interpretation of the law was a guarantee of equal participation of citizens (CGR, 02.01.19).

The formalistic interpretations by the CGR have influenced the technicalities through which legal and non-legal actors have reached spatial results. The complexity of the rules and regulations of planning law drawn on have resulted in complex administrative decisions: in the words of CGR officers interviewed, there will be mistakes in any Construction Permit that is analysed in the CGR offices (CG3;02.03.17). This complexity has influenced the legal strategies claimants make use of in the CGR and other Courts. As planning lawyers argued in interviews for this research, the legal details of a Construction Permit or badly enforced LUPs remain as sources for legal technicalities that can be used to obtain spatial results (Law2; 15.12.16). In that sense, the CGR interpretation of planning law has spatial effects -which are traced in the next chapter- but these are not recognised explicitly in the application of law. The legalist approach to the law does not recognize that the elements of the interpretation or the technicalities used as part of the spatial production.

The legalist approach has also permeated the legal strategies that actors use in the CGR. Regarding the uses of law for social change by taking advantage of its ambivalence, my analysis of the case-by-case review revealed a constant mismatch between the concrete objectives and legal objectives of the claimants. Most of the controversies over Construction Permits are related to the practices of community actors attacking the legality of the permit in order to prevent or mitigate the effect of the undesirable building. The arguments of petitioners in most cases relate to the procedures undertaken for the approval of the Construction Permit: the strategy is to present the CGR with the different problems relating to the Construction Permit in order to obtain the declaration of illegality<sup>46</sup>. Petitioners argue that there has been a misinterpretation of

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<sup>46</sup> i.e. CGR Rulings N°60.408-2008 “*Neighbours / Municipality of Ñuñoa*”; N°13.703-2009 “*Defendamos la Ciudad / Municipality of Las Condes*”; N° 36.156-2015 “*Junta de Vecinos / Municipality of Las Condes*”

the urban legal rules and regulation (such as incorrect calculation of the number of stories that are allowed to the veracity of the university degree of the architect). Any illegality, independent of whether it is relevant or not to its effect in the built environment, appears to be an effective tool to put into question a new urban development. There is no space for substantive arguments about the purpose or effects of the decision, mainly because planning law does not contain space for such claims. Questions about legality do not allow discussion of the real controversy – the use of space - but rather, become discussions about the limits of legality itself.

The role of the CGR is also related to the idea of providing legal certainty for investment. This effectively protects Construction Permits against third parties aiming to limit their effects.

*When interpreting the law, the CGR determines its meaning and scope, and therefore, any of its technic of interpretation must, in principle, rule in terms that the interpreted rule had always the meaning and scope that has been assigned to it, unless there has been a change of jurisprudence, in which case, considering the principle of legal certainty, the new ruling only applies to the future, without affecting situations based on the prior doctrine (...) The invalidation of irregular acts of the Administration has as a limit the consolidated legal situations based on the trust of private parties in the legitimate proceedings of its organs, and therefore the consequences of those cannot affect third parties that acquired rights on good faith based on those acts (CGR, 2013).*

Legal certainty grants that conditions continue over time for all parties and a Construction Permit creates secure legal situations.

Another observed interpretation criterion used by the CGR based on a formal approach is the logic of foregone facts. Several controversies on the illegality of procedures in Construction Permits were *paper wins* based on the criterion of protecting administrative acts that create or declare rights for third parties<sup>47</sup>. This is the case for Construction Permits that while not in full conformity with planning law, are considered to be equally legal on the basis that they have consolidated rights of third parties - normally, the developers. Foregone facts have Construction Permits as an ally. The time at which administrative decisions are authorised was also relevant for a number of rulings. If an administrative act such as a Construction Permit was

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<sup>47</sup> That is, CGR Rulings N°49531-2008 “*Real Estate / Valparaíso Municipality & Ministry of Education*”; N°32.639-2010, “*SEREMI MHDU & Defendamos la Ciudad / La Reina Municipality*”.

granted, this limited the effect that other administrative acts had in the same place. Actions of local governments such as protection declarations for historical reasons (historical conservation) or changes to LUPs had to respect previous administrative decisions and permits<sup>48</sup>. The CGR argued that considering those supervening administrative acts legal would limit the protection of “private rights”. As discussed in Chapter 4, a Construction Permit limits a piece of land from the remit of local governments and authorities.

The analysis of the supporting rulings also shows that the CGR rarely attends to substantive or spatial arguments in its reasoning and, a formal approach to planning law is the accepted way of reasoning. The CGR tends to consider the value of the administrative act rather than the associated legal doctrine, such as the social function of property (Art. 19 N°24 PC) or public interest (Azuela, Saavedra and Herrera, 2016). In the few cases that the CGR decided the invalidity of legal rules or regulation in answer to a claim, the interpretation followed the spirit of the Constitution as the basis for the ruling<sup>49</sup>. These interpretations of planning law, whether legalistic or occasionally extra-legal arguing for the spirit of the law, lack reflection on the tensions in planning law that claimants represent, such as private versus public interest in the built environment.

This suggests that the CGR has advocated a vision where many of the decisions made urban planning system though LUPs are not in conformity with the legal system. This is the opinion of many officials: that beyond the implementation of rulings and the several observations on LUPs and the action on MHDU made by the CGR in order to avoid “incorrect interpretations” the objective is to limit the action of the government (Acad2; 18.01.17; Pub2; 22.12.16). As a result, the MHDU pushed for changes in the GLUD. The approval of the Public Space Contributions Act (LAEP, *Ley de Aportes al Espacio Público*) in 2016 was partly a consequence of the CGR’s interpretation of the limited powers of LUPs in order to restore that power (Acad2; 18.01.17). The Bill included an attempt to address different experiences that had been limited by the CGR interpretation that DDU and local governments had increasingly faced in the years preceding this legislative change. At the same time, the implementation of that Law is still on hold and is not clear that it recovers the power of local governments and the MHDU to plan without the influence of the CGR. Moreover, these partial legal reforms will still confront the formalistic interpretation centred on complex planning law rules and regulations.

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<sup>48</sup> CGR Ruling N°99.736-2014; N°49.531-2008

<sup>49</sup> CGR Ruling N°46.907-2007.

## 5.6 Conclusion

This chapter has examined the role of the CGR in the formalistic interpretation of planning law. It provided an illustration of the position of the CGR and its importance in the built environment and argued that the CGR's interpretations have significant effects in planning law on LUPs and urban projects. The position of the CGR has been described as central to planning by a number of scholars: however, the way in which it develops the interpretation of planning law has been little discussed. This chapter provided evidence to identify who, when, where interpretations by the CGR are required in relation to planning law in administrative acts by public officers. The chapter finished with a discussion of how the role of the CGR has influenced the planning system in Chile through formalistic interpretations of law.

In conclusion, the influence of a formalistic interpretation of law and the legal system on planning law and its administration has been discussed. The position of the CGR has been extended over the 10 years covered by the analysis of documents, because of the increasing number of actors demanding answers from the CGR and the conviction that the enforcement of law is beneficial for public policies. I argue that how that enforcement is practiced –through a formal interpretation of law - has spatial effects in the built environment. Although the CGR does not state this explicitly, the interpretation of law by the CGR has limited itself to considerations of formal law. The quantitative result suggests that under these legalistic interpretations, real estate developers obtain favourable outcomes more frequently which have positive outcomes for their investment in the built environment.

The next chapter unpacks the concepts of planning law that were discussed in this and the previous chapter and analyses the canalization of planning law through narrow formalistic interpretations. In this chapter, I explored what an interpretation of law can mean for actors in a planning process and how that interpretation is performed. Consequently, the next step is to describe the action of planning law in the practices in procedures that are established by planning law and enforced through formalistic interpretations.

## Chapter 6. Case Study: the constitutive role of planning law in Independencia, Providencia and Estación Central

This chapter looks at the social practices of planning law in three municipalities of Santiago. Describing the ordinary events of planning processes is a way to look at the canalisation of planning law in specific places and how legalistic interpretations are implemented in Chile. While the two previous chapters examined the interpretation of planning law and the associated devices by the CGR, this chapter explores how the social practice of planning law configures the legal decisions and actions of actors, in order to search for the constitutive role of the social practices of planning law in the built environment.

The chapter focuses on three planning processes in inner city municipalities of Santiago, looking at the processes related to the implementation of LUPs and issuing Construction Permits and the constitutive role of planning law through them. The chapter starts with a description of the urban trends that characterise the inner centre of Santiago. After that, the three cases (Providencia, Independencia and Estación Central) are described separately, drawing on interviews with actors from public offices, private developers and residents; analysis of legal and complementary documents; and observation of urban processes to illustrate the cases. In the each of the three cases, I describe the line of events and their relationship with social practices of planning law. The final section discusses the commonalities and the perceived effects on the built environment of Santiago. The strategies, technicalities and legal effects of actions are also discussed.

The core of this chapter is the description of the case studies. Where possible, the presentation of the cases is structured in a similar fashion. Firstly, I present a description of the municipality linked to the planning process that was followed in municipal territory. The changes analysed - a new development after a reform of Land Use Plans in *Providencia*; a reaction to the renewed interest by real estate developers in *Independencia*; and the appearance of large constructions allowed by Construction Permits in *Estación Central*- allowed me to gather experiences, opinions and interactions of involved actors and their use of law to pursue their objectives. I explain: the status of each municipality up to the period of the research; the process of modification of planning or construction permits; actors' reactions to these processes and the

outcomes of planning processes. Also, in each case study I present the legal discussions and the results, both in the Courts and in the built environment. These descriptions of the cases also consider discourses and technicalities in practices of planning law.

The development of an empirical perspective on law has gained depth from the examination planning law rules and regulation and the importance of legal devices, the interpretation of planning law by the CGR and the discourses entailing the notion of formalism. This chapter aims to understand how law is palpable and material through those discourses and interpretations in the built environment: how formalism is part of the social production of the built environment. The case studies are described and analysed with the aim of understanding the physical presence of planning law in the built environment, based on the examination of discourses described in previous chapters in order to examine the practicalities that actors confront in everyday decisions. The case studies are particularly focused on describing the effects of law on the practicalities that constitute these cases. As Valverde (2012: 10) has argued, “*law quietly shapes both the built space and the social interactions that take place in it. And as it does so, certain cultural values are literally built into the urban fabric*”.

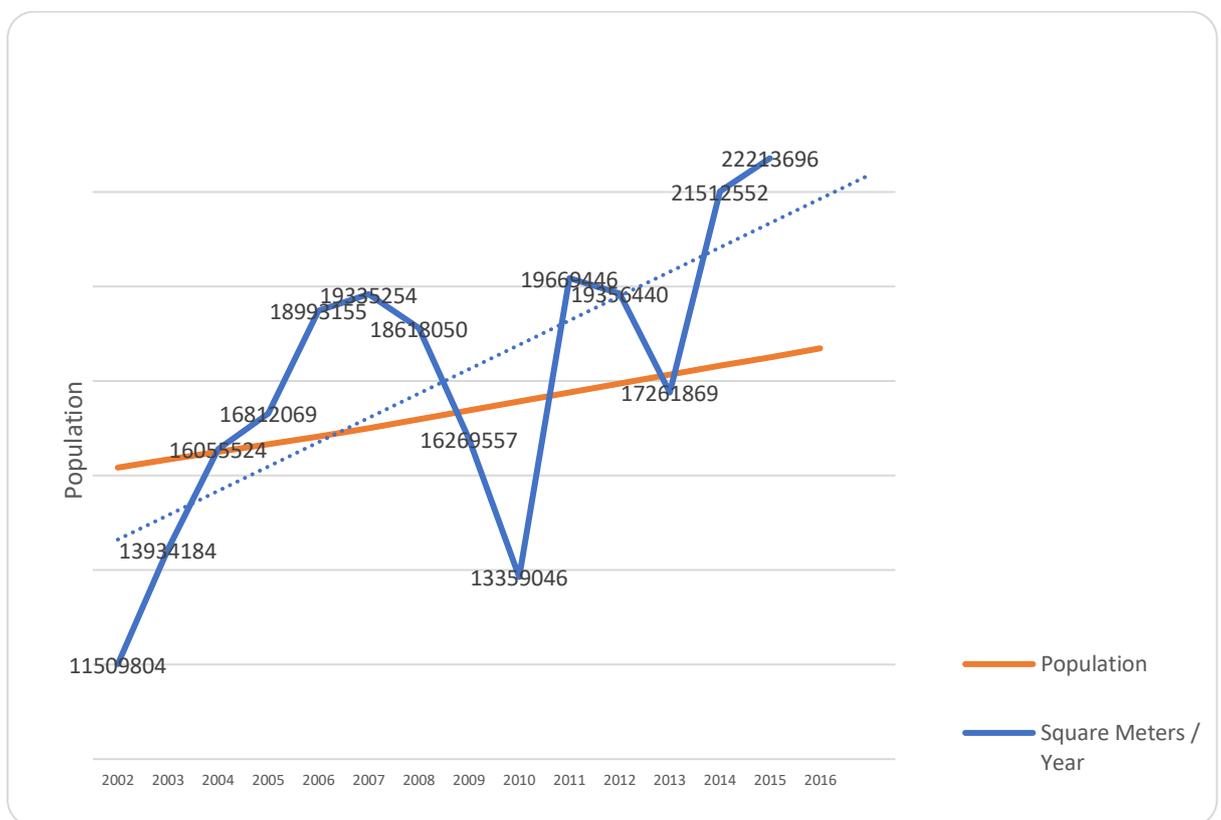
## 6.1 The Santiago context of the three case studies

The research aims to analyse how planning law is expressed differently through the legal devices of planning law on one hand, and formalistic interpretations on the other. The evidence presented in the previous two chapters influences the emphasis of the narrative that I constructed to describe the cases. In the three cases I describe the legal devices of Land Use Plans and how Construction Permits produce spatial effects in the built environment. The different actors’ social practices in planning law - particularly the municipalities - were followed in order to explain different results in each case. The formalistic approaches to planning law influenced the everyday decisions, the ordinary practices observed in the case studies. The action of the legal devices was located in case studies located in municipalities that are part of the inner city of Santiago, a part of the city that has been confronted by aggressive urban reconstruction over the 10 years covered by this study.

Santiago is a city with continuing growth in population and urban development (Figure 13). Like many Latin American cities, Santiago is undergoing restructuring processes with residential, commercial and services developments taking place in many parts of the city,

modifying the urban landscape and built environment. Regarding housing, until the 2000s the number of residential developments increased in Santiago through two distinct processes: on one hand, housing has located on the outskirts of the city - sometimes taking place beyond the formal urban limit: social housing and private housing projects for the middle classes grown on the peripheries of the city (Tokman, 2006; Fernando, 2008). On the other hand, large gated communities in middle income municipalities converted vast tracts of empty land to privatized urban commons (Borsdorf and Hidalgo, 2008).

FIGURE 13: POPULATION AND PRODUCTION OF SQUARE METERS PER YEAR IN SANTIAGO



Source: INE, 2017.

As I showed in Chapter 4, the planning system in Chile was liberalised and has become market-centred since 1975. Private developers are at the centre of the growth and development of cities such as Santiago. Real estate development is undertaken by private developers and finance institutions that have found profit in these processes, increasing the capacity of the market to provide for housing needs. Santiago has been described as the result of a private-led development where spatial enclaves of poverty and enclaves of wealth characterise Santiago as a

segregated city (Sabatini and Cerda, 2001; Agostini *et al.*, 2016). In fact, the segregation of the Chilean capital has been highlighted as one of the main challenges for Chilean urban development (OCDE, 2016).

However, since the 2000s, the pattern of increment in the production of residential building has changed. A reconstruction process of the inner city of Santiago has slowly taken place and replaced the process of urban expansion, of which Providencia, Estación Central and Independencia are part. These inner city municipalities have experimented with different scales of restocking housing units since the 2000s. Market forces have been related to restructuring processes by the redevelopment or “recycling” of land at the inner urban centre. Many municipalities that lost population between 1992 and 2002 reverted this tendency in the period 2002-2017 (Figure 3). The Census of 2017 revealed that for first time in the city’s history, private developers had sold more units of apartments than houses in the inner centre of Santiago, according to the number of units of apartments and houses that were sold in Santiago per year:

FIGURE 14: NUMBER OF APARTMENTS AND HOUSES SOLD PER YEAR IN THE METROPOLITAN REGION

Year	Apartments	Houses
2012	23606	15421
2013	26838	11693
2014	47298	18077
2015	59357	16761
2016	49644	9857
2017	36127	12955
2018	46935	11933

Source: Observatorio Urbano MHDU

The explanations for this change of pattern in urban development in Santiago have varied in two competing theories. The first theory argues that real estate developers have encountered favourable local reception to investment in large urban developments welcomed by municipalities. The term “urban state -entrepreneurialism” (Lopez-Morales, 2012) was coined to sum up the land use regulations, institutional arrangements and speculation logic of the state at

the local level. This vision underlines how local governments from inner city Municipalities compete against each other for private investment of real estate production. The fragmentation of urban institutions and the use of legal instruments (partial modifications of LUPs) linked to profits from land are central to the urban renewal process.

This argument is based on the economic logic of land as a commodity, where the first step centring the value of the land in the economic offer that real estate developers provide to the market. The most valuable land in similar inner centre Municipalities will be that of the Municipality that offers the best conditions. However, the theory also offers a diversification in the way real estate developers bring investment to their companies. Lopez Morales also describes the arrival of new small investors that buy a group of apartments, creating a new market for apartments in high rise residential buildings for renting. Real estate developers have constructed new buildings in the inner city with a clear interest in renting apartments either directly to resident owners, or through small investors. As López Morales (2012: 84) argues, the first step for this machine to work was to find the best regulations conditions for investment: *it was focussed on specific spatial niches; that is, ad-hoc modifications of regulations in Land Use Plans, intentionally allowed in very specific zones?*. At the same time, the consolidations of investment funds for real estate development also increased the renovation of the pericentre (Cattaneo Pineda, 2011:14). According to Lopez Morales, a number of informal public private partnerships -consolidated in the change of LUPs to bring new development to the territory- were at the core of the redevelopment of pericentric municipalities of Santiago and the municipalities provided competing conditions to attract urban investment.

The institutional arrangement for urban state-entrepreneurialism is a fragmented local administrative system, creating competition between different local administrations. The 34 politically independent municipalities compete to attract private investment by offering the best conditions for private real estate development (López-Morales, 2016). If a local government changes the urban legal regulation included in a LUP to obtain urban development, urban state-entrepreneurialism and the fragmented administration of the city allows private construction capital to rapidly take up these opportunities. Otherwise, when Municipalities tighten their regulations against high-rise buildings, Real estate developers react against changes in LUPs and move their investments to the new most favourable inner centre municipality that provides the best Land Use Plan for investment conditions. The land administration system allows development decisions to be made on comparisons not only between particular spaces and

supply differences, but also on which Municipality has the best institutional arrangements and regulations that allow the best revenue.

A competing theory for the explanation of the change in patterns of development in the inner city is the renewed interest by households for living in the centre: An *infilling* process is the preference in central locations of the city with well-connected neighbourhoods (Poduje, 2013). According to this theory, the problems with transport, lack of urban facilities in peripheral municipalities and smaller families are linked with the increase in buyers who want access to the benefits of the central city. This, according the opinion of a Real Estate Developer ((Priv4, 16.01.17), is because households want to avoid long travel times, lack of well-located land, a consumer-perceived crime-insecurity of houses against apartments, and public policies that have encouraged new investments in inner areas. In this narrative, developers reacted to changed patterns of residential preferences that had multiple causes. It disputes the existence of a context of state-entrepreneurialism or the active intervention of developers to create this process.

According to real estate developers interviewed in the fieldwork, there is also changes in demand that affect how the housing is designed. The argument is that Chilean families have reduced in size (fewer children) and fragmented (more divorces or non-marriage relations) (Priv2, 10.01.17). According to a real estate developer, the current density calculations for building were made in the 1990s based on four persons per housing, but the 2002 Census considered the “typical family” as having 2.8 persons (Priv2, 10.01.17). Other real-estate developers recognised other factors like apartments being seen as safer than houses and better located in a city that has increasingly suffered transport problems, “particularly since 2011 when the new transportation system started” ((Priv4, 16.01.17).

The changes to the inner city of Santiago have had effects on residents and politics. The numbers of urban controversies linked with Construction Permits have increased since 2005, and opposition to large investments has intensified (Hernando and Razmilic, 2015). As a reaction, some local authorities have promoted and implemented LUPs that limit the maximum heights and density allowed by other LUPs or that did not have regulations at all. The political action of residents has created pressure, motivating the reaction of local authorities - or candidates- related to limiting urban development.

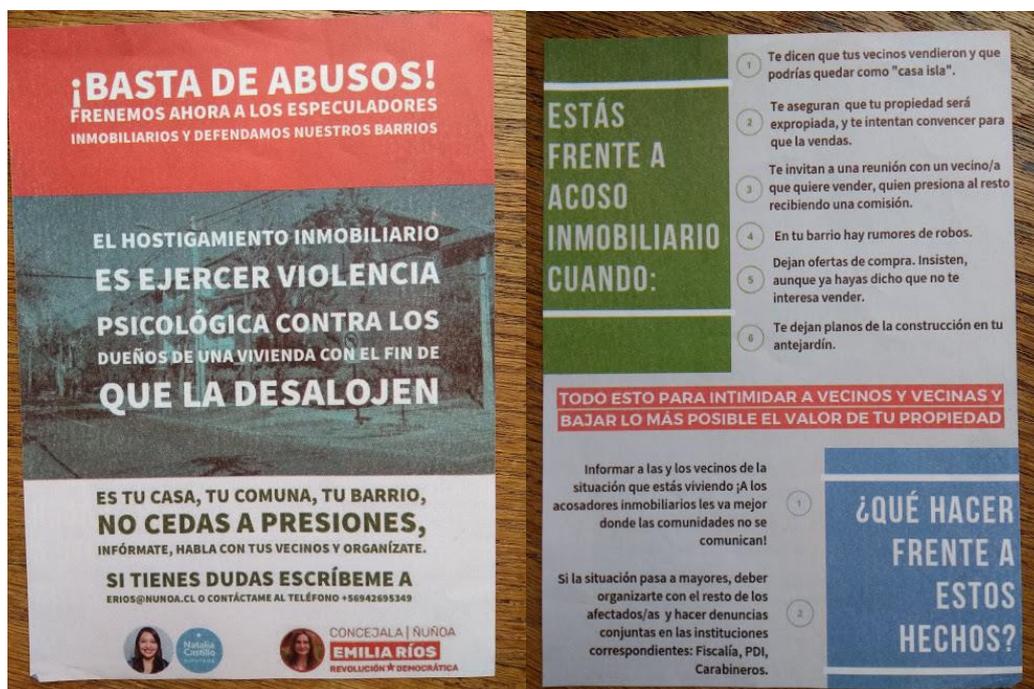
The inner-city municipalities that have initiated modifications to LUPs have used different approaches. A first group of local governments, like Independencia, have quickly implemented amendments to bring in strict height limits. This means that the height of buildings is limited without exception or limitation in a new LUP that reacted against new urban developments that based their development in the prior LUP. Measures like these have been criticised for not allowing the creation of housing for new residents (CNDU, 2014). A second group of municipalities like Providencia, have started amending LUPs in a process intended to regulate the territory as a whole. Heights of buildings are tackled as part of a group of modifications that respond to demands expressed through citizen participation. Although the result could be the same as the first group (that is, tighter restrictions), the process hints at more profound changes to decision-making processes to tackle local problems.

The increase in building construction in the inner city is also influenced by the limitation of development in the Santiago Centre Municipality which was introduced in order to stop the large amount of successful urban reconstruction that had taken place over the previous 20 years. As López-Morales (2016) has shown, the combination of an active determination by the Santiago Centre Municipality since the 2000 to reactivate the urban development in the Municipality along with subsidies that benefited “urban renovation” changed the face of Santiago Centre. The negative effects were loss of historical heritage, standardised, low-quality high-rise buildings. On the positive side, however, Santiago gained a population increase: until the 2000s Santiago Centre was losing population, but since then, population has consistently risen. Once the renewal of Santiago Centre was stopped by political pressures linked to the negative spatial effects, development interest moved to the adjacent municipalities in the inner centre.

The renewal of the inner centre and its consequences have become an active political issue, bringing urban planning issues to be in the centre of debates (Pub1, 22.12.16, Pub2, 22.12.16, Acad3; 25.01.17). Candidates for local government elections have promised amendments to LUPs to fulfil community desires to limit urban development in their neighbourhoods. Several local government representatives have developed the term “real estate harassment” (Figure 15): a constant requirement from real estate developers to buy land plots with single-housing, with constant requirement and with a veiled threat: “if you do not sell now, and your neighbours do, soon you will be surrounded by high-rise buildings” (EC1; 24.04.17). Harassment, according to this view, can take the form of a real estate developer permanently offering money to neighbours (and making them sell one by one), leaving leaflets of the new

projects outside houses doors, new rumours that crime in the area has risen, until there are owners that “psychologically” feel that there is no option but to sell (FIGURE 15). Although the line between the negotiation and harassment is not well established, matters of real estate development have involved the local governments political campaigns. According to the Regional Governor, the matters of real estate development and the kind of city were at the centre of the Municipal election and explain the change in administration in cases as Providencia and Santiago (Pub6, 04.04.17).

FIGURE 15: LEAFLETS FROM LOCAL REPRESENTATIVES REGARDING THE EXISTENCE OF “REAL-ESTATE” HARASSMENT



SOURCE: AUTHOR

The case studies conducted for the research were situated in this context which sets the scenario for actors deploying their strategies for desired outcomes. The case studies provide evidence for how planning law can be useful for, or is an obstacle to, the interactions developed by actors. My interest is to discover how, in the social practice of planning law, certain groups of actors use devices and discourses having spatial effects. A specific element of the research was to understand how actors’ positions and discourses were enhanced or diminished when translated into planning law processes. The case studies also examine legal procedures, the interpretation of law by the Courts and the CGR and the results of the disputes in the built environment.

The next section describes the three processes of planning change in municipalities in the pericentric Santiago. These processes are introduced in the context of the LUP and the background of the municipality. After that, I describe each case and its result (to the date when this research was completed). At the end of the Chapter, I develop some conclusions about the outcomes of the cases and reflect on a comparison of the three cases.

## **6.2 Independencia: The constitutive role of planning law over time. Constructions Permits consolidating rules and regulations for good.**

Independencia is an inner-centre municipality that borders on Santiago Centre at its north-western limit. The Municipality of Independencia until the 2000 was characterized for having a low-density composition and several heritage neighbourhoods. The municipality is a product of the division of the north side of Municipality of Santiago in 1991. The LUP of Independencia, therefore, was “inherited” from the Land Use Plans of different municipalities (Santiago, Renca and Conchalí). The new municipality was controlled politically by a populist-Right administration until a collation of the Left won power in 2012.

Planning in the Municipality was conducted through partial modifications to the inherited LUPs, which did not cover the whole territory of the Municipality. According to Lopez-Morales the most meaningful amendment was developed in 2005, changing a planned *park area* to developable land. Instead of modifying all the Land Use Plans the Municipality decided to offer a specific area of the LUP for urban construction. (Lopez-Morales, 2010). The change in that area was indicative of the vision of bringing new real estate development in the Municipality.

Between 2007 and 2010, real estate development activity increased with Construction Permits being issued for high-rise buildings. The limitation of new constructions in the Santiago Centre Municipality expanded the interest to near municipalities such as Independencia and a proposal for an underground transport extension promoted interest in the central road of Independencia. The interest of real estate developers went beyond the territories that had received modifications through LUPs. In fact, the partial modifications of Land Use Plans did not limit aggressively neither the height or the density of the projects. The result of the

incremental granting of Construction Permits and the lack of control through Land Use Plans was several massive building projects (Ind1, 16.12.16).

As explained in the previous section, these new and proposed developments produced controversies with residents. Two streets of Independencia (“Avenida Francia” and “Avenida Inglaterra”) formed the “Barrio Los Castaños, a “protected heritage area zone” that was one of the first neighbourhoods constructed in the “modernism movement” in Chile in 1930. However, a developer obtained a Construction Permit to replace several houses with three buildings of 20 stories in 2006. The Construction Permit was obtained before the protection zone had been put in place by the Municipality, and the land was not covered by a height limitation in the LUP. In the face of increasing numbers of similar neighbourhood disputes, the civil servants and Mayor changed its pro-development approach - at least discursively. The Municipality intended to revoke the disputed Construction Permits through legal procedures. But after several defeats in the Courts, the Municipality was forced to recognise the legality of the permits. Nevertheless, the emergence of neighbourhood groups led to the creation of a group that today is represented on the Municipal Council and supports political change in the Municipality.

In 2007 and in reaction to this case, the Municipality began research for creating a new LUP. Although the local administration at that time was interested in increasing the amount of real estate developments (Lopez-Morales, 2012), the Municipality was unable to complete the new LUP. The reasons were many: it was difficult for neighbours to reach agreement derived from the “Los Castaños” case, a change in the national regulation of LUPs that required clarifications from central authorities made mandatory to start the planning process again, and the reality that real estate developers were already interested in urban developments opposed to changes in the LUP. All of this helped to keep the urban environment unregulated (Ind1, 16.12.16). More than 35 multi-storey buildings were approved before 2012 in the Municipality, a year when a new administration gained office promising to limit the urban development of the Municipality.

### 6.2.1 A new local administration and a new LUP

The new local administration in 2012 began with the main task of limiting what was understood as the uncoordinated and disruptive regeneration of the Municipality, using the legal devices of LUPs and the limitations on construction enabled by planning law. Firstly, the Mayor

froze the granting of Construction Permits for one year (4 March 2013 to 4 March 2014) for any building of more than six stories. The freezing of Construction Permits went with the political promise of drawing up a new LUP that would limit the undesirable development and regulate appearance of high-rise buildings. The Mayor stated that “*with this change we will protect not only a lifestyle, but an architectural and cultural patrimony that for years the citizens have tried to protect and that, for lack of regulation, real estate development have bulldozed*”<sup>50</sup>.

However, the number of projects was not immediately reduced. Although there were new Urban Advisors (see Chapter 4) and a new DOM with the change of Mayor, the instruments to stop the use of the existing regulations in the Land Use Plan were limited. The Municipality could not prevent developers from applying for new permits in the short term after the freezing of conditions and the procedures to change the Land Use Plan were lengthy (see Chapter 4). The objective, therefore, was to introduce a quick change to the existing LUP to stop large-scale real estate development. This was supported by different community groups that opposed high-rise buildings and were also interested in of the creation of a new LUP.

The process to approve the amendment to LUP was successful. The planning office of Independencia developed a pragmatic approach to successfully approve the LUP in the time provided by the suspension of permit grants. In order to do that, the officials of the planning office - the Urban Advisor and the DOM - explained that they:

*We approved the modifications to the LUP in one year. We had the experience from the Maipu Municipality, and we knew how we could change rules fast. .... I think we are the Municipality that took the least time to modify [a LUP] It was madness. It involved working seven days a week for a whole year. We had to reach an accord with SEREMIs (...) agreeing to send emails instead of official documents by letter. If they needed me to bring them coffee, I would bring them coffee (...) [We would work in] any way in order to beat the official deadlines of the administrative legal process, which overpass the year limit. These are “unofficial” agreements but allow you to speed up the process. That allows you to avoid the five years that a LUP modification involves. (...) Also, the only way to make fast process is to produce general and pragmatic Land Use Plans (Ind1, 16.12.16).*

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<sup>50</sup> Press note in “Cooperativa” on the 2.03.2013, available at <https://www.cooperativa.cl/noticias/economia/sectores-productivos/construccion/alcalde-de-independencia-congelo-permisos-de-edificacion-en-altura/2013-03-02/201039.html> [Consulted: 28.02.2019].

However, the development of a LUP in that timing had a cost. The respondent also hints at some of the problems in *speeding up* the Land Use Plans:

*You are not able to look the detail. The instruments are only urbanistic rules, they do not allow you to get to the specifics of particular neighbourhoods. If you really want to get involved in a neighbourhood, you need to develop "sectional plans" and those take five years more. My central problem is with time: approval processes are too long, and we needed to limit development (Ind1, 16.12.16).*

The process of the LUP also aimed to provide a space for the visions and frustrations of neighbourhood associations. However, the process of participation had to dismiss most of the propositions made by the community. Most of these suggestions were only wishful ideas such as "do not destroy our neighbourhoods" or "send the real estate development to another place" or "we do not want a LUP here, we want parks, recreation sites and gyms"<sup>51</sup>. Other ideas asked for social housing percentages or public transport investment, but these do not fall under the LUP process and were also dismissed.

The debate about building height was at the centre of the residents' participation comments and in the LUP process. Most of the residents argued more strongly for a reduction in the heights allowed in the zones of the LUP than the original proposed by the Municipality. However, some actor's height and density limits that "would be comparable with other Municipalities and that gives a reasonable option for real estate developers to invest"<sup>52</sup>. Finally, according to the Urban Advisor, the Municipality opted for mixed development in zones with a maximum of three, five and 10 stories. According to the DOM, the urgency of the freeze on permits limited a more in-depth discussion on the Equal distribution of zones throughout the Municipality, particularly the height (Ind2, 16.12.16).

The main objective of the development of the new LUP was to obtain a quick instrument against uncoordinated and "bulldozer" urban development which threatened to change the skyline and urban environment of the Municipality forever. The new LUP was successfully approved on 25 March 2014. This meant there was a window between the onset of the permit freeze (4 March) and the approval of the LUP. In this gap, permissive regulation for new developments was in force; a moment related by the officials in the planning office:

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<sup>51</sup> Documented in the "Process of Hearing of LUP modification of Independencia", presentation elaborated by the Urban Advisor office of Independencia Municipality.

<sup>52</sup> Ibid, p.45.

*Real Estate Developers are bold and difficult to control. They react very fast. When we organized and developed the freezing in December of 2012, we aimed for quick results. In January, we met with SEREMI, the Mayor and most of the authorities and in March we obtained the freezing. When the freezing was approved, a number of projects had applied for Construction Permits before this, and most of them got developed. And when we got the freezing, we had only one year - the longest time in which you can freeze the granting of construction permits - to develop the Land Use Plan. The freezing was also a signpost for developers. They were waiting for the freezing to end. When you start a freezing process, you also tell them that the reception of construction permits will be open again at a specific date. Therefore, they design and prepare for that date. Between the end of the freezing and the final approval of the new Land Use Plan, only 14 days elapsed. In that short period of time, Real Estate Developers applied for new projects under the old regulations(Ind1, 16.12.16).*

In response to the developers rushing in to get permits in the 14 days, planning officials pushed the interpretation of planning law to avoid the appearance of undesired projects. The literal interpretation of planning law - the legalistic approach - was a key element for public officers to limit the activity of real estate developers that did not comply with the regulations of the about-to-be-approved Land Use Plan. Any mistake in the application for a Construction Permit allowed officers to deny new permits during those fourteen days:

*A title of an architectural plan was wrongly named according to the GOUD and it was used in order to not approve the project. Anything was valid in order to limit new projects (Ind1, 16.12.16).*

Nevertheless, the window of opportunity allowed 13 new projects to be approved. This number, added to those Construction Permits that were approved in draft before the freezing, continued to be constructed at the time of the fieldwork. These buildings located in the main streets of Independencia changed permanently its built environment. Independencia contains blocks that mix one or two storied houses with high-rise buildings (Images 1 and 2). The Municipal Offices in which the interview with the planning officials took place is surrounded by high-rise buildings, owned by developers who rent out the buildings.

FIGURE 16: PICTURES OF INDEPENDENCIA HIGH RISE BUILDINGS.



Source: Author

The new conditions of the LUP – zones with six, eight and 10 stories height limits - proved successful under these regulations, no new urban projects were submitted to be approved by the DOM because no new projects were submitted to the evaluation of the DOM (Ind2, 16.12.16). The LUP intertwined this process, leaving several landowners who had sale agreements without that possibility anymore. As a consequence, development moved to adjacent Municipalities with better investment conditions.

In this subsection I showed the main elements of the Independencia new LUP planning process. How problems with new buildings motivated neighbours and political changes. However, the changes to the LUP and the used of planning law by planning officers revealed that this relation is far from being straightforward.

### **6.3 Providencia: The planning law canalisation of conflicts.**

Providencia is located on the eastern side of Santiago Municipality. There were 142.079 inhabitants living in the Municipality, according to the Census of 2017. The population is composed of middle and high-income families, mixing long-term residents with a generation of young people who choose the Municipality for its urban amenities. Many workers from the south of the city travel through Providencia to their workplaces in the centre and east side of Santiago.

Providencia has been characterized as a privileged municipality with high income. In fact, Providencia is one of the top five municipalities for the proportion of fiscal revenues coming from land tax and other local sources (Razmilic, 2017). Public spaces, green areas and the quality of public goods such as street lighting, roads and sidewalks are of better quality than most other municipalities in Santiago. According to the “*Institute de Estudios Urbanos*” of *Universidad Católica* quality of life index, in 2018 Providencia was ranked as the best place to live in Santiago.

The life quality of the municipality is also evident in a better management of its urban development. The Providencia Land Use Plan, developed in 1976 by a group of planners led by German Bannen, used innovative use of the legal powers that GOUD allows to Land Use Plans. Providencia was projected as a city within the city, aiming to bring investment and services. The Providencia LUP extended the scope of the urbanistic rules analysed in Chapter 4. The management of the territory - the physical result - was linked to the implementation of specific planning regulations. This has resulted in a design of space that represents one of the better cases of urban management of Santiago (Priv5, 12.01.17).

Urbanistic rules were used and managed in Providencia by providing incentives for development conditions (such as height or density) in exchange for public spaces. The development of a parallel street to *Avenida Providencia (Nueva Providencia)* or the location of

residential projects in *el Bosque* street are the result of the LUP incentives plan. Private developers that adjusted their projects to the stated interests of the Municipality - such as leaving public footpaths at ground level or setting back the construction line of high-rise residential projects- were allowed higher density construction. As I have shown in Chapter 5, these benefits were not well received within a strict legalist approach and were repealed by the CGR. Since 2005, however, they were important for the construction of the built environment of Providencia during the 80s and 90s.

The original LUP contained legal powers that were used to regulate private development for desired physical results in the built environment, but these are no longer available. A good example was the Municipality's ability to "formulate objections" to the "aesthetic values" of a new building and impose minimum heights for certain areas<sup>53</sup>. The national legislation never contemplated rules like this for Land Use Plans and most of them were amended in subsequent versions of the Land Use Plan (the last version in 2007, finally modified the last rules that were part of the original LUP) or at the request of the CGR. As a result, the 2007 LUP provided a more flexible conditions for urban development, although it maintained the main ideas of the 1976 LUP.

The conditions of the 2007 LUP and new investments generated the opposition of residents who organised against these investments. The construction of a motor highway from the Airport to the west side of the city passing through traditional neighbourhoods of Providencia; a fifteen-storey building in Plaza *Las Lilas*; and the decision of a private company to sell a private park, showed that Providencia was being affected by the increasing changes in Santiago urban development (Pub8, 28.01.2017). Neighbourhood associations organised to stop these projects. These organisations got together and created the "Providencia Participa" movement: residents concerned about the future of the Municipality and seeking changes to the LUP.

Several neighbourhood organisations were formed because of concerns about the 2007 LUP allowing high-rise buildings in traditional low-rise neighbourhoods. These neighbourhood movements were involved in different disputes with the Municipality over issues such as the heritage protection status of several neighbourhoods or the protection of areas against real estate development. The civil society movement with organizations like *Providencia Participa* increased its

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<sup>53</sup> Providencia LUP Ordinance, 1987, Art. 43.

influence and was able to gain political power in the Municipality. One of the creators of the movement, Josefa Errázuriz, was elected Mayor between 2012 and 2016. Her government brought in an amendment to the LUP with the objective of controlling real estate development in several neighbourhoods.

Under the government of Josefa Errázuriz between 2012 and 2016, changes to the Land Use Plan were developed as the result of the focus on citizens' opinions by considering their "preferences, interest and opinions" in drafting changes to the LUP (Pub8, 28.01.2017). In the first year in office, the Municipality invited neighbours to "*cabildos*" (group assemblies) and similar forms of public meeting in different places in the Municipality. That information was used by civil servants from the Municipality to carry out analyses and produce design proposals. The Department of *Asesoría Urbana* (Urban Advisor, see Chapter 4) held meetings with different groups of residents and "representatives of institutions" with the objective of incorporating the ideas of people who lived and worked in Providencia into the LUP<sup>54</sup>. This information was central to developing both the structure and the location of the four proposals for modification of the 2007 Providencia LUP<sup>55</sup>.

Like the case of Independencia, height and density limits were at the centre of the discussions. The arguments against the limitation of building height came from real estate developers and a group of private planning advisors. Developers and their representatives argued that new legal provisions would increase real estate and housing prices in the Municipality which was already one of the best locations with the best amenities in the city. Critics also argued that this change would limit access to Providencia for medium income classes (Acad3; 22.01.17). The responses to these points argued that the idea was not to limit the growth of the Municipality but coordinate its development with participation of the residents of Providencia. For developers, however, the problem was related with the limited space for development that the new LUP was proposing: a density and height of seven stories for buildings. After the LUP was approved with these urbanistic rules, real estate development in Providencia did not decrease, although the range and type of commercial and residential accommodation available the market changed.

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<sup>54</sup> Explicative note of the Providencia LUP modification, 2016, p.3.

<sup>55</sup> A first modification based on this information, intended to protect a traditional neighbourhood (Las Flores), was used as test to improve the result of the next amendments (Prov1, 03.01.2017). The second modification was more ambitious and intended to change how buildings are grouped] and to limit some heights in 7 neighbourhoods of the Municipality. The third change of the LUP was to modify or consolidate several land uses and the final to preserve the Patrimony of the Municipality. The final change aimed to historical conservation of neighbourhoods

The interest of developers was confronted by neighbourhood associations that were against aggressive new urban development in Providencia. The research for this thesis focuses on a case that began after the modifications to the zoning plan were implemented in 2015: this was a redevelopment project for commercial use in the neighbourhood of Bellavista in the south of Providencia, a residential and nightlife place where several pubs and restaurants coexist with housing. The case reveals the limits of planning law and the different interpretations that authorities, associations, Courts and private actors can develop from the same law, and how a particular interpretation comes to be enforced by the system.

### 6.3.1 The development of the case

In 2015, the investment fund, “Cimenta”, announced the development of a project equivalent to US\$22 million to acquire, develop and rent a “*gastronomic and cultural centre*” in the heart of Bellavista neighbourhood. Cimenta is an investment fund created in 1991 with a product portfolio of twenty projects and was worth £217 million in 2017. Although investment funds cannot invest directly in properties, Cimenta creates incorporated companies entirely owned by the fund that develop of housing, commercial spaces, offices and “strip centres”. The Bellavista project was planned to consist of 4,500 sq. metres of commercial space including 15 restaurants and offices in a four-storey building with 300 hundred parking spaces in six underground levels.

Several nearby residents had heard, “*rumours and concerns of a number of families*” (Prov2, 20.01.2017) that the abandoned buildings on the site had finally been sold and that a new project would appear (Prov2, 13.01.17). The “*Junta de Vecinos de Bellavista*” (JVB) - the legal association that represents residents and neighbourhood associations - started to receive in June 2015 complaints about activity in the property located at street *Constitución N°241*. Then the *Junta de Vecinos* received an invitation from Cimenta to a meeting for investors interested in a project that had a provisional Construction Permit. Residents learned from this meeting for investors that the abandoned property would be demolished and a new development constructed in its place. The residents immediately realised that the Cimenta project would negatively affect the neighbourhood, since it would increase the commercial activity of the residential part of Bellavista and bringing massive private transportation externalities, since the new project had more than the legal cap of 149 new parking slots (Prov3, 13.01.2017).

The residents reacted against the development activities and tried to halt the construction of the project. Two teams of concerned residents were created. The first team was concerned with creating awareness of the project by interviews in the media, reports and press releases (FIGURE 17). The idea was to show how the project was detrimental to the community. The other team was dedicated to researching the legal aspects of the project.

FIGURE 17: THE PROVIDENCIA CASE IN THE PRESS: ARTICLE N°1: "NEIGHBOURS PARALYZE THE CONSTRUCTION OF A GASTRONOMIC CENTRE IN BELLAVISTA", ARTICLE N°2: "NEIGHBOURS IN PROVIDENCIA ALERT NEW PARKING SLOTS IN A HERITAGE AREA"

**Vecinos paralizan la construcción de centro gastronómico en Bellavista**

En junio del año pasado, este pasaje contó la historia de la casa de Mauricio Montecinos, que quedó aislada resistiendo a la construcción de un centro gastronómico en Bellavista. Tras un año de pelea, él y sus vecinos lograron que la municipalidad de Providencia comenzara el proceso de invalidación del permiso de edificación de esa construcción, que les involucra el barrio y los quita el sueño.

PER CATALINA RUIZ • FOTO: ALEJANDRO BLANCO

Un grupo de unos veinte vecinos de Bellavista se reúne la mañana del día de septiembre de 2015 en Antonia López de Bellas Constitución. Casi todos son antiguos residentes, personas que en los últimos años han vivido en el barrio. El Club en junio del año pasado, en contra de la empresa que construye el centro gastronómico de más de 200 personas y seis pisos de estacionamientos que lo dejó aislado. Tienen a punto de empezar una fase "Bellavista no se vende, no más permisos ilegales", dice un cartel. Se levantan frente a la entrada de camioneros de la obra y los impiden el paso.

Para tranquilizarlos llega la alcaldesa de Providencia, Josefina Errázuriz. Les dice que va a ser constructiva con la administración general de Fondos Cimentosa S.A. dueño del proyecto, para evaluar las razones sociales. "Pero si esto es una construcción legal, no es problema anunciar" la intención de la municipalidad. Carolina Errázuriz entra a la obra.

Década de años antes decidida una mujer de 70 años, delgada, rubia, vestida de todos colores. Los guardanos la saludan en la puerta. Es Josefina Vald, periodista, artista y la cara visible de la lucha de los vecinos contra el proyecto. Quien fuera pareja de Camilo Mery, hijo del pintor del mismo nombre e integrante del barrio, no vivía para ver lo que el movimiento que ella encabezaba consiguió hasta ahora: que la municipalidad de la invalidación del permiso de edificación del proyecto.

**REVIVIR EL BARRIO**

Cuando se estaba preparando un aspecto del centro gastronómico, en 2013, durante la alcaldía de Errázuriz, el director de Obras de la municipalidad, Sergio Verdugo, que está en ese puesto desde los tiempos de Lillo, se reunió con los vecinos. Les dijo que este sería un beneficio para el sector, que se iba a apalancar y no había vuelta atrás. "Pero cuando empezaron los trabajos decidimos enfrentar esto desde todos los frentes: técnico, administrativo, judicial, etc.", dice María Inés Arribas, arquitecta y presidenta de la Asociación de Residentes Patrimonio Bellavista.

El primero que hicieron fue ir a la vía administrativa, denunciando todo tipo de irregularidades, pidieron la invalidación del permiso de edificación a la Seremi de Vivienda y Urbanismo, insinuación respecto al Director de Obras Municipales (DOM) que había entregado de dicha autorización. La discusión giró básicamente en torno a dos temas: primero la "falta de equipamiento" no autorizado "mediante" y la "carga de ocupación" que sobrepasa los permisos.

Imagínate, dos mil personas y 300 autos circulando por el sector, ¿lo reventan? No hay capacidad para eso: las veredas, las calles, el ruido, la basura", dice María Inés Arribas, presidenta de la Asociación de Residentes Patrimonio Bellavista, quienes lograron paralizar la construcción del centro gastronómico.

Los vecinos de Providencia afirman que inmuebles como "La Chascona" están fuera de peligro y que faenas fueron aprobadas con todos los permisos necesarios.

Hay tres cosas que por estos días los vecinos del área conmovida entre las calles Antonia López de Bellas y Constitución, en pleno barrio Bellavista de Providencia, están lamentando.

El primero es el constante aluvión que genera el tránsito de maquinaria y camioneros. Lo segundo, es el polvo y el ruido que durante varias horas del día los invade en sus hogares. Y lo tercero, es aquella pasividad dura que antes predominaba en casi todo el barrio y que ya se perdió.

"Hasta los animales del zoológico están estresados. Ya ni siquiera están los rugidos de los leones y el llorar de los pájaros que habitualmente escuchamos aquí", dice Inés Arribas, representante de la Asociación de Residentes Patrimonio Bellavista, una agrupación que actualmente está enfocándose al municipio a detener la construcción de 149 estacionamientos subterráneos.

Según ellos, los extralimitados negativos propios de una faena como esta no son un tanto irregular, así que también cuestionan los permisos entregados para levantar la obra y, lo más grave, afirman que hay un riesgo inminente para esta zona patrimonial.

149 estacionamientos están contemplados dentro del proyecto según la empresa que solicita un aumento de aparcaderos al municipio, asunto que dice no se resuelve.

80 dueños han llegado a más de los vecinos que pertenecen al municipio. El ruido mismo acapala por la arena ambiental no puede superar los 55 decibelios en áreas urbanas como esta.

Esto porque, según los residentes, el subido de la manzana conformada por las calles Antonia López de Bellas, Constitución, Fernando Martínez de la Páez y Chacón Manzarete, constituido por rocas y napas subterráneas que incluyeron en que los terrenos de esa zona no son aptos para una construcción de este tipo.

De hecho, afirman que edificios patrimoniales como la ex residencia de Camilo Mery, El Castillo Riebles y "La Chascona", la emblemática casa de Pablo Neruda, padecerán derrumbes ante la remoción de sus cimientos.

"Este barrio se ha vuelto para muchas personas un desierto. Además de todo el caos que vivimos en estos días por la construcción, todo ese patrimonio está corriendo un riesgo incalculable", agrega Vald, señalando que las calles adyacentes al futuro estacionamiento ya están colapsadas por los buses.

Casi todos los vecinos no solo exigen la realización de un estudio de impacto ambiental del proyecto, sino que aspiran a que las obras se paralitquen por completo.

Desde la Municipalidad de Providencia son entusiastas en recalar que Cimentra, la empresa que desarrolla la iniciativa, cumplió con todos los requisitos y permisos exigidos por la autoridad. En su sentido, detallan que la Ley sobre Bienes Generales del Medio Ambiente establece las condiciones en que está dentro del área urbana, lo que manda a el plano regulador que considere análisis ambiental desde su aprobación.

Además explican que el subsuelo es una propiedad privada y que la tecnología que hoy se aplica en la obra "no da pie para problemas en inmuebles patrimoniales o edificios de flores, pues hoy estudios de mecánica del suelo "le compraban".

"La municipalidad fue rigurosa en exigir todo lo necesario para probar el proyecto. Asimismo, las direcciones de Obras solo pueden pedir lo exigible, tal como lo estipula la norma y Contraloría", agrega detallando que la empresa constructora ya se comprometió a instalar paneles acústicos para amortiguar el ruido y limitar los impactos durante los días sábado.

Implementación de 149 aparcaderos subterráneos moviliza a residentes:

## Vecinos de Bellavista alertan riesgo en áreas patrimoniales tras construcción de estacionamientos

Municipalidad de Providencia afirma que inmuebles como "La Chascona" están fuera de peligro y que faenas fueron aprobadas con todos los permisos necesarios.

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Source: "The Clinic" and "El Mercurio", 2016.

Like the controversies described in Chapter 5, the Construction Permit was at the heart of the legal controversy. The controversy was centred on the interpretation of the urbanistic

rules for the development of the project after Construction Permit No. 26-2011 had already been granted. The residents analysed the Construction Permit looking for mistakes that could invalidate it (Prov2, 13.01.17). They found that the permit was based on incorrect premises which resulted in illegalities. They found that the qualifications of the architect who had signed off on the project were dubious and that land fusion had not been conducted according to correct legal procedure to obtain a draft of the Construction Project: these were all formal problems that could activate an administrative procedure.

However, the core problem with the Construction Permit uncovered by the resident's legal team was that the street that accessed the project was not suitable for the scale for the project in the terms required by the GOUD. According to Article 2.1.36 of the GOUD, the type of road determines which type of commercial building can be developed. The width and qualities of roads are defined to assure that they are able take the type and amount of traffic generated by to a development "of medium scale". The gastronomic centre was a Medium Scale project that required a *collector, main or structural* type of road (a qualification based on the amount of intensity of use for transport). However, according to the Providencia LUP, the street that accessed the project was only a service road, which did not meet the prescribed requirements.

The problems of the Construction Permit enabled the residents to start political and then legal actions against the project. However, the opinion of the DOM - expressed in the Construction Permit and repeated in meetings with and letters to the residents - was that the road was designed to be of those that could receive the amount of use that the LUP required, therefore the project was valid. The residents' objections to the project and the legal points were raised with the superiors of the Providencia DOMs. The Municipality did not act against the opinion of its DOM on the belief that it was not possible to declare the project illegal without first hearing the opinion of the technical superior of the DOM, the SEREMI.

The residents' association decided to start legal actions that would effectively stop construction and declare the illegality of the permit. However, the legal processes proved to be an "*indeterminate field of battle*" (Prov3, 13.01.17) in which the residents had to undertake multiple legal actions with several actors and procedures. SEREMI was informed of the legal analysis of the Construction Permit which argued it was illegal, particularly of the type of street that provided access for the building. The SEREMI required the DOM to develop pertinent actions (Table 10) which continued with a discussion through official documents debating the legal

interpretation of the GOUD, the access to the project and how it should be changed. While this debate was going on, development continued. In practice, neither the Municipality nor the SEREMI mandated the DOM to invalidate the Construction Permit.

After the procedures with the SEREMI and Municipality, the residents realised that the administrative hierarchy was not going to declare the Construction Permit illegal. At the same time, the continuing construction of the project left little time for endless legal actions. The residents decided to take the issue to superior levels. Two actions were taken: application to the CGR regarding the actions of the DOM which the residents argued were contrary to planning law rules; and Constitutional recourses in Judicial Courts (*Recurso de Protección*) (Table 10).

In the procedure in the CGR, the JVB required a review of the legality of the procedures involved in the acquisition of the land and the granting of the Construction Permit, particularly regarding how the developer had answered several issues that the DOM had raised, and the dubious certification of the architect for the project. Through Ruling No. 25257 of 2016, the CGR found that the procedure of land amalgamation did not comply with the law and that the Municipality had to start disciplinary proceedings to find who was responsible for the procedure granting the Construction Permit. However, the CGR did not question the validity of the Construction Permit, which made judicial proceedings the only available way to stop the development of the project. Although formally the arguments of the resident were supported (the procedure for the Construction Permit lacked legality), CGR confirmed that the mistakes of the DOM could not invalidate a third part right (Cimenta). Therefore, the Construction Permit was still valid and the spatial process that the residents were fighting against could not be stopped.

At the same time, the JVB lodged a Constitutional action against the DOM and Cimenta, arguing that the Construction Permit violated the human rights of the members of the JVB. The decision to resort to the Courts faced problems in “translating” the claims of JVB into legal requirements: the association had to “accommodate” their problems to a language that could make the case work in jurisprudential and administrative proceedings (Prov3, 13.01.17). Finding lawyers -required by Courts- with expertise in urban planning matters, describing the problems of the neighbourhood in a way that Constitutional action could apply to the case and the very technical forms of planning law made it difficult to develop legal actions with potential for success (Prov3, 13.01.2017). Cimenta reacted by not only defending the project against these

claims, but also seeking the intervention of the Courts to protect their rights which they argued were being limited by the residents' actions.

The protection of Constitutional rights is also enforceable by Corporations like Cimenta, which have express recognition regarding private property and economic initiative rights<sup>56</sup>. This contrasts with the absence of Constitutionally recognised rights such as a right to adequate housing, to urban space (such as right to the city) or any way to protect residents' say in their neighbourhoods. When residents' associations like JVB or residents in general, ask for the intervention of a Court in deciding on infringements of Constitutional rights, they need to modify their claims to fit the prescriptive list of human rights recognised by the Constitution. The JVB had to claim that the project posed health issues in order to provide better arguments to potentially win the Constitutional action (Prov3, 13.01.17).

During the legal procedures in the Courts, residents confronted arguments that their objections to Construction Permit had not addressed. Particularly, a modification to the GOUD was relevant to the position of the DOM and Cimenta: the MHDU had changed the regulation to make it easier for large-scale developments to find the necessary access that Article 2.1.36 of the GOUD demanded<sup>57</sup>. In other words, a large -scale development did not need to be accessed directly from a major street but only need to be within a radius of 200 meters of a major street. With this modification, large-scale developments like the Cimenta project could have access by a "local" street that connected to a main road. The modification to the GOUD was heavily criticised and was rescinded one month after a new central government taking office in 2014. However, this modification was already in effect when the Construction Permit had been approved and could not be retrospectively changed.

At the same time, the SEREMI mandated the DOM to initiate an invalidation process on the Construction Permit. The DOM was hesitant about starting a process of invalidation, (Process N°5) and only notified the developer that the Construction Permit was being reconsidered (Prov3, 13.01.17), redirecting the instruction to the developers so that Cimenta initiated an invalidation process on the instruction on the DOM (Process N°11).

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<sup>56</sup> PC, Articles 19 (N20 and N21).

<sup>57</sup> The MHDU D.S. 01-2013.

TABLE 10: Legal procedures in the Providencia case

	Who	What	Legal Action	Result
1	JVB	<i>Administrative request</i>  (SEREMI)	05.04.15 Requires SEREMI to analyse the case.	19/05/15, Ord. SEREMI decides that the CP was given contrary to the required access for the scale of the Project. Asks DOM to “do pertinent actions”.
2	JVB  DOM	<i>Administrative request</i>  (SEREMI)	16.06.15 Requires SEREMI to mandate DOM to start invalidation procedure. 24.04.15 Interpretation of Article 2.1.36 allowing exceptions for large-scale equipment.	06.08.15 Ord. 3641. SEREMI. DOM should take pertinent action to solve the illegality of CP. Rejects interpretation of DOM.  SEREMI insists through legal document Ord. N°3800, 25.06.15., and requires starting the invalidation process.
3	JVB  NGO “Defendamos la Ciudad”  DOM	<i>Administrative request</i>  (SEREMI)	22.06.15 Requires SEREMI to start actions  17.07.15 and 30.07.15 Requires SEREMI to require DOM to start the invalidation  26.08.15 Presents a new interpretation that makes the Cimenta project viable.	15.09.15 Ord. N°4559  Rejects new interpretation of DOM. Reiterates DOM to start invalidation process.

4	JVB	Judicial  (Courts)	ROL N°86.274-2005 28.09.15 Protection of Constitutional Rights claim against DOM and Cimenta.	
5	DOM	<i>Administrative Legal Procedure</i>  (Municipality, appeal on Courts)	13.10.15 Starts the invalidation process, following Ord. N°3.800	DOM suspends procedure of invalidation in relation to a public law nullity claim by Cimenta against the Municipality of Providencia, based on the order of the SEREMI.
6	SEREMI  JVB  CIMENTA        10.01.17	<i>Administrative Legal Procedure</i>  (Municipality)	11.08.15 Cimenta defends the legality of the CP and argues the illegality of SEREMI giving instructions to DOM.	The Municipality ratifies the instruction of the N°5 process.
7	JVB	<i>Administrative Legal Procedure</i>  Contraloría General of the Republic	05.01.2016 The Association requires the CGR to analyse the legality of the construction permit.	05.05.2016 There were procedures against the law. Municipality should pursue responsibilities. However, the legality of the Construction Permit is not addressed in the ruling.

8	JVB	Constitutional Action N°86.374-2015  (Courts)	28.09.15 The JVB requests Courts to declare that actions of DOM and Cimenta were against the physical well-being of residents, property rights, and the right to live in a contamination-free environment; stop the building immediately and invalidate the CP N°44-2014	
9	Cimenta	Judicial: R. N°97.232-2015 Appeal Court  R. N°47.899-2016 Supreme Court	2015 Questions the legality and fairness of SEREMI and DOM decisions regarding starting an invalidation process.	Supreme Court concluded there is no illegality in the authority requiring the legal criterion to the approval of a project.
10	Cimenta	Judicial R. N°88.189-2016 Appeal Court	26.01.2016 Questions the legality of the ordinary N°3.800/2016 from the SEREMI	First instance: the instruction is completely legitimate and legal.
11	Cimenta	Judicial R. N°274-2016  Supreme Court R. N°73.800-2016	9.01.16 Requests the Court declare the illegality of the Municipality and DOM starting the invalidation process that followed the instructions of the SEREMI.	09.08.16 The Appeal Courts finds no illegality in the instruction.  21.08.17 The procedure and resolution of the DOM to initiate the invalidation process is null. However, the Courts orders the Municipality of Providencia to initiate the administrative invalidation process and

				solve.
12	Cimenta	Judicial R N°22.122-2016 Civil Courts	Request that Courts declare that the D.S. 01-2013 was the applicable law for Construction Permit N°44-2014, and not related to the prior draft project	Judicial procedure was not pursued by Cimenta.
13	JVB	Judicial R N°28.467-2016 Civil Court	16.11.2016 Requires that the Court declare the illegality of the Construction Permit.	Procedure has not made substantive progress since 03.2018

The timeline of the different actions that were lodged in Courts is complex and there were parallel processes happening at the same time. The first procedure was the Constitutional Action which aimed to mandate the DOM to initiate the invalidation of the Construction Process (Process N° 8). Cimenta also used the Courts to question the decisions of the SEREMI regarding their order to contemplate the invalidation of the Construction Permit (Processes N° 9, 10, 11, 12). The DOM acted as its own representative against the Municipality, the SEREMI and the residents' association, arguing for the legality of the Construction Permit (Processes N° 8,10). The residents argued that the legal strategy of Cimenta was to delay the legal processes so that they could pursue the development of the project before decisions were reached.

There were other actions by Cimenta and residents which were abandoned unresolved in the Civil Courts: processes in Civil Courts often take more than five years to conclude. The

residents lodged a “illegality complaint” in the Civil Court against the DOM for the Construction Permit (Procedure C-N°28.467-2016). Cimenta requested lower courts to certify the legality of the Construction Permit (Procedure C-N°22.122-2016). Cimenta also requested Civil Courts suspend the “invalidation procedure” and, rather, declare the Construction Permit legal (Procedure C-N°1.651/2017 and Procedure C-N°2.451-2017).

Theoretical descriptions of jurisdictional processes describe the existence of claimants, defendants and third party impartial judges to solve controversial issues. This assumes that a dispute has two parties – in this case, Cimenta and JVB – who were claimants against each other and both against (but with different arguments) civil servants. However, examination of the processes of this case revealed the existence of multiple actors with independent and partial interpretations of planning law. Examination of the documents of the proceedings revealed the conflicting positions of administrative authorities (between regional government and local government) and even at the same level (DOM and the local government). The resolution that the Courts could provide for the controversy was a matter of interest for the scope of authority of the SEREMI, the DOM and the Municipality.

### 6.3.2 *Summary of Providencia Case*

Among possible legal processes resolutions, the resolution of the Court on the legality of the instruction of the DOM (Process N°11) is critical to understanding the outcomes of the controversy. The Supreme Court ruled that neither the DOM nor the Municipality were able to satisfy their legal duty only “notifying” to Cimenta that the SEREMI had started the invalidation process of the Permit. According to the Court resolution, the Municipality or the DOM had to start the process of invalidation requested by the SEREMI. With this result, Cimenta argued publicly that the action of the DOM to notify that the invalidation of the construction permit was illegal, and therefore they had a “positive result” in Court, restoring the legality of the Construction Permit<sup>58</sup>. However, the JVB argued that the Supreme Court through this resolution had mandated the Municipality to start a legal invalidation process, and to hear interested parties and to provide a final decision.

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<sup>58</sup> <https://www.df.cl/noticias/empresas/actualidad/fondo-cimenta-revierte-fallo-y-viabiliza-polo-gastronomico-en-providencia/2017-08-22/200329.html>

In principle, the JVB had obtained a positive result in the Supreme Court: the Construction Permit was not unchangeable and a procedure of invalidation by the Municipality was the correct procedure to declare the illegality of the Construction Permit. However, this result was not useful for the practical expectations of the JVB. Any resolution (including Construction Permits) by the Municipality is reviewable after two years. A potential action of non-validation was weak on the basis that it could be prescribed in 2017. More importantly, Cimenta did not stop construction and by it was almost completed and signed off by the DOM. If obtaining an invalidation of the Construction Permit is complicated, an invalidation process that would seek to tear down an already finished building project is almost impossible (Acad2; 18.01.17).

After a political change in the Municipality in October 2016, the local government moved from being an independent centre-Left administration to a Right political party majority. Although the new Mayor, Evelyn Matthei, did not directly address this case in the media, the attitude in legal actions changed dramatically. An example was the Procedure N°28.647-2016 in the Civil Courts, which offered a new perspective for the Municipality. The attitude in the different stages of this procedure was being more open and neutral about the nature of the project since the change of administration. Although the local government did not pursue changes to the LUP developed by the prior government, it removed itself from the controversy (Prov2).

Cimenta argued that difficulties with residents had delayed the expected returns on the investment.

*Unfortunately, during the year the speed of construction was far from our desires. This happened because the countless judicial and administrative obstacles that residents filed, with the support of authorities of the previous administration, wanting to stop the initiative, even when it complied with all the requirements of the regulations and the law. Notwithstanding, we expect that this contribution to the neighbourhood and the city, can be finished and open to the public starting in 2019<sup>59</sup>.*

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<sup>59</sup> Cimenta Memory 2017, available at [<http://www.cimenta.cl/wp-content/uploads/2018/04/Memoria-2017.pdf>] (consulted: 10.07.19).

Any further delays due to legal procedures is a means to delay another day of construction and another day longer to the completion of the project

FIGURE 18: THE NEW GASTRONOMIC CENTRE AND A SINGLE HOUSE OF THE NEIGHBOURHOOD WITH THE CARTEL “NOT FOR SALE”



Source: Author

The built environment of Providencia has been slowly modified in new densification projects that have changed the spatial configuration of neighbourhoods. According to the residents, the nature of a neighbourhood like Bellavista has been changed by processes of reconstruction. The case of Cimenta showed how those modifications to the built environment can be based in the social practices of authorities and developers and their interpretations of planning law, which the legal system helped to ensure. The neutrality associated with the legal system is difficult to associate with the outcomes of its applications.

#### 6.4 Estación Central: The absence of a LUP

Estación Central (*Central Station*) is a Municipality that gets its name from the location of the train station connecting Santiago with the south. Like Independencia, the Municipality was

created in 1985 from the zones of south *Santiago Centre*, east *Quinta Normal*, west *Pudahuel* and north *Maipú* Municipalities. According to an Urban Advisor, Estación Central has been managed as if it were a peripheral Municipality without taking in consideration the centrality of its territory (EC3, 14.01.17). Estación Central has few urban assets like parks or centres of economic activity, although it has a good connection with the central city by the Underground. The Municipality has been of interest to real estate developers since 2010.

With the creation of the Municipality in 1985, the Estación Central LUP was made up from a combination of two sources: the first source was the LUPs of the municipalities that held the territory prior to the creation of Estación Central. The second source for those areas of the new Municipality that had not had LUPs were the urbanistic rules of the 1960 *Intercommunal Plan of Santiago*. In that way, the whole territory of Estación Central was regulated, although it was not a systematic and organised LUP and neither of these legal regulations and controls had been developed for Estación Central as a single territorial unity.

Under these regulations the spatial configuration of Estación Central remained stable, made up of houses and commercial sites of one or two floors, and no multi-storey residential buildings. Activity or interest in relations to reconstruction in the territory was “absolutely nil” (EC3, 14.01.17). Consequently, there was no political interest in developing a LUP and it did not seem urgent. Until the time of the fieldwork, for this research, the Estación Central had not modified the existing planning conditions by which the Municipality was structured. From 2004 to 2006, a Land Use Plan was developed but it did not reach the approval stage because of problems in the approval at the Regional Board of Representatives. According to the Urban Advisor, lack of human resources in the Urban Advisory team are blamed for the failed approval of the new Land Use Plan (EC3, 14.01.17).

Since 2012, developers have been granted a series of draft Construction Permits for high-density high-rise residential buildings, which led to several landowners selling their houses to real estate developers. Most of the Construction Permits were granted in a specific territory of Estación Central, in an area bounded by *General Velasquez*, *5 de Abril*, *las Rejas*, and *Alameda* streets in an area of 10.000 square meters. The Construction Permits had levels of density completely different from their surroundings (Figure 19) and at heights and densities not seen before in Santiago (Pub5;). These projects were based on a contested interpretation of the law

by the developers, but it was effective in allowing development of what was known as “vertical ghettos” in Estación Central.

FIGURE 19: AREA OF PROPOSED REDEVELOPMENT, ESTACIÓN CENTRAL, 2017.



SOURCE: OWN, FROM GOOGLE EARTH ACCESSED

20.08.2018

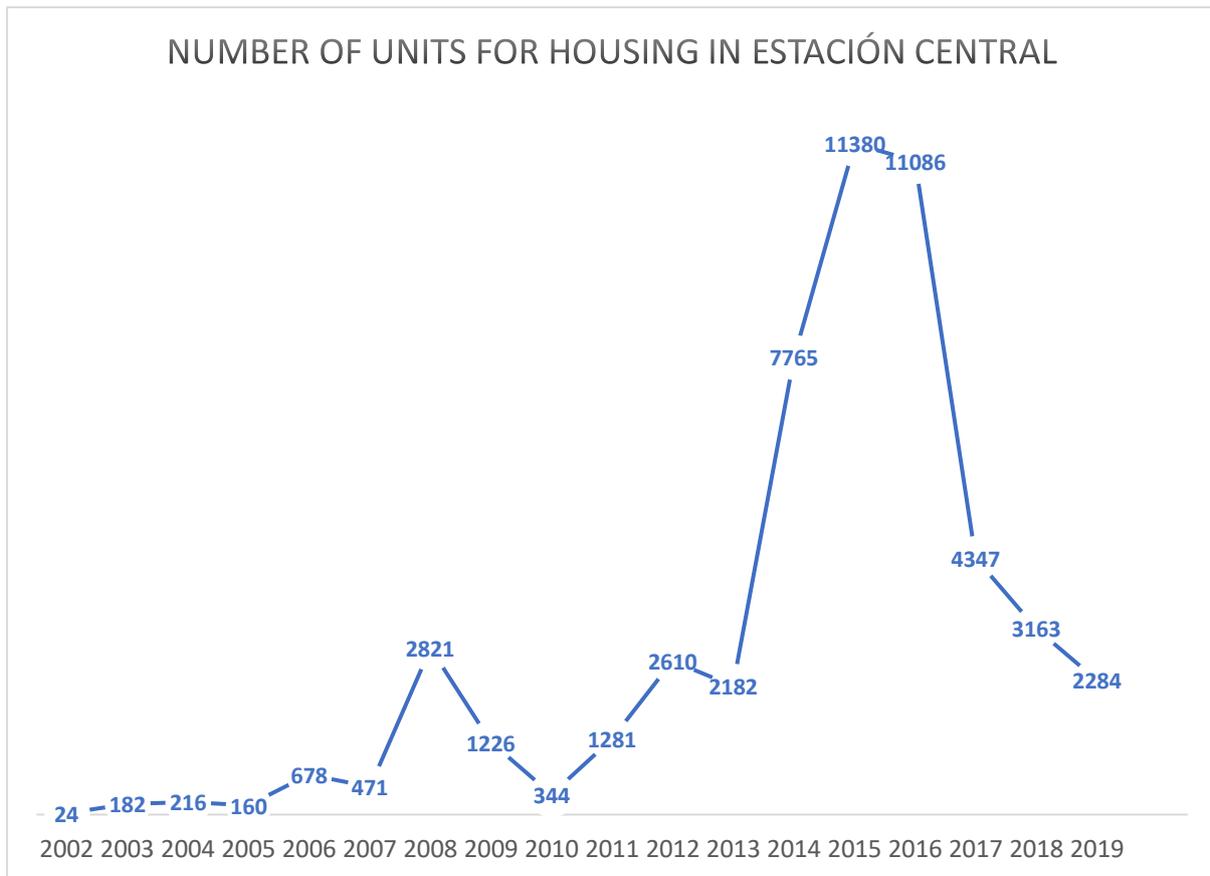
#### 6.4.1. Interpretations of the Lack of a Local Plan in Estación Central

After many decades of ignoring the Municipality, developers became interested in constructing new housing projects in Estación Central since 2012<sup>60</sup>. The redevelopment of the inner city of Santiago and the entrepreneurial conditions for urban development were now seen to be good investment opportunities. New LUPs in Santiago (2013), Recoleta (2013) and Independencia (2015), had put limits on heights and density, which affected possibilities for new

<sup>60</sup> The real Estate Developers were: Eurocorp (6 projects); Suksa (18 projects); Gran Mundo Inversiones (1 project); Paz (1 project); Foral (1 project); Deisa (2 projects).

developments. From 2013, there was an unprecedented number of new Construction Permits granted in Estación Central (Figure 20) and as well there being an increase in the number of permits issued, compared with prior reconstruction processes, the new developments were for extremely dense, outsized projects. Also, the developments were located in an area that apparently had no limits on either height or density and was only under the general regulation of the GOUD.

FIGURE 20: NUMBER OF UNITS FOR HOUSING IN ESTACIÓN CENTRAL



Source: MHUD.

FIGURE 21: CONSTRUCTION PERMITS GRANTED IN ESTACIÓN CENTRAL IN YEARS 2013-2015



SOURCE: OWN, FROM GOOGLE EARTH AND INFORMATION OF CGR AND SEREMI, ACCESSED 20.08.2020

Developers argued that the zone did not have an enforceable LUP and therefore no specific height and density limits because it was regulated by non-specific planning law rules and regulations. This interpretation, supported by the DOM of Estación Central, was based on the history of the previous and intricate LUPs that had applied before the creation of Estación Central. In addition, a combination of changes to local and regional LUPs and to the GLUD provided arguments to conclude that only non-specific urban planning law rules and regulations applied to the area. However, no authority explicitly intended to leave a territory without a LUP. It was a formalist legal interpretation of the history of LUPs and a creative interpretation by real estate developers that enabled the granting of Construction Permits which allowed the resulting high-rise buildings.

FIGURE 22: A HOUSE WITH A “FOR SELL” CARTEL, BETWEEN 2 NEW HIGH-RISE DEVELOPMENTS



SOURCE: OWN , 20.01.2017

The history of the regulation for this area was a combination of several modifications on of the rules that affected the territory. There was a sectional amendment to the Intercommunal Plan in 1980 that aimed to revitalise the centre of Santiago in Estación Central by allowing buildings of 15 stories. This amendment over-rode the previous (lower height limits) regulations for the area, made by Santiago Municipality. Then in 1992, there was an amendment to the GLUD that meant that the Intercommunal Plan no longer had the authority to set density and height controls. So, following this, in 1994 a new Intercommunal Plan was drawn up that formally confirmed that the Intercommunal Plan did not have authority over density and height controls in urban areas. At the same time, it overrode the 1980 sectional amendment. There were no set density or height limits at the regional level, and these were now the responsibility of local government, through the LUPs.

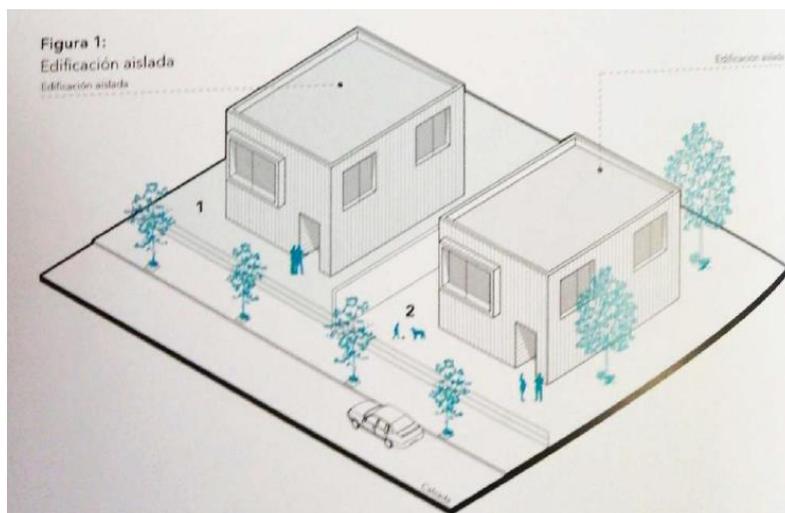
Therefore, after the derogation of the Intercommunal Plan, the question was, what was the applicable LUP for the zone that was covered by the 1980 amendment to the Section of the Intercommunal Plan allowing 15 storey buildings? Legal practitioners interviewed for this research argued that a formalistic interpretation would conclude that the zone did not have specific legal urbanistic rules that limited development, since Estación Central had not developed a LUP for the zone and the prior LUPs were derogated by the 1980 amendments (Law2;

15.12.16; Pub3;10.01.17). Others argued that the existence of pre-1980 LUPs should be applicable and that there had been no intention by the authority to leave the zone without urban urbanistic rules (NGO1, 25.01.17). In practice, the literal formalistic interpretation formed the basis for the Construction Permits granted by the DOM: the area had no enforceable urbanistic rules from a LUP.

Land in areas without specific urbanistic rules set out in LUPs is regulated by general rules and regulations contained in the GOUD. The GOUD regulates height limits which apply if a LUP does not provide specific legal controls. The GOUD determines the maximum height for a particular the type and grouping of building (aggrupation). The GOUD can set out building boundaries and regulate how buildings relate to other adjacent buildings. There are three types of groupings (aggrupation): terraced, detached and continuous façade (FIGURE 23). For the first two, when there are no urbanistic rules contained in a LUP, the maximum height is determined by the *rasantes* (lines in degree angle measured from the public space that the building faces). However, in the case of continuous building - the aggrupation with a façade that extends from boundary to boundary or a building “*located from the lateral opposite or concurrent delimitations from the same land plot that maintain the same façade with the adjacent building and in compliance with the maximum height established by the Land Use Plan*”<sup>61</sup>. In this case, the maximum height is determined by the surrounding buildings and the height set out in the LUP.

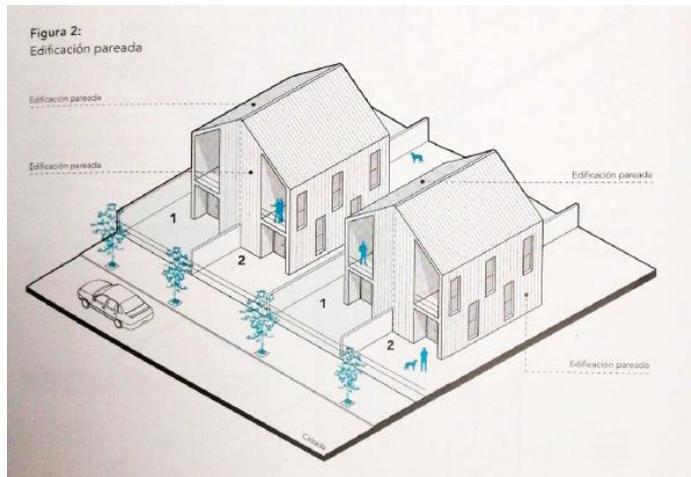
FIGURE 23: TYPES OF AGGRUPATION ACCORDING TO THE GOUD

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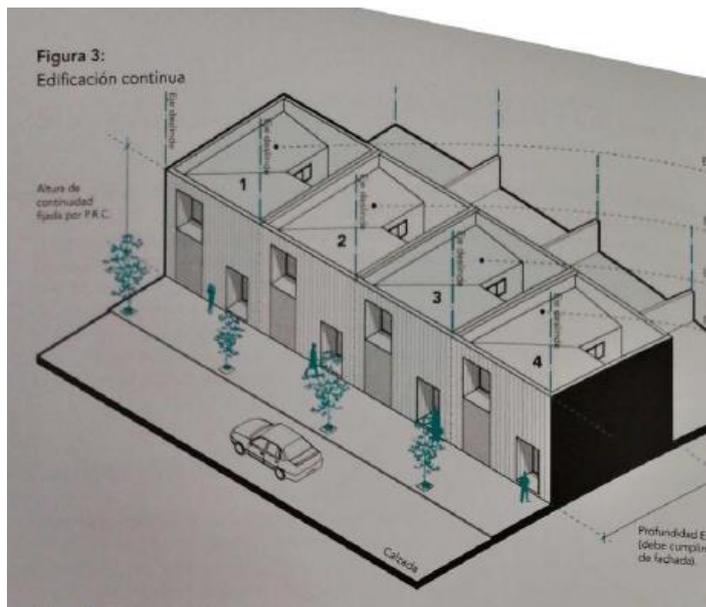


<sup>61</sup> GOUD, Article 1.1.2.

## DETACHED



## CONTINUOUS FAÇADE:



Source: “OGUC Ilustrada, 2019”.

According to the developers behind the projects in Estación Central, the absence of height control allowed a *continuous aggragation* building to be increased in height to whatever the developers decided. However, concept of the continuous aggragation (continuity of buildings) was based on continuity with adjacent projects but these were not yet developed; the adjacent buildings were theoretical projects that were depicted in pairs in order to have “adjacent” buildings, but which in fact, required new Construction Permits. These land plots had no other adjacent buildings than the future buildings that would also be based on the same interpretation.

The combination of absence of specific urbanistic rules and the *creative* interpretation of the planning law illustrates the notion of *creative compliance* introduced in the Chapter 4 (Section 4.2.2). The formalistic interpretation of the LUP and the GOUD providing the legal rationale for the Construction Permits was accepted by the DOM, which concurred with this interpretation and granted the permits. According to the Urban Advisor of Estación Central, the DOM that allowed and granted the interpretations had a limited capacity (only two public officers and they only had experience of Construction Permits for single detached housing). Also, the DOM did not have the support of higher authorities: although SEREMI, DDU and the CGR were aware of the problem in 2013, they were “unable to provide an interpretation of the law that was sustained over time” and contradictions appeared when there were changes to the people in charge (EC3, 14.01.17).

Between 2012 and 2015 the DOM of Estación Central approved 35 Construction Permits for residential buildings of between 30 and 43 stories and an average density of 6.000 inhabitants per square kilometre. This combination of factors meant that the developers with the support of the DOM allowed the construction of massive residential buildings which were accepted as being in compliance with planning law. The absence of LUPs in a third of Chilean municipalities had not created major problems, but few of these municipalities were under the pressure from development interests in a central locality that EC was. In Estación Central, as is explained in the next section, these incentives for development based by the absence of a LUP were helped with the creative interpretation of rules and regulation by private developers.

#### 6.4.2 Reactions to Redevelopment in Estación Central

The authorities started to react almost as soon as the first projects were under construction. In interviews for the research, civil servants from the DDU and the SEREMI said they had been aware of the highly disruptive Construction Permits very early on. However, it was argued that “there is not much we can do, if the Municipality has no interest and developers have construction permits” (Pub7, 12.01.19). However, a series of events put the case of Estación Central at the centre of the urban planning debate in Santiago, prompting arguments for and against the projects.

The residents in the areas surrounding the high-rise residential buildings were aware of the changes when construction started. The residents' group, Neighbourhood Defence of Estación Central ("*Agrupación de Defensa de Barrios de Estación Central*", NDEC), was formed in October 2014 by local organisations and *Junta de Vecinos*. It started when a number of residents saw how the new constructions were beginning to take over the neighbourhood. The residents organised themselves and contacted other people who had problems with the construction of the high-rise buildings. Sixteen residents' associations supported the creation of the new umbrella group, with the aim of making the authorities aware of the problems that the neighbourhoods were experiencing and to gather information regarding the number of new projects (EC1;26.04.2017).

The NDEC helped the residents by organising their complaints and directed them to different authorities. After lodging illegality actions against the Construction Permits in the DOM in December 2016, the NDEC started a round of meetings with the political authorities. Firstly, they communicated the concerns to the Mayor. The NDEC asked the Mayor to start a process of drafting a new LUP. But after three attempts to present the petition, there was still no response (EC1;26.04.2017). Then they contacted the SEREMI of the Region, who listened to the concerns but argued that nothing much could be done. However, SEREMI did agree to study the request to analyse the legality of the permits. After this, the NDEC met with the Regional Governor who stated that the Municipality had approved funds to develop a new LUP but that it had not yet started. The Association also sent letters and complaints to the CGR, arguing that the interpretations of the law in the Construction Permits were poorly analysed and invalidly granted. They also appealed to the Courts with Constitutional actions, but these were rapidly dismissed.

However, the case gained attention from the press and the public when the Regional Governor publicly questioned the physical effects of the constructions in April 2017. According to him, the reaction in the press reinforced the perception that it was necessary to question the effects of an apparently legal situation ((Pub6, 04.04.17).). The Regional Governor also coined the phrase "vertical ghettos" which is how the projects are now known. Subsequent press reports have continued to put the Estación Central high-rise buildings at the centre of the debate (FIGURE 24). The controversy had massive media coverage and the case was used as a discussion of the limits of the real estate development by academics, the National Council for Urban Development and the government itself.

FIGURE 24: THE REGIONAL GOVERNOR ON TWITTER: “THESE BUILDINGS ARE BEING CONSTRUCTED IN ESTACIÓN CENTRAL. WHERE IS THE HUMAN SCALE AND THE PUBLIC SPACE? DID YOU KNOW THAT THERE IS NOT LAND USE PLANNING THERE?”



SOURCE: TWITTER, [HTTPS://TWITTER.COM/ORREGO/STATUS/849774394641698820?LANG=ES](https://twitter.com/orrego/status/849774394641698820?lang=es)

FIGURE 25: ESTACIÓN CENTRAL DEVELOPMENT



SOURCE: AUTHOR, ESTACIÓN CENTRAL, MARCH 2016.

Eventually, the relevant authorities began to get involved in the case. Like many of the examples analysed in Chapter 5, and in the other two case studies in this Chapter, the reaction of authorities came after the granting of Construction Permits. The Regional Governor lobbied for as many possibilities to prevent further construction as the legal system allowed and requested environmental checks to those projects that had not commenced construction (Pub5, 18.01.17). According to the SEREMI, the weakness of planning law's ability to react against undesired development was tried to be solved through "the leadership and interest of political figures as Orrego" (Pub5; 18.01.17). However, this process only resulted in delayed briefly the unstarted projects, since the Construction Permits were still valid.

Regional and local authorities also reacted after the issue had become central to the debate. In May 2016, the MHUD issued an official document through the DDU, Circular 313 which interpreted the *GOUD* to mean that if no height limit is stated in the LUP, it is not possible to approve Construction Permits that contemplate a continuous building. The SEREMI notified the Estación Central DOM that according to the law, it is not allowed to grant Construction Permits with *continuous façades* and that those developments which had not yet started needed to start environmental checks with other authorities. In April 2016, the

Municipality started proceedings to suspend the Construction Permits in the relevant area for one year to April 2017.

At the time the permits to construct were suspended, the status of the high-rise building projects was the following:

TABLE 11: Status of the projects according to Seremi in August 2017.

Number of Projects	Status
4	Draft which failed to convert to a Construction Permit
3	Construction Permit proceeding to construction based on the Draft
12	Granted Construction Permits which had not started construction
8	Granted Construction Permits that had started development
8	Completed and built projects.
<b>31</b>	<b>Total</b>

Source: Author.

According to the SEREMI and DDU *Circular 313*, the Construction Permits were flawed and should not have been granted<sup>62</sup>. With that opinion, the NDEC started procedures to request the DOM to review the Construction Permits that fell under this Circular as having been bad interpretations of the law. But the DOM stood firm in its position, and so the procedures went to the CGR, who received the opinion of the SEREMI, which, as it was explained in the Chapter 4, has the competence to determine if the construction permits were incorrectly forbidden but it cannot question the legality of a granted construction permit. However, the SEREMI insisted on questioning the DOM about the reasoning behind the authorisation of the Construction Permits in order to try to prevent this happening in the future. The responses of the DOM to the requirements of the SEREMI became the basis for new appeals to the CGR and the Courts about the already-granted Construction Permits (EC1;26.04.2017).

<sup>62</sup> SEREMI RM, Resolution Ord. N°3.600-2017

Developers holding granted Construction Permits also resorted to the CGR regarding the DDU interpretation in *Circular 313*. Their argument was that if area did not have a LUP, the Intercommunal Land Use Plan was the instrument that established the aggrupation and maximum heights. In the circumstance that the regional instrument could not legally determine standards, the developer has “free determinacy”(that is, the developer can construct with the density and the height that he or she wants)<sup>63</sup>. However, through Ruling N°43.367-2017, the CGR concluded that there were no urban legal rules that regulated the height or the density for the area in question. However, it also concluded that the continuous aggrupation could not be approved in the absence of a LUP or a rule that limits height: in this way, the CGR confirmed the provisions of Circular 313.

After the CGR had decided on the legal interpretation of the prevailing legal condition of the area, it decided on the legality of the Construction Permits. As analysed in Chapter 5, Section 3, the CGR rulings repeatedly argued that Construction Permits recognize a property right that cannot be affected retroactively by mistakes in the interpretation of rules. Also, the good faith of private parties is recognised when the CGR requires a municipality to start invalidation processes. In this case, the Ruling N°44.959-2017 which answered the presentation of the NDEC, concluded that approvals given for draft projects and in Construction Permits based on continuous aggrupation in Estación Central were invalid. Therefore, the ruling argued, the Municipality had to “adopt suitable measures to correct those irregularities”<sup>64</sup>. The Municipality corrected only Construction Permits that were granted after the notification of Circular 313.

After a deposition from the NDEC and NGOs, the CGR settled the legal condition of the buildings already under construction. The CGR argued in Ruling N°27.918-2018 that Circular 313 was not an amendment to planning law but an interpretation of it. Therefore, it was not a change to planning law that the Construction Permit would be protected against: it was an interpretation of planning law, and therefore had been enforceable since the law’s creation. In practice, the ruling mandated the Municipality to start invalidation processes for all the Construction Permits that had been granted. Those rulings were disputed by developers taking Constitutional actions in the High Courts regarding the legality of the CGR argument against “Protected Rights” in retroactive rulings. In the meantime, some developers have continued with

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<sup>63</sup> Argument presented by Developers in the proceedings of the Ruling N°44.959-2017.

<sup>64</sup> CGR Ruling N°44.959-2017

construction, which became the cause of new Constitutional actions by the NDEC against the Municipality. These actions had not been ruled by Courts by June 2019.

#### 6.4.3 Development of the case

Notwithstanding these legal proceedings, at least 10 high-rise buildings were finished in 2019, and others are being constructed during the time that the Municipality initiated the invalidations processes. The impact on the built environment of the constructed buildings is very obvious. A resident of the area for more than 60 years, related how the environment had changed only in the last three years from a residential single-housing neighbourhood, to a neighbourhood with many high-rise buildings (EC1;26.04.2017). Figure 26 confirms the effect of the new buildings on the physical appearance of the built environment.

FIGURE 26: ESTACIÓN CENTRAL IN 2009 (WITHOUT ANY OF THE HIGH RISE BUILDINGS DESCRIBED) AND 2019 (WITH MORE THAN THE 50% OF THE ORIGINAL BUILDINGS ALREADY FINISHED)



Source: Own elaboration with google earth © images.

Life has also changed since the occupation of the first buildings.

*The neighbourhood life is dead. Both the people that sold their houses and the new closed buildings changed completely the way we live (...). The people that stayed because we have an attachment to our*

*houses, our land, our heritage of our families. There is also emotional value. We have a great location in the city: we have Metro, buses, interregional buses, airport, universities, hospitals... the amenities are extraordinary (...) These benefits are very difficult to find in other Municipalities (...). However, the buildings have changed how we live. There is less pressure in the water and the sewerage is not working properly, we repeatedly see people from the sanitary cleaning the sewerage drains. The height of the building blocks the signal of TV, cell phones, communications in general (...) The buildings do not have enough parking places, the amount of space that they have doesn't support the number of cars of people living there. Roads and sidewalks are full of parked cars (...). Ambulances, fire engines and bin collection trucks cannot pass the streets. It is chaos?* (EC1,27.04.17).

The President of the NDEC Association argues that the media hype about what was happening in Estación Central proved beneficial for the residents' cause (EC1.27.04.17). The number of legal activities and arrangements was facilitated with the appearance of the case on TV, in print media and social media. Criticisms of the Governor were central to raising awareness of the case. However, much of the media attention was focussed on how it was to live in the *vertical ghettos* rather than on the lives of original residents.

A representative of the CCHC argued that the effects in the urban environment were consequences of the desirable location of the Municipality, and "institutional weakness" which allowed a number of individual decisions to result in the agglomeration of mega-densities in Estación Central (Priv3,11.04.17). According to this view, real estate developers working in the area are responding to strong demand, and obtained Construction Permits with weak regulation. *"The supply of high-rise flats and apartments is in response to demands from people/ buyers who want, need and can afford these kinds of accommodation. The high density of these developments is not because the developers want this, but because there is a demand for it."* (Priv3,11.04.17). This is consistent with the effects that real estate development has in the price of the land. An owner of land in a neighbouring redevelopment area stated that he received offers of more than USD \$600.000, when before development started it "would not have been more than USD \$100.000" (EC2, 27.04.2017).

Real estate developers directly involved in the construction and sale of high buildings argued in favour of their benefits. The main argument was that the buildings met the need of many households to live near the centre of the city: nobody was forced to live there. The developer SUKSA published a press release arguing that apartments were sold at accessible prices that met the needs of the "new" Chilean family (FIGURE 27).

FIGURE 27: AN INSERT BY THE REAL ESTATE DEVELOPERS OF ESTACIÓN CENTRAL TO THEIR BUILDINGS “APARTMENTS THAT PROVIDE ACCESS TO URBAN GOODS, SERVICES AND CONNECTIVITY IN COMPLIANCE WITH CURRENT REGULATION” AND ALL OF THE PROJECTS HAVE CONSTRUCTION PERMITS AND ENVIRONMENTAL REVISIONS.



**DEPARTAMENTOS QUE ENTREGAN  
ACCESO A BIENES,  
SERVICIOS Y CONECTIVIDAD  
RESPETANDO  
LA NORMATIVA VIGENTE**

Su Ksa es una de las más de 12 empresas inmobiliarias que construyen proyectos de densificación en altura en Estación Central, tal como los que ya existen en comunas como Santiago, Independencia, Nuñoa e incluso Las Condes. La propuesta habitacional que desarrolla ofrece una vivienda de calidad, a pocos pasos de la Alameda con acceso directo al Metro, centros de salud, supermercados, centros comerciales, colegios y zonas de entretenimiento, como el Parque Quinta Normal, entre otros. Todo lo anterior a un precio accesible (entre UF1.000 a UF2.000) para cientos de personas que, de no existir esta opción, deberían radicarse en la periferia de la ciudad o simplemente no podrían acceder a una vivienda de estas características.

En este contexto, Su Ksa lamenta que algunas declaraciones hayan descalificado este tipo de departamentos, lugares que efectivamente se han convertido en una solución para miles de personas y que entregan múltiples beneficios así como mayor seguridad (más de 150 cámaras de vigilancia por cada edificio) y vida en Comunidad.

Con más de una década en el mercado, Inmobiliaria Su Ksa ha construido edificios en varias comunas de la capital con una propuesta innovadora y de calidad, adaptándose a los cambios que está teniendo la sociedad chilena, como el menor número de integrantes de las familias, la creciente demanda por viviendas unipersonales y la preferencia por la localización para reducir tiempos de viaje y accesibilidad a bienes y servicios.

En relación a la fotografía que ha sido cuestionada públicamente, es importante precisar que se trata de un conjunto de 5 edificios con accesos y administraciones independientes. Además, cada edificación cuenta con sus permisos y aprobaciones ambientales y sectoriales, entregadas y aprobadas por la autoridad respectiva.

Source: Insert of SukSa Developer in local newspaper “La Segunda”, April 2017.

However, other representatives of the real estate developers questioned the decisions of other developers and the effects of their projects. A senior representative of an association of real estate developers argued that this kind of development was in part responsible for the decision of many municipalities to develop Land Use Plans that do not allow new projects (Priv2, 10.01.17). These *predatory* real estate developers have

affected the image of all real estate developers, both with the public and with authorities making planning decisions (Priv2, 10.01.17). “

*Any real estate developer accepts proposals from businesses with their own capital. Therefore, projects from real estate developers come sponsored from banks or another groups. These developers cannot risk doing things like they did in Estación Central. Most real estate transactions are expressions of wealth, but not a product of wealth per se. The only developers who have made their own money are predatory developers who exploit loopholes in the law / bend the rules to the maximum.*

(Priv2, 10.01.17).

According to these perspectives, the measure of control of urban development is profit, without much consideration of the effects on the built environment.

The effects of the high-rise buildings also implied a new way to inhabit the neighbourhood for residents of the buildings. Although it was impossible to access the new building directly (I did not have a pass), the occupants stepping out the building provided different perspectives on what it was like to live in one of the apartments. Residents who complained that people had to wait “one hour to use the lift”; lack of sunlight and lack of privacy meant that many occupants “do not last long” in the building. On the other hand, there were residents who felt that the building offered better conditions than living on the outskirts of the city (EC4). Although it is difficult to organise, a private system of controlled access to the building through QR codes have made them feel safer than in their previous homes (EC4, EC5). These contrasting views were published in the press as possible narratives of the Estación Central case (FIGURE 28).

FIGURE 28: SUPPORTERS AND DETRACTORS OF PEOPLE LIVING IN THE “VERTICAL GUETTOS”. “I CLOSE THE CURTAINS BECAUSE ALL IS SEEABLE” AND “NEIGHBOURS FROM THE VERTICAL GUETTOS ARGUE THAT THEY WERE TARNISHED”.



Source: Local Newspapers “La Segunda”, April 2017 and La Hora, May 2017.

#### 6.4.4 Epilogue to the case

The legal proceedings over the high-rise buildings in Estación Central are not finished (July 2019). After the rulings of the CGR, developers and residents have requested the Courts to effectively protect their rights: developers have requested the protection of acquired rights in Construction Permits obtained before the interpretation in Circular 313, while residents have requested the Municipality should declare the illegality of the Construction Permits and stop the construction of the buildings. However, the different discussions, procedures and timings of different authorities (SEREMI, Intendencia, DDU, DOM) has meant there has not been final response. At May 2019, there were 13 projects with Construction Permits still under construction. However, the residents successfully stopped at least six new buildings.

The Municipality began developing a LUP for the zone since freezing Construction Permits in 2017. The Municipality and the SEREMI are developing a fast-track procedure to draw up urbanistic rules for this area of Estación Central. According to the Urban Advisor, the Municipality aims to maintain the interest of developers in a sustainable way that allows the continued growth of the Municipality for the next 20 or 30 years with projects “that give something to the territory” (EC3, 14.01.17). By ‘sustainability’, the Advisor means buildings that have setback designs, entrance gardens, security conditions, requirements that, apart from limited heights, are not enforceable under present planning law (EC3, 14.01.17). The same advisor argues that the NDEC Association want to keep traditional neighbourhood life and because they are mostly elderly, they would not accept any proposal (EC3, 14.01.17). But according to representative of

the NDEC, the intention is that the construction process and buildings should be fewer stories in height and be more sympathetic to the surrounding environment (EC1;26.04.2017).

The Estación Central case had effects at a national level. A set of reforms to the GLUD were developed to apply controls in cases where no urbanistic rules existed. A number of changes to the GOUD were explicitly based on the apparent lack of limits that Estación Central faced. During the approval of an initiative that aimed to make land markets more transparent by making LUPs and other decisions simpler, the MHDU modified the project to propose instruments to create an “*adequate density*”<sup>65</sup>. The proposed rule established supplementary rules that allowing a maximum height of 10 stories if the construction was adjacent to similar buildings and stories if there were no adjacent construction<sup>66</sup>. The objective of the rule, according the MHDU was to encourage the development of Land Use Plans for those Regions that did not have them (Acad2; 18.01.17). This reform makes impossible that projects with high-rise buildings have a Construction Permit without the existence of a LUP.

The case of the area of Estación Central in question showed how certain actors behave when there are possible interpretations that involve profit-making and radical spatial change. The legal interpretations by private developers and some government officials in Estación Central did not consider the common good as an element that informs planning law. “Creative compliance” in the context of a Municipality with a limited human capacity and planning law that favours construction produced rapid changes in the urban environment of Estación Central. The case made the notion of “vertical ghettos” a commonplace that illustrates the limitations of planning law in Chile.

## 6.5 Discussion

This chapter examined Chilean planning law in the context of the inner centre of Santiago and three planning processes in the built environment of three municipalities. In this context, social practices in the use of planning law rules and regulation were examined, describing the different outcomes in the Municipalities. Civil servants sought to control the urban development of Independencia; residents tried to stop a gastronomic centre in Providencia; and developers interpreted the legal conditions of Estación Central in their own

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<sup>65</sup> Bill of Law of MHDU applied in 2016, which resulted in Law N°21.078.

<sup>66</sup> GLUD, Art. 28 Quinquies.

favour. The case studies examined legal interpretations, discourses and outcomes of these processes. This section aims to discuss the commonalities in the social practice of planning law that were observed in the case studies.

An unsurprising conclusion is that, as elsewhere, planning law matters for the development of the urban environment of Santiago Municipalities of the inner centre. The growth of inner Santiago, the increasing amount of high-rise building and consequent changes to the built environments have been facilitated by forms of legal regulation (Lopez-Morales, 2012). Planning law, however, also provided instruments for actors to react against unwanted physical results and projects. When the projects proved controversial, actors pursued decisions through the legal system with differential success. When disputes began, the legal system created a “to and for” of legal requirements, resolutions, rulings and reactions that created uncertainty and confusion. The complexity of urban environment processes is a key element in understanding its regulation (Azuela, 2016). But, the discourses and interpretations of planning law responded to the different objectives of actors rather than to any overall understanding of urban processes. In that way, as Azuela (2016) argues, the immediacy of legal processes and their expression in social relations makes planning law highly polyvalent: how it is interpreted depends on the objectives that actors have for the built environment.

The three case studies revealed the importance for actors of obtaining legal validity for their objectives. Developers argued that the legal certainty of Construction Permits was essential for their investments. Civil servants acted on their Constitutional mandate within the margins of law, making their responses sometimes slow and limited or even non-existent. In turn, residents reacting to the undesirable spatial effects of development, aimed their strategies at obtaining invalidation of the certification of projects, translating their objectives into legal actions. In each of the cases, actors translated their objectives into the legal system through legal analysis and interpretations of planning law.

The examination of cases also revealed that how planning law is interpreted is also relevant for the constitution of the spatial. A formalistic interpretation of planning law was the sole approach legal and non-legal actors used in the constitution of the planning disputes. The formal interpretation provided contradictory arguments for actors: for instance, in the case of Estación Central, a literal reading of the complex history of different of LUPs and their validity in the area allowed the conclusion that an LUP was not enforceable. At the same time, the

interpretation of the CGR that Circular 313 did not change the law, but only interpret it, is a legal fiction: that an interpretation is a technique that does not change the law but provides its exact meaning. As I have argued throughout the thesis, planning law is not only the existence of legal rules and regulations, but the way these are applied and the discourses supporting the applications, in this case, formalistic approaches to the law. The formalism that allowed “creative compliance” (or ignoring the spirit of law) contributed to the production of the spatial in the area of Estación Central: a formal interpretation of planning law resulted in the area being considered not to have LUP, despite the undesirable outcome this implied. The same logic allowed civil servants in Independencia to reject new projects based on a formal interpretation which did not allow for mistakes.

The constitution of spatial consequences in the built environment of the three Municipalities is also embedded in the significance of the Construction Permit: the use of planning law provided certainty for developers which, once legally certified by DOMs was difficult to dismiss. The granting of a Construction Permit allowed a developer to start and build projects even if these were dubious and could be considered illegal by the CGR or Courts. The case of Providencia revealed how the legal system was used to allow time to finish the development and therefore consolidating the spatial with a force impossible to dismiss in legal terms. As Valverde (2011: 70) has argued, attention is needed to those elements where space and time become visible, or, in her words, “were time thickens”. A Construction Permit allows a developer to obtain the assurance of conditions based the legal interpretations by a DOM (included in the Construction Permit) and therefore strengthens the legal status of the outcome in the built environment. The development of a building, the legality of which is based on those provisions, is the constitutive role of a law that favours a specific interpretation of a specific time. The legal constitution of the spatial does not only occur through legal classifications or derived from the definition of legal cases and rulings: a mundane act such as the certification of compliance with urbanistic rules has a spatial effect that, as the cases have shown, is difficult to reverse.

Although there is a discursive relation between the legal system and certainty (Chapter 4, section 4.1), the cases revealed that actors are confronted with uncertainty in the urban environment. In the case studies, this uncertainty about the spatial constitution of their neighbourhoods was related to processes of planning law. The three cases showed that local actors become enmeshed in controversies involving many procedures, authorities and times,

many in parallel. The uncertainty that actors face was eventually solved by the legal system with a firm and non-appealable determination. However, the path to obtain a determination is filled with multiple actors, procedures and long, time-consuming processes. The possibility of obtaining results depended on the legal strategies of actors and their willingness to get involved in the legal procedures. Once Construction Permits were obtained, further time-consuming actions aimed to spatially consolidate these legal interpretations.

A number of respondents felt that the legal system produced insecurity at different levels: insecurity for residents to develop long-term plans in their spaces (Prov3, 13.01.17, NGO1, 25.01.17) ; for public officers regarding the limited authority to law allowed, and the possibility that the CGR could question or overturn their decisions (Pub7, 12.01.17, Ind1, 16.12.16). However, the need for legal certainty has been publicly argued mostly by real estate developers (Chapter 4, section 4.4). In this connection, the Estación Central case and the question validity of Construction Permits has coined the term “legal uncertainty” for real estate developers. The Guild of Real Estate Developers has publicly manifested their dissatisfaction with the recent actions of the CGR. A number of investments has been questioned because of the “fragility” Construction Permits created by the decisions in the Estación Central case. Although some respondents questioned the rationale for the decisions behind the granting of development permits in Estación Central, publicly the CCHC has actively advocated the protection of Construction Permits for those developments. As is discussed in the next chapter, the notion of legal certainty is relevant to understanding how planning law has a constitutive role in the built environment.

Planning law provides public officers at different levels competencies to give opinions and resolutions on the three cases. As the cases showed, the number of administrative authorities with different competences and judicial and administrative courts blurs the certainty linked with law. The DOM acts within the GLUD to approve Construction Permits as certification that developments comply with urban legal rules. But, the invalidation process of that same Construction Permit that the law allows determines that DOMs must now evaluate if their action was legal or not depends on a political authority such as the Mayor. The SEREMI has the authority to interpret Land Use Plans, but once it makes an interpretation contrary to the DOMs’, it is not clear that the Municipality or the SEREMI can force DOMs to change their original interpretation included in the Construction Permit. Legal procedures also depend on the decisions of actors. Legal procedures also depend on the decisions of actors: for instance,

whether to resort to the CGR for a ruling on the authority of a public officer to make a particular decision; whether to appeal to a judge to decide on the law applying to the case. In the three case studies, legal strategies and technicalities employed by private developers and by residents were crucial to determine the result of the project.

Finally, the emphasis in planning law on urban development based in land markets and private investment (Chapter 4, Section 3) is noticeable in the cases described in this Chapter. The configurations of LUPs and strategies in planning law allowed certain way of exploiting the built environment. In the case of Estación Central, a legal loophole was at the base of the real estate development, and its main characteristic - the massive heights of several buildings - was enabled by a creative interpretation of the law. In the case of Providencia, it was also the conflicting interpretations of the law that allowed time for the development to be completed. And in the case of the Independencia, the control of what a local government could include in a LUP to avoid indiscriminate development only produced that real estate developers went to other Municipalities to invest.

The discussions of the legal interpretation for the planning processes that were examined also showed what was possible for spatial development in those Municipalities. The canalisation of planning law operated through the interpretations that different actors implemented and discussed in the prior cases. The case studies also showed how some possibilities were out of the range of discussion (or out of the canalisation). For instance, in the case of Estación Central, the option of stopping development until legal rules were in place was not considered. In addition, the conclusion that there no Land Use Plan in force did not take into account that there were planning regulations for the zone (although they were derogated); and in practice it would be difficult to argue that any authority would have intentionally meant that an area should not have a LUP, especially since planners had developed norms for the area in question. However, the legal discussion displaced any consideration of the future or a rational way of developing the area: it was a solely a legal discussion about whether there were enforceable urbanistic rules that controlled the development. The rationality of the legal discussion centred on solving the intricate puzzle of legislations rather than on a holistic plan for the future of the area or the illogic idea that an area that had at least 3 priors LUPs, finished with no rule at all.

## 6.6 Conclusion

This chapter has examined three case studies of planning processes in the Municipalities of Providencia, Independencia and Estación Central. It examined planning law in the context of processes and controversies of reconstruction that Santiago is facing. As the cases represent important issues of planning in Chile of how law canalises processes of the built environment, they show how planning law has a determining role in the production of the built environment. After a description of the context of Santiago, the chapter described the processes of three cases that represented how actors deal with their objectives using the legal devices offered by planning law. The chapter finished with a discussion of the relations between the social practice planning law and effects with the built environment.

By retelling the history of planning changes in Independencia, Providencia and Estación Central and exploring the detailed development of the controversies and disputes., this chapter has given an account of how planning law is not just the background to, but rather plays a fundamental part in, producing the built environment. The built environment and the way in which actors inhabit it generate spatial, social and political dynamics that pursue legal arrangements in order to prevail. The production of the built environment is in part explained by planning law that facilitates the action of those pursuing urban development through market decisions. The examination of the multiple procedures to stop projects, the limited scope for action that Municipalities have, and the discourse of actors trying to stop projects revealed the limitations of planning law for those who have no say in Construction Permits.

This chapter presented a narration of the cases description of the built environment, and some reflections on commonalities between the cases. The next chapter describes the processes in which planning law is constitutive of the built environment by discussing how legal devices and discourses become manifested in the built environment. In so doing, I am able to reflect on how social practices of planning law constitute the spatial in the observed Municipalities.

## 7.1 Introduction

The aim of this chapter is to identify the empirical findings of social practices of planning law (Chapters 4-6) in the constitution of the built environment, how they link between themselves and relate to the wider debates on the topics of this research. Therefore, this chapter references the evidence and conclusions presented in previous chapters, bringing an integrated perspective to the Thesis.

Along the analytical descriptions throughout the development of this thesis, both evidence of the operations of, and questions about, planning law have appeared. In the last three chapters, I have examined approaches that have expanded the concept of the social practice of planning law. In Chapter 4, I argued that planning law channelled the intentions and perspectives of different actors through *legal devices*. Canalisation implies that the constitutive role of law in the built environment takes place through the empowerments and limits that law provides to the practice of planning. In Chapter 5, I analysed the legal discourses and technicalities that were used to decide upon urban planning controversies by the CGR. I also showed how actors used legal strategies and knowledge in order to accomplish their objectives. Finally, in Chapter 6, I reviewed three cases in the inner centre of Santiago, examining the how actors socially practiced planning law in processes in the built environment. The results of the planning processes in the built environment of three Municipalities were described, emphasising the legal devices and processes used by actors engaging with planning law.

This chapter discusses concepts which have been developed throughout the Thesis. Firstly, I critically reflect on observed processes in the built environment of Santiago and the constitutive role of social practices of planning law. The built environment has been permanently changed by the processes studied. The changes have been the result of logics of either total redevelopment or total protection (i.e. no policy or actors proposed a compromise or mixed approach). And because of these binary positions, the outcomes in the built environment have been fragmented (i.e. not the result of a coherent policy or approach), and uncertain (i.e. similarly, lacking policy or approach to ensure consistency, or long-lasting stability). After that, I discuss issues that have been described and discussed in previous Chapters which configure the processes through which planning law constitutes the built environment. First, I unpack the

meaning of ‘legal certainty’ and its relationship with the processes in the built environment observed in the fieldwork. Rulings, technicalities and discourses are revisited to argue that ‘certainty’ is linked with a legalistic interpretation of planning law, which has positive and negative consequences. A second step is to show how social practices of planning law provide channels for actors’ particular visions of actors of their built environment. The limitations of planning law certainly influence the possibilities of planning, not only in its practice but also in the expectations of actors about *what planning can do* through its instruments. Finally, the third step in which social practice constitutes the built environment is in the legal translations of actors’ objectives of actors into dualistic strategies and enforcements which have binary results in the built environment.

The discussion is structured as follows. I start describing and conceptualizing the spatial processes in the built environment observed in the three Municipalities of the inner centre of Santiago. Then I move to consider elements to the research question, tracing the practices of how planning law constitutes the built environment of Santiago. Lastly, I discuss how these reflections contribute to the conclusions of this Thesis.

## **7.2 Understanding the constitutive role of planning law: the evidence from the built environment**

Chapter 6 described cases studies of three planning processes located in the inner centre of Santiago. The three cases involved the use of legal devices by actors to obtain results in the built environment. The fieldwork obtained evidence, not only on the legal processes but also on the material experiences and practices of actors in planning law, and the consequences of Construction Permits and Land Use Plans. The use of these legal devices, the construction of discourses and strategies had spatial consequences in the built environment. Each Municipality served as evidence for the different constitution of its built environment, particularly the buildings and spatial changes resulting from the process that were observed. The physical consequences also represent ways in which the social practice of planning constitutes the physical materiality of the city. The three case studies provided elements for understanding how planning law definitions of the spatial transform in the built environment.

In the case of Independencia, the possibilities that planning law offered to change processes in the built environment and develop proposals by a new planning and political

governance team were examined. The case study showed how the granting of Construction Permits limited the action of civil servants aiming to solve an identified problem or to achieve a promised political outcome. That limitation linked a strategic use of planning law with a pragmatic rationale in the legal practices of the officials of the local government which allowed several Construction Permits to be rejected before the Land Use Plan was finished. After the Land Use Plan was completed, and therefore there were new rules for urban developments that would be more sensible with Independencia, the real estate developers' attention turned to other Municipalities. The profit for those developments was better in Municipalities with less urbanistic rules that limit expansion. This produced a spatial combination in Independencia of land over-exploited by new buildings (those projects approved prior to the change to the LUP) sharing the built environment with low-rise houses of one or two stories, many of them expecting to be sold but then left without real estate developer buyers. The discontinuity of the structure of Independencia was influenced by two different approaches to the Land Use Plan, from a pro-development local government to a local government that had different political vision for the territory.

The formalistic approach to planning law was noted in the action of the local government in the case of Independencia, particularly when the local government was in the process of drafting a new LUP and wanted to avoid new buildings based in the "old" LUP. It was described how civil servants used technicalities and interpretation to stop the proliferation of new Construction Permits once the freeze of permits was over. However, the formalist understanding of planning law also limited planning practice: the political objectives of the new governing party were severely limited by the protection of previous decisions in relation to private property. Planning law establishes not only what can be built, but also how alternative legal devices can isolate specified parcels of land from future changes to the LUP. In that sense, the protection of Construction Permits under planning law constitutes how time is managed in the built environment. But time also limited and constrained the objectives of the new Land Use Plan. After the LUP was published, urban development allowed by older Construction Permits was still being constructed and changing the spatial configuration of Independencia, which led to criticism of the Municipality and the actors who had been involved in the planning process for the new LUP.

However, the limitations of planning law and formalistic strategies also condition how planners use legal devices to accomplish their visions and representations of space (Lefebvre,

1991). The limitations that the rules and regulations of planning law place on the possibilities for planners to manoeuvre required that the staff applied techniques of formalistic interpretations to deal with the period from the *freezing* of Permits to the enforcement of the new LUP. Planners from the Independencia Municipality were required to be “the most legalist they could be” to stop the development of new projects. The use of a formalistic practice of law is not limited to lawyers and legal technicians, but rather, to become an urban planner is to be a legal technician (Booth, 2016). At the same time, the objectives were pragmatic in order to gain fast planning approval for a new LUP which would solve the development problems. The civil servants’ awareness of the limitations of planning law were also strategically used to limit new developments and to accomplish the new LUP, adapting planning law to their desired objectives.

The process of the creation of the Land Use Plan showed how the possibilities for residents to contribute to framing the objectives for their neighbourhoods are severely constrained by planning law. The officials had to submit a simple and clear LUP in order to achieve its approval within the year that the freezing of conditions gave them. At the same time, many ideas put forward in participation residents by residents in the process of the LUP simply were not legal or not relevant to the scope of what planning law was able to prevent in Land Use Plans. Residents’ and civil servants’ visions of the built environment residents did not find “fertile ground” in translation into planning law, at least in the case of Independencia. Planning processes, like those in the case of Independencia, are not a fertile ground for the reception of planning discussions, let alone for creating consensus or shared objectives for the Municipality.

In the case of Providencia, the case study provided evidence that after the approval of the carefully crafted and participative LUP, there were still conflicts between private developers and residents. Findings show how planning processes and the development of controversial projects became more complex after authorities and legal procedures linked with planning law were involved. The developers’ strategies and techniques - delaying community and regional officers’ legal actions- allowed legally dubious projects to be constructed. The large number of parallel legal procedures available for actors, the contradictory rulings and the inability of regional and local authorities to have a line of command over the DOM , show how law can also be a *source of uncertainty* for actors involved in urban development and planning. In that state of uncertainty, the management of information was critical to employing legal devices that allowed to particular actors to accomplish their objectives.

Similarly, legal devices make it easier for developers to make commercial entrepreneurial decisions about individual projects, which undermines the ability of governments to plan for coordinated urban change at a wider scale. This parallels how the language of planning law justifies, or at least implies, the acceptance of evictions or gentrification (Hubbard and Lees, 2018). In Chapter 4, it was concluded that developers could postpone the negative reactions of authorities and residents until after the rights to develop had been formally instated in Construction Permits. As the case in Providencia showed, the management of information and the acquisition of permits is used by developers to limit the ability of residents to react against developers' interests. The legal devices of planning – especially Construction Permits - benefited urban development rather than protecting community rights or the rights of residents without real estate interests. If the rights of residents seemed invisible to the legal system, then residents had to translate the effects of development on their everyday lives into Constitutional rights. Particular actors' capacities for reactions against legal devices such as Construction Permits is limited, even when these are based on dubious interpretations of the law. In that sense, law is implicated in the permanent changes to the spatial configuration of neighbourhoods such as Bellavista.

The materialising of interpretations of planning law through Construction Permits represented a fruitful device of the use of legal technicalities. The ability to develop a project with the granting of a draft Construction Permit approved by the DOM, was based on a legal interpretation that, at least in the cases of Providencia and Estación Central, represented creative compliance drawing on specific legal knowledge. The conditions for permanent change in the city depend on the legal practice of architects and lawyers who creatively interpret planning law in order to obtain permissions from the DOM. If there are mistakes in this procedure, or if there are techniques that manipulate the law, any reaction or objection has to attack the legality of the Construction Permit after it has been granted and notified to the community. And, as the Providencia case shows, time is against that objective.

In that context, the built environment of Providencia combined one of the most crafted and planned territories in Santiago with a permanent menace or opportunity for urban reconstruction. The assets of the urban environment of Providencia - parks, transport and culture - motivated the interest of developers who could almost at any time obtain a Construction Permit. The authorities' lack of control over local interpretations of planning law in the granting of Construction Permits also contributed to that permanent menace. Although

developers argued that changes to the Land Use Plan limited the opportunities for redevelopment which would increase the capacity of one of the main municipalities in Santiago, the interest in applying for new developments did not decrease.

Finally, the case of Estación Central showed how legal devices could support aggressive spatial processes in a built environment that experienced rapid change over a few years. The case study provided insights into how decisions made by real estate developers are not only influenced by the most beneficial economic conditions, but also by an active agenda to maximise the increment of revenues through an active and creative interpretation of planning law. The Construction Permit consolidated interpretations that allowed the development of 38 buildings of more than 8,000 person per km<sup>2</sup>, the highest densities that Santiago has witnessed (Poduje, 2016). Like many of the cases examined in Chapter 5, the development of the first projects attracted political and media attention and provided support for controls that would prevent the repetition of similar cases. However, construction was not halted: many of the buildings were completed and changed Estación Central permanently.

These outcomes in the built environment of Estación Central are linked with the deregulatory effect of the formalist interpretation of the lack of a LUP and the ‘creative compliance’ with planning laws by real estate developers. The *laissez-faire* interpretation of the observed area allowed buildings that were only limited by what was economically and technically possible. Once again, residents only knew about the dramatic changes proposed for their built environment once the projects had started. It was notably interesting how the accidental result of not having a LUP was naturalized in formalistic legal terms, drawing the seemingly obvious conclusion that there were simply no urbanistic rules that limited development.

The three cases revealed that what is known as the ‘public interest’ - that is, interest different from private land and real estate investment and development interests - is conditioned to the definitions of private property that the social practice of planning law establishes. The legal devices of planning described in Chapter 4 are centred on land markets and private property. In the case of LUPs, urbanistic rules are based on, and enforced through, limitations on private property. Construction Permits incorporate the potentials for the exploitation of land into the private property of developers. Developers rapidly detected possibilities of profit, most of the time before the public and the local authorities knew of it and did not have either the rights or the instruments to limit these possibilities for development profits. The action of

institutions like the CGR confirm that private rights are more likely to be protected under formalistic terms. The built environment processes that were observed are linked with the legal devices that allow private decisions to gain certainty and legitimacy faster than the capacity for reaction by authorities and communities.

In that sense, the spatial processes in the built environment of the inner municipalities of Santiago are developed through private decisions which are materialized technically through Construction Permits. The constitutive role of social practices of planning law in the built environment was exemplified in the case studies through the commencement of the construction of a building which the same legal system could not stop through its procedures. Spatial consequences of planning law are initiated by private developers through the interpretations of planning law contained in Construction Permits. When buildings were controversial, these devices had enough power to protect the approval against residents, civil servants and even Courts. The Construction Permits materialised interpretations of planning law but these interpretations can later be discarded – for instance, by a change to a LUP,- or a reinterpretation by the Courts, or by the DDU. In that sense, Construction Permits are legal devices that in practice assisted developers to undertake the rapid construction and completion of buildings, because the procedures for declaring a Construction Permit illegal are so complex and slow.

Planning law offers opportunities for those involved in controversies to make their claims. However, the evidence of the case studies and Chapter 5 showed that when claimants objecting to the issue of permits sought positive results for their claims, this generally did not affect the spatial outcomes of Construction Permits considered legal by DOMs. In the cases of Providencia and Estación Central, the built environment was modified through legal devices which were later declared to be illegal. However, the declaration of Courts and the CGR could not “deconstruct” the already-developed spatial outcomes. Buildings in Estación Central, the project in Providencia and the development in Independencia only required a moment in time of legal certainty to have material effects. The built environment represented the concretisation of these legal interpretations which were not permanent, but which proved to be materially and spatially definitive.

One of the observed spatial processes was the fragmented ways the spatial development in the three Municipalities that were studied. Fragmentation is understood as disconnected spaces of social interaction within a city, and in the context of Latin American cities has been

emphasised as a consequence of neoliberal policies and globalization (Low, 2005) having effects on the social-cultural composition of the cities (Bayón and Saraví, 2013). Gated communities and social housing are two ways in which Santiago has been described as a fragmented city (Gil, 2013), and as described in this Thesis, the appearance of new high-rise building projects has rapidly modified the urban context of Independencia and Estación Central. In the case of these Municipalities, the urban development processes represented enabled the physical fragmentation of the followed areas. Social practices of planning law had positive results for developers who strategically employed devices like Construction Permits. But these social practices were less helpful in enabling local governments to limit the undesired effects of development. In that sense, fragmentation operated through specific land plots that were developed with not much connection of the will of the Municipality or the residents.

The management of information and time through legal devices deployed by developers created uncertainty for residents and authorities, made even more uncertain by the unclear legal processes that confronts residents trying to take legal action against Construction Permits. The built environment of the three Municipalities was in permanent change due to the privatisation of decision-making in development. Planning law facilitated the reconstruction of Municipalities by urban projects that allow increased densities of families and services in previously less-dense residential neighbourhoods (Table 12).

TABLE 12: ELEMENTS OF THE BUILT ENVIRONMENT ACCORDING TO CASE STUDY OBSERVATIONS.

Built environment	<i>Findings</i>
Providencia	Constituted through a combination of existing low-rise residential neighbourhoods and new processes of development that threaten to permanently change the area.
Estación Central	Highly <i>disruptive</i> new buildings that create changes in life of existing residents. The legal arrangements put in place to allow these new buildings became the template for changes in planning regulations in the whole country.

Independencia	After a wave of reconstruction projects were halted, the built environment has not undergone further changes. However, it is now fragmented and discontinuous
Santiago (the inner- city)	<p>Different and disruptive environments according to the municipal context and objectives.</p> <p><i>Dynamic</i> processes of urban reconstruction at increasing density in the inner city that have modified the built environment.</p> <p>Conflict surrounding the construction of new projects. <i>Uncertainty</i> for many actors regarding the possibilities and limitations on the production of the built environment.</p>

SOURCE: AUTHOR

Disruption, change and fragmentation are spatial processes that were observed in the built environment of Santiago in the three cases affecting residents, developers and officers in charge. The question now turns to finding links that explain how the practice of planning law is constitutive of the built environment. During the Thesis, I have gathered evidence on the practice of planning law and the strategies and discourses that actors develop to achieve objectives in the built environment. This evidence allows me to argue that the role of planning law is more complex than simple normative arrangements which order, forbid or allow; and more complex than the commands of law that are finally settled in Courts, intending to provide certainty for those who have acted legally. This Thesis has tried to question the meanings of planning law and examine how they constitute the places studied in the cases.

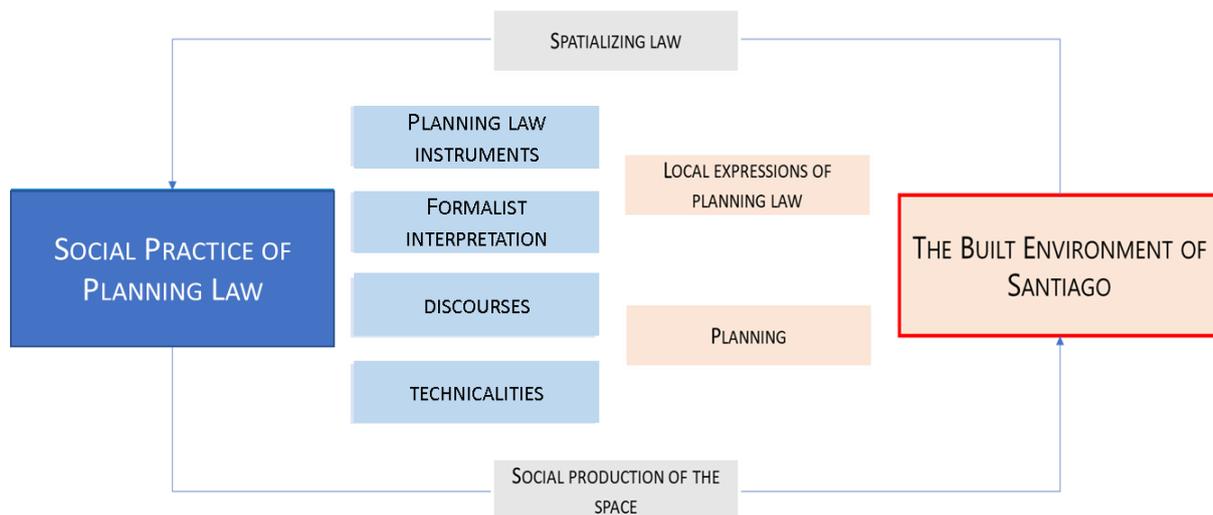
As I have argued in previous chapters, planning law is not only composed by rules and regulations, but also by social practices that include the discourses of legal actors and the decisions of legal institutions. These practices influence how legal devices come to have spatial manifestations in the built environment. The case studies presented controversial planning moments in which legal and non-legal actors had competing visions of what should be done and how planning law was functional for such visions. The spatial controversies led and followed from different interpretations of planning law. However, these interpretations were developed

within similar a legalistic framework that canalized those controversies in legal procedures and timings. These processes of spatial change were reflected in redevelopments and reconfigurations of the built environment for which residents, civil servants, and developers constructed strategies and discourses in processes of planning law. The words that express the provisions, strategies, interpretations and devices in those legal processes are incorporated into the strategies that actors in the built environment in controversies beyond the legal: they express the legal system ways of working. But how?

How do these social practices constitute the built environment? The next section is an account of how the observed spatial processes in the three Municipalities can be related to the constitutive role of the social practices of planning law. This aims to answer the question: How is law constitutive of the built environment of Santiago?( see the discussion of concepts in Chapter 2).

### 7.3 The constitutive role of practices of planning law in the built environment.

After describing the spatial processes forming the built environment of the three Municipalities as dynamic, fragmented and uncertain, the task of this section is to examine how the social practice of planning law constitutes the built environment. The section unpacks the evidence gathered and proposes an explanation of how the spatial processes observed in the fieldwork are, in part, explained by the constitutive role of the social practices of planning law. This links the findings of the previous chapter to the evidence of how planning law is embedded in documents and buildings.



I argue that the constitutive role of the social practice of planning law acts permanently through three forms of actors' ordinary decisions in the construction of the city. First, there are discourses which emanate from social attitudes that use planning law as a medium for obtaining results in the built environment. These discourses are grouped in terms of the pursuit of legal certainty and of legalism. Secondly, planning law deals with the fact that actors have hopes, visions or dreams of their neighbourhoods and city, but also, they have ideas about what law should be, which are exercised through planning, at least in their discourses. Thirdly, these discourses and visions become motivations in controversies with the use of legal devices and technicalities, working as elements that affect how planning is developed and which therefore connect planning law and the built environment. I will explain these three elements in separate subsections.

### 7.3.1 Discourses on law: legal certainty and legalism

The summary of the Estación Central case identified central elements of discourses on planning law. Private developers reacted strongly to the rulings of the CGR that questioned the Construction Permits in Estación Central. The reaction was a bold critique of the role of the CGR in the interpretation of planning law. The Association of Private Developers (CCHC) argued against the decision, because, they argued, it diminished the *legal certainty* of the Construction Permits. The President of the CCHC claimed that:

*in last days there was a change in the interpretation of the regulation. Before this change of interpretations there was an indication(sic) that public institutions should make the revisions and change criteria if necessary but looking forward without a retroactive effect. That is the problem. Now, projects that had their permits approved under the current regulation are being questioned. That is very serious.*<sup>67</sup>

In the examination of the revision of the rules and regulations of planning law in Chapter 4, I argued that although these rules have changed over time, altering the roles and discourses of actors, legal certainty is a central element of planning law. The roles of LUPs and Construction Permits show how planning law operates in planning processes, providing certainty in law for the expectations of different actors. Since the dictatorship, the role of planning has centred in market

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<sup>67</sup> Interview to the President of the CCHC, 02.01.2019 La Tercera, available at “[<https://www.latercera.com/pulso/noticia/cchc-cambio-criterio-CGR-todas-estas-incertezas-generan-mas-demoras-mayor-riesgo-pone-una-presion-al-precio-las-viviendas/512898/>], (Consulted: 10.07.19)

allocation of land resources. In that context, I described how certainty is present in a series of social practices that shape the way that planners and actors make decisions in the built environment. However, as was shown in Chapters 5 and 6, the consideration of different spatial outcomes in effect questioned the expected legal certainty of planning law. The outcomes of similar issues in similar circumstances seemed to vary according to political and spatial context, which accordingly created trust in the law for some actors and mistrust of the legal judgements for others. (Philippopoulos-Mihalopoulos, 2010).

Particularly, Chapter 4 showed how Construction Permits facilitated the new role that private developers had gained since the dictatorship. The certainty of rights already incorporated to their estate through Construction Permits was protected by planning law and by the interpretations that Courts gave to legal devices. The developers traditionally and successfully resort to Courts and the CGR, claiming acquired rights granted in Construction Permits and limiting other actors' claims to other forms of rights. This is consistent with the observed results of the action of CGR in planning law. Real estate developers argued that *good faith* and *legitimate trust* in institutions were necessary for investments that were protected by acquired rights<sup>68</sup>, doctrines that were accepted by the CGR - at least until 2017 - and the Supreme Court, directly based on the principle of legal certainty<sup>69</sup>.

The final ruling of the CGR in the Estación Central case restarted the debate around legal certainty. In an editorial titled "CGR and legal uncertainty", the *El Mercurio* newspaper discussed the "*imperative need of recovering legal certainty regarding the competences of the CGR*"<sup>70</sup>. The intervention of the CGR over already-granted Construction Permits was seen to be "*belated, exorbitant and abnormal*" and they argued that the debate regarding legal certainty arose because of the "*unprecedented*" situation where more than 40 Construction Permits were invalidated in Estación Central<sup>71</sup>. The problem, it seems, is not planning law as such, but the "antique laws" that "*allow CGR to intervene in planning issues, which led to an absurd situation that damages legal certainty*". The intervention of the CGR in planning law matters was itself now a source of uncertainty.

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<sup>68</sup> Constitutional Action against CGR, pleaded by "Fortaleza" in the Appeal Court of Santiago, Rol N°88.101-2018.

<sup>69</sup> CGR Rulings N°50.185-2007; N°6.105-2009; N°39341-2016; N°63.415-2015; "Corte de Apelaciones de Santiago", Rol N°65110-2014, 26.1.2015; Supreme Court, sentence of rol N° 293-2013.

<sup>70</sup> El Mercurio, "CGR and Legal Uncertainty", 19.03.19,

[<http://www.elmercurio.com/blogs/2019/03/19/67945/CGR-e-incerteza-juridica.aspx>] (Consulted: 21.05.2019)

<sup>71</sup> Ibid.

However, the intervention of the CGR was not always considered a threat to legal certainty for private developers: quite the opposite. The CGR was receptive to the enforcement of Construction Permits and limits on the rights of third parties during the 10 years that were analysed for this research. In fact, the CGR sustained a number of rulings based on the idea of legal certainty. It has argued that “*rules of Land Use Plans that do not encounter legal basis in the GOUD affect the legal certainty that those instruments should provide. Regulations in LUPs without basis in the GOUD affect the legal certainty*” and that the principle of legal certainty was a limit to the duty of CGR:

*When interpreting the law, it determines its meaning and scope, and therefore, any of its construal must, in principle, rule in terms that the interpreted rule had always the meaning and scope that has been assigned to it, unless in the case of a change of jurisprudence, in which case, considering the principle of legal certainty, the new ruling only applies to the future, without affecting situations based on the prior doctrine (...) The invalidation of irregular acts of the Administration has as a limit the consolidated legal situations based on the trust of private parties in the legitimate proceedings of its organs, and therefore the consequences of those invalidations cannot affect third parties that acquired rights on good faith based on those acts<sup>72</sup>.*

Legal certainty, therefore, is seen not only as a concept that provides security for investment but ensures that conditions continue over time for all parties. Legal security was guaranteed through the granting of Construction Permits that “*created solid legal situations that produced acquired rights for actors*”.

Now, the rulings of the CGR are no longer seen to create legal certainty, political actors have started to ask for changes to the ways the CGR can intervene. Congressional representatives argued that reforms were required to “*determine with more clarity the scope of authority of DOMs, MHDU and the CGR to discuss the legality of a Construction Permit*”<sup>73</sup>. A group of legislators have proposed a change to the procedures of Construction Permits and Land Use Plans with the explicit aim of “limiting the action of CGR”. The CCHC created a Commission of Legal Certainty to consider the opinions of real estate developers in different arenas, adding arguments to the lobbying body for developers.

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<sup>72</sup> Ruling 6105-2009

<sup>73</sup> El Mercurio, Own Translation, “Permisos de edificación bajo la lupa de la Contraloría: Vivienda analiza cambios a la ley, y la Cámara de la Construcción crea comisión especial”, 10th of June of 2018, <http://www.economiaynegocios.cl/noticias/noticias.asp?id=476812> [consulted: 21.05.2019].

The reaction of private developers to the loss of legal certainty for Construction Permits reveals how pivotal this concept is for the decisions of urban development. Indeed, legal certainty is a central element of the rule of law, required for the operational necessities of actors and their legitimate expectations (UNCTAD, 2016). The notion of legal certainty promoted in the discourse of developers is connected to notions of predictability and stability. In fact, the Construction Permit as a legal device works with the idea of protecting a business that requires confidence to invest and that it is deemed as central to the functioning of the urban development business. The calculation of legal consequences of Construction Permits is an economic measure of the profit that investments can produce. However, legal certainty for developers is uncertainty for civil society that, for instance, only receives information about developments when they have already started.

The notion of legal certainty that real estate developers have publicly argued for is related to their expectations of what the legal system and the practice of law should mean. Values like stability and predictability are at the core of the pursuit of certainty. In that sense, legal certainty means *“that laws and, in particular, adjudication must be predictable: laws must satisfy requirements of clarity, stability, and intelligibility so that those concerned can, with relative accuracy, calculate the legal consequences of their actions as well as the outcome of legal proceedings”* (Paunio, 2009:1469). According to this view, the expectation of legal certainty is important to actors’ use of the legal system to achieve their objectives. At the same time, legal certainty is central to the usefulness of the existence of planning law rules and regulations for investments and developments. Consequently, actors seeking profit from the built environment also are concerned with the concept of legal certainty.

Real Estate developers, residents and NGOs all use planning law to protect their interests through legal proceedings. These actions pursue opposite objectives from those of real estate developers by questioning the legality of Construction Permits or using legal instruments to limit development. Although these strategies had different results, actors were moved by an interest in obtaining outcomes that settle controversies and create spatial certainty. However, as the Chapter 4 shows, the legal devices available to create certainty for actors other than real estate developers are blurred by the obscurity of rules, time limits and other limitations of that same planning law. In this case, the certainty offered by planning law seems to repeatedly undermine the trust that actors other than developers have in the legal system.

Actors that look for certainty in the built environment translate that interest through the legal devices and instruments that planning law provides. In the case of private developers, Construction Permits provide the security to make investments, apply for loans and contract labour to develop a project. In the case of NGOs and residents, the case studies showed that certainty depended on the creation of LUPs that ruled out the possibility of certain types of real estate development. However, public discourse about legal certainty is largely centred on the idea of private property and development. Lawful control and legal certainty itself are linked with securing the value of private property (Stinchcombe, 1999). In an ownership model of planning, where private property is the object to which planning rules apply, and over which rights to develop are consolidated through Construction Permits, other kinds of *properties* such as public or communal property remain silent in planning law. Spatial objectives that are less “translatable” into terms of private property are more difficult to achieve or have certainty in planning law enforcement.

Although the position of private property is privileged in Chilean planning law, actions in Courts and in the CGR have increased over the years. The different possible interpretations of planning law by the same authority undoubtedly diminish the notion of legal certainty which has traditionally sustained public discussion: the certainty for developers to create market-based projects decreased after rulings like the one of Estación Central. Consequently, it is central to understanding planning law to examine why the CGR has changed its approach to the legal certainty of Construction Permits after the case of Estación Central. The ruling itself does not address the reasons for the change of approach, it only rules that Construction Permits should respect the interpretation of Circular 313. However, there several possible alternative explanations for this change.

The first option would be to consider the change of the person in Charge of the CGR. Since 2015, the person in charge has been Jorge Bermúdez. and respondents in interviews have argued that the change of interpretation emanated directly from his appointment (Pub3; 10.01.17). The rulings that were analysed in Chapter 5 for the years 2016 and 2017 do not show a drastic change in the approach to legal interpretation in rulings regarding Construction Permits. However, at least three important changes to interpretation of the law regarding urban issues had been developed by Bermúdez. New requirements to authorise changes to protected buildings (Ruling N°4.000-2016); limitations on new developments when a *Designation of Public Utility for Private Land* had been issued (Ruling N°92.512-2016); and the already discussed Ruling

N°43.367-2017 (section 6.4.2) represented changes of jurisprudence creating new interpretations of the law. Notwithstanding, an analysis of these rulings for this research, shows that they are argued in the same way: they are technicalities ensuring the coherence and strict interpretation of planning law.

I argue that an explanation for the seemingly contradictory interpretations by the CGR is a shift in the notion of legal certainty based on the logic of a legalistic adjudication of the law. Chapter 4 analysed how legalist interpretation is apparently indifferent to the spirit of planning law or to political and cultural agendas. A formalistic interpretation of planning law can limit the legal scope and spatial impact of Land Use Plans or the GOUD. A legalistic interpretation of planning law, however, provides already-taken actions with a representation of law as coherent and the actions as legal (MacCormick, 1989). Actors involved in the case studies argued that their aims were in accordance with a legalistic understanding of planning law, both in Providencia and Estación Central, as did the local authority of Independencia. Rather than a discussion of principles or objectives, the debates focussed on the logic of the legality of actions. Like the use of legal devices in the CGR and the case studies, legal certainty as a discourse and objective of actors in the built environment is also pursued under the logic of legalism, which also informed the decision on Estación Central.

The connection between legal certainty and legalist interpretations of planning law allowed that the creative and *innovative* understandings of planning law based on their literal interpretations reach for certainty through Construction Permits. In the case studies, private developers and public authorities - in the case of Independencia - developed *creative* interpretations of planning law in the search for certainty for their objectives. The case of Estación Central revealed an interpretation of planning law in the margins of planning law: using the urbanist rule for continuous façade to conclude that there was no density nor height limit, which obtained certainty through construction permits and that allowed the development of high rise apartments projects. This use of planning law is only the repetition of different creative interpretations that using legalism - formal interpretation - obtain certifications of legality that have effects in the spatiality of urban projects. Actions of securing development rights through interpretations are understood as compatible with conformity to the law. The possibility of multiple interpretations places on “the legislator” the responsibility for the outcomes of these interpretations of planning laws (Atria Curi, 2018). The literal interpretation of planning law, which in the end, is the use of planning law, presents opportunities which within legal

boundaries are consolidated through Constructions Permits that create, at least discursively, the protection of legal certainty.

Consequently, the legal certainty that was questioned in the rulings of Estación Central was coinciding with the aims of private developers: security to calculate future returns on investment because of the enforcement of planning laws through legally validated Construction Permits. In contrast, those who believed that legal certainty is related to the protections provided by general laws - the spirit of law - or accepted by the community - Land Use Plans – also used legalistic interpretations, but used them to question the granting of Construction Permits based on what they saw as “empty interpretations of the law” (NGO1, 25.01.17). As discussed in Chapter 5, the strategy of the JVB and other residents’ associations struggling against new developments also draws on a formal interpretation of planning law by searching for mistakes in the procedures for applying for and issuing Construction Permits. As the Providencia and Estación Central cases showed, residents become experts on legal provisions of GLUD and GOUD to compare the legal requirements with the Construction Permits issued.

The CGR has consistently argued from a formal approach to the interpretation of general principles of the legal system in order to understand planning law, based on the belief that that a strict interpretation of planning law and scope of the authority is the best way to ensure transparent participation of citizens in considering changes to their built environment (Pub9, 30.01.17). This logic endorses another aspect of legal certainty, in what is called a ‘substantial logic of certainty’ - *“the rational acceptability of legal decision-making. In this sense, it is not sufficient that laws and adjudication are predictable: they must also be accepted by the legal community in question”* (Paunio, Ibid). The strict adherence to a formal interpretation of planning law, rather than attending to its spirit, attended to the logic of strict formalism, which has different consequences for the practice of planning law. As I explained in Chapter 5, the comments on, and amendments to, multiple LUPs made by the CGR were based on the lack of support in national planning laws (GLUD and GOUD) for instruments included in LUPs. Many rulings describe the failure to find “tools for legal interpretation that allow” a public institution to do anything other than what is found in the GLUD and GOUD. This resulted in the illegality of specific rules of LUPs because they were not in accordance with GLUD and GOUD. The rulings of the CGR are decisions on the scope of the authority that law provides to planning authorities and is not an evaluation of the quality or the substance of planning law itself or of what is happening in the built environment.

The formalistic approach to law is helpful in understanding the importance and influence of the CGR in the social practice of planning law and its spatial results. The public institutions with responsibility for interpreting planning law (DDU) and the LUPS (SEREMIs), as well as DOMS, in practice interpret the legality of the proposals authorised by Construction Permits. However, actors who could interpret planning laws differently according to the spirit of the law have been limited in two ways by the action of the CGR. The first, which was analysed in Chapter 5, is the strict and legalist interpretation of planning law by the CGR in controversies and legal audit of LUPS.

In following strict legalistic interpretations, the CGR ignores the spatial effects of those interpretations. The discourse of legal forms as a source of transparency and participation referenced above in prior paragraphs is related to this action. The second way is a process in which the actors with the responsibilities to interpret planning law in a substantial way retreat from their scope of authorities and follow what the CGR argues. This is related to the fear of losing time in having to argue their case in proceedings and the risk of eventual sanctions by the CGR on public officers (Pub7, 12.01.17). In practice, when citizens ask for interpretations of planning law, officials working in the SEREMI and DDU have tended to replicate the CGR's versions.

Ironically, the combination of different actors pursuing legal certainty in the context of a legalistic approach to planning law has had the effect of increasing uncertainty for private developers and spatial effects in general. Legalism has also influenced how decisions made by the CGR, and therefore by other institutions, have been produced. The certainty of neighbourhoods, LUPs and Construction Permits has been measured in formal legal terms, but this has created other uncertainties, particularly when a formal interpretation of planning law diverges from the spirit or objectives of the law or the objectives. The power of Construction Permits was questioned by a legalistic interpretation in Estación Central case, increasing the uncertainty for officials in Municipalities and their ability to regulate the form and quality of the built environment in their areas<sup>74</sup>. Residents struggled to ensure public goods and attributes such as acceptable densities or green areas, trusting only in LUP but these can be deemed illegal at any time by the CGR. And since the ruling in the case of Estación Central, real estate developers

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<sup>74</sup> Interview to the President of the DOM association, published in "La Tercera", 28.10.2017, available at [<https://www.latercera.com/noticia/presidente-la-asociacion-directores-obras-chile- algunas-direcciones-obras-cajas-negras-queremos-resolverlo/>] (consulted: 10.07.19).

have argued that Construction Permits have succumbed to undue pressures and unpredictable legal interpretations. Legality and the pursuit for certainty show how formal interpretations of planning law and their detachment of the laws' objectives can operate differently for different actors interacting in the development of the built environment.

By acknowledging that law constitutes on space, it allows me to discuss core concepts such as legal certainty and legalism as central to the development of planning processes. These concepts do not entail an explicit vision of the city, the built environment or urban development and remain silent regarding substantive spatial effects in the built environment. However, legal devices are used by actors to obtain spatial effects in the built environment: the power of planning law is to offer a clear path to produce something in the city is still a good explanation for its use. The decisions of the CGR and the Courts have meant that private developers, public officers and civil groups have resorted to legalism as a tool to obtain results.

The accomplishment of legal certainty and the formal interpretation of planning law is a necessary element in understanding the constitutive role social practices of planning law in the built environment. The next step is explaining how this influences the ordinary practices of actors using planning law in for and against urban development. As I show, notions of legal certainty and legalism are also enmeshed in planning law that limits the crafting of visions for the built environment.

### 7.3.2 Discourses and visions of the city: the limitations of the Chilean rules and regulations of planning law

In this section I argue that the receptiveness of planning law to the rationales of actors is another element through which the social practices of planning law constitute spatial processes, particularly the fragmentation of the built environment. For this, I discuss the idea of “visions of the city” that actors pursue and the receptiveness of planning law to these perspectives.

The participative practices of “visioning” with residents and citizens have become an increasingly important tool for defining priorities and goals for cities, such as sustainability or social justice. Planning theory engages with theories of participation and mediation among actors in order to embrace the diversity of cities through democratic processes (Forester, 2016; Healey, 2005). UN-Habitat has promoted “visioning” as a tool for innovation and decision-making in

cities and to address increasing problems such as climate change (Ferguson, Frantzeskaki, & Brown, 2013; UN Habitat, 2010). But processes of envisioning must deal with different rationales and approaches that embrace the diversity of cities.

During the course of this Thesis, I have described a number of actors involved in spatial processes in their Municipalities and the legal decisions that constitute the built environment. The rationales involved in attempts to influence the development of the physical environment vary from actor to actor, but at some point, almost all of them confront the use of planning law to achieve their objectives. The last subsection discussed how legal certainty and legality influence the security of actors in the exercise of their rights and the achievement of their objectives in the built environment. However, social practice also depends on how those rationales and perceptions are treated in planning law, particularly in the understanding of what planning law should be.

A recurrent element in discussions of planning law encountered in fieldwork was around the notion of visions of the city. This concept emerged a number of times during interviews discussing spatial processes and actors' opinions of planning law. Respondents assumed and expected that planning law had a vision or "image of the city". The long process of adopting LUPs means that "visions" become enforceable five or six years after the community participation forums have been held (Ind1, 16.12.16). However, the Chief of Development with the DDU argued that there is no basis in law for a common vision of the city (Pub2, 22.12.16), while others argued that planning law is part of a system to support investment by private developers. As one respondent argued eloquently:

*If you look at any architectural biennial on urban matters in the last 20 years, the question is the same: What is the city that we want? You go to another meeting and the question is repeated: "... but well, what is the city that we want?" But almost anybody has one idea of a city that he or she wants, which is different (Pub1, 22.12.16).*

According to a private developer, planning law is based in the logic of urbanistic rules for planning being formed "when everything that was urban was going to be planned as a "whole picture" (Priv1, 02.01.2017). Although having divergent ideas of what the objectives of planning should be, many actors felt that planning law should provide a *vision* of the city. Many actors expected

planning law should provide a vision or a city-image that can be publicly discussed and agreed to democratically.

In the actual context of urban development, where urbanisation and urban construction and reconstruction continually occur, it is difficult to see how planning law could, by itself, provide a “vision of the city” that would create political consensus. A number of scholars have argued that, rather than seeking ‘visions of the city’, planning law needs to set achievable objectives through instruments of planning (Healy, 2004). City planners and legislators have been increasingly required to design planning laws that support participatory procedures to create *agreements* rather than visions, images and objectives for development. In that sense, the expectation that planning law should set the procedures for *achieving* a particular vision of the city has mutated into a focus on the procedures that make possible the *production* of a vision. The participation of residents, propositions by the public, transparent processes and democratic decision-making have characterised the expectation of participation in LUPs.

In the case of Chile, the ability for the mechanisms of planning law that might allow these visions created through processes of participation are even more limited than in some other countries as I have shown in the prior chapters. The room for participation and community decision-making is the creation of LUPs or the development of municipal or regional areas. However, the legalistic context described in Chapter 4 leaves little room for manoeuvre for actors in the design of LUPs. At the same time, the length of time it takes for these instruments to be approved, and with their capacity being increasingly limited by the rulings of the CGR, both contribute to limiting functionality. As was analysed in Chapter 4 and 5, a number of instruments that historically had been employed in regulating urban development were limited by the CGR when it was considered they did not have “legal support”.

In this context, the incentive for urban advisors is to provide generalised urbanistic rules that can be sustained over time and provide a general framework for urban development, while avoiding problems for LUPs in the short term (Pub1, 22.12.16). However, new pressures against development from citizens and politicians have meant that during the long processes of drawing up and approving LUPs the tendency has been to put interim limits on densities and height in order to protect lands from situations such that in Estación Central (CNDU). In recent LUPs, visions of the city as a place for urban development, regeneration and the reception of new habitants have encountered the voices of actors wanting to protect neighbourhoods and limit

urban development. Where previously the objective of LUPs was to provide enough space for possible interest by private developers, in the last 10 years many of these LUPs have intended to limit options for urban development. In both cases, however, the limitations of planning law in the Chilean legal context have meant that officials tend to design LUP regulations that can be maintained in the long term, rather than creating specific rules for specific development cases.

The possibility for LUPs, and planning law in general, to be expressed in instruments that represent the will of residents and officials is also limited by the mediums through which the regulations of LUPs are expressed. As was examined in Chapter 4, urbanistic rules of LUPs are the forms into which the opinions of residents and proposals of public officers are translated. Although LUPs include a diagnostic of the situation, objectives and most recently an “image objective” for planning, the limitations set by private property are the main features of urban planning. In this way, it is the decisions of developers that become materialised in the built environment, rather than the desires of the residents. In the case of Independencia, the disconnection of the desires and ideas of residents from the final result reveals how the translation of the community’s wishes into what is “legal” was difficult and generated frustration among citizens, while the resulting lack of interest by private developers in investing in the Municipality left the LUP as a keeper of what already existed - a fragmented and dysfunctional urban environment.

After LUPs come into force, the possibility that the interpretation of their provisions can produce results that are different from the agreements reached by communities is increasing in the CGR and in the Courts. Even though “technical” institutions provide substantive interpretation of planning law, the legal interpretations by the Courts and the CGR can dilute the visions that officers and residents had agreed on in LUPs. The will of the citizens mediated by regulations becomes more blurred when legal authorities interpret and apply criteria that accord with legal standards but do not respond to the objectives of planning. As I explained in Chapter 5, CGR argued that its strict interpretation of law is a guarantee of transparency and the participation of citizens. However, in contrast as an officer of the CGR argued, it is questionable that the CGR have a democratic or more legitimate standard than those who participated in a LUP (CGR3, 02.01.19). The legal interpretation of LUPs and the order of the CGR to modify or eliminate parts of them is based on an interpretation that leaves a number of legal instruments - and consequently, a number of voices and opinions - outside the system.

Planning law is inserted into a system that provides little room for negotiation and that uses prescriptive techniques in order to deliver clear commandments and permissions through the law. The instruments of planning law - mainly LUPs - do not have the capacity to produce specific solutions to local problems. Although representatives of private developers argued for a planning system that would allow rapid reaction and flexibility for urban development, they appeared reluctant to accept the idea of non-prescriptive rules (Priv1). A number of actors prefer the idea of “small and clear instruments of planning law” that do not have preference for any particular actor (Pub1, 22.12.16).

Although planning law provides legal devices that can be time limited and modest in their objectives this does not limit the constitutive role of the social practice of planning law in the built environment. Rather, it provides another characteristic of the ways in which planning law canalizes planning. Although the conceptualisation of the spatial is not well-developed in law, LUPs do frame how actors pursue their visions through the social practice of planning law. The absence of urbanistic rules in territories like Estación Central, still had profound spatial consequences on how the built environment was finally materialized. Planning law provides an arena where actors develop strategies, such as legalisms and the discourse of legal certainty, that embody visions requiring a limited notion of planning law. That arena, although it lacks elements enabling adaptation, or flexibility in response to the participation of residents and design by local authorities, is still a representation that socially produces space: planning visions and the dreams of actors are reconceptualised through planning law. Eventually, a clear objective developed by local actors requires to be translated into the planning law, through LUPs and urbanist rules, to be spatially binding.

Actors expect that planning law should provide a vision of the city or at least set out the procedures to obtain that vision. But planning law is severely limited and unable to meet the expectations that actors have for it. Planning law enforcement, through legalism and legal certainty, is somehow blind to the requirements of the city. However, law enforcement is still a fundamental aspect of planning and an element of how the social practice of planning law is constitutive of processes in the built environment. This combination of limited tools for planning law but unavoidable enforcement of it provides the context for the next step that I argue between the interpretation of formal planning law and its constitutive role in the built environment. The enforcement of planning law and the incapacity to enable negotiation between the different visions of the urban produces binary results in the built environment.

### 7.3.3. Enforcement and strategies in the social practice planning law

This section presents how the social practice of planning law is represented in visible spatial binaries. The notion of social practice of planning law is connected to the ability to judge something as legal or illegal. Previous chapters (4-6) revealed how the enforcement of planning law in spatial processes resulted from the actions of actors pursuing their objectives by any legal means. These legal endeavours in planning law have constituted the built environment through the normalisation of the binaries of the success or failure of legal strategies.

I use the concept of binaries to describe the constitution of the legal/ illegal dichotomy that was observed in social practices of planning law. Binaries have inherent limitations as explanations of the social world, since they rely on hierarchical simplifications of the real world (Rakowski, 1994). However, the legal enforcement of the law is inherently related to the enforcement binaries: if there is something that can be “legal”, according to a formalist interpretation of law, there has to be an “illegal” in order to make sense of the prescriptions of law. These categories become settled and taken for granted, normalising spatial results: a building, a planning development or a demolition gain certainty if they are legal (Azuela, 2016). There are legal processes and instruments that provide spaces for generating consensus or agreements: in fact, the planning process is based on that premise. However, when legal instruments fail, and processes are not finished, the enforcement of law aims to coercively impose the legal ruling of a jurisdictional or administrative court that declares something legal (or illegal).

The binaries of legal enforcement are also linked to the social practices described in this Thesis. Actors expect certainty through planning processes that result in a LUP in accordance with the requirements of planning law. However, I showed how the limitations of legal devices and their enforcement through formalism affect severely the spirit of planning law. This limitation is assumed by lawyers who translate, transform and exert power in the interpretation of planning law (D. G. Martin, Scherr and City, 2010). Nevertheless, these limitations do not prevent it influencing spatial processes. On the contrary, it explains how planning law is essential for the outcomes of strategies that actors embrace, particularly when processes reach courts or use formalisms in order to accomplish objectives, as the case studies showed. The example of legal practitioners using Court procedures to allow the continuity of a development project

(Providencia) or the technicality of the CGR deciding that a legal norm in a LUP legal norm was not in accordance with the GLUD, represent ways in which the social practice of law is conceptualized.

The role of legal binaries in the constitution of the spatial is also related to the deployment of strategies by actors. The analysis of rulings of the CGR showed how actors' strategies aimed to frame the debate regarding the legality/illegality of the actions of their counterparts, mostly through technicalities. The decision of the CGR could confirm the legality of an action, and therefore ensure its material fulfilment, or declare its illegality. The residents' strategies aimed at finding mistakes in the proceedings of Construction Permits, or the strategies to contest urban development in Independencia showed that the legal/illegal dichotomy defines legal strategies and practices of actors, independently of their success rate. In this sense, legal and non-legal technicians give spatial significance to the legal and the illegal, and legal moves dispute alternative worlds through legal arguments (Delaney, 2010). A similar process happens with the defence of Construction Permits or the request to limit the enforcement of a LUP: legal strategies using technicalities or procedures defined how places were constituted.

The case studies revealed groups who pursued specific objectives in the development of the planning disputes through arguments that disputed the legality of actions. Actors fought for their aims in the built environment in legal actions that pursued an "all or nothing" strategy for their aims. In the case of Providencia, residents hoped that the illegality of the permit would cancel the project, while in Estación Central the creative interpretations of the GOUD resulted in high rise buildings adjoined to one-floor houses of owners which did not sell their plots to real estate developers. After the modification of the LUP in Independencia, the territory was transformed from one with much high-rise urban development activity to a territory the DOM declared that did not allow any new high-density projects. The case studies revealed that actors' objectives in controversies could be achieved – changes to the built environment by developers, or residents maintaining the status quos. At the same time, the instruments available for reaching shared visions of the city were ineffective at either enabling visioning processes or providing certainty for actors. In sum, planning law practice is constituted through "absolutes" - to do something or to do nothing; and binaries – legal / illegal.

The formalist model for planning law influenced the strategies that actors followed in the built environment. This statement could be linked to a narrow understanding of the effects of

planning law in what seems a simple point, but it is it is implicated in complex strategies by actors to make something *legal*, particularly through Constructions Permits. As I have explained, planning law provides legal certainty for actors who use creative compliance to obtain results in the built environment. Through creative compliance and legalism, Construction Permits make something legal, as the Estación Central case showed. When these constructions are disputed, the legal/illegal dichotomy legitimises the planning result. When something is legal and then questioned afterwards, the defence is that developers only acted in compliance with the law. In other words, the Construction Permit naturalises and settles an interpretation that (creatively) complies with the law.

The legal / illegal strategy of actors is transformed locally. As the case-studies showed, the formal interpretation of planning law was discussed among national-level public officers, the CGR and local governments. Although scholars have argued that local enforcement of planning law is open to difference and flexible in relation to values such as social justice (Hubbard and Prior, 2018) the case studies revealed that local governments, and particularly DOMs, had limited power to counter the force of real estate development through Construction Permits. So, although the local enforcement of planning law is not consistent between central and local governments, it does not necessarily represent as the reason for different interpretations in a local versus national perspective. Rather, the differences appear to derive from formalist understandings of planning law. In that sense at a municipal level, the inner city Municipalities sometimes had differences with the DDU and SEREMI interpretations, but these differences focussed instead on legalistic interpretations of planning law.

In the fieldwork, the prescriptive enforcement of planning law revealed the strategies of specific actors. Strategies in the controversies aimed to obtain results in the built environment based on a strict defence of the legality of actions or, in contrast, actors that argued that actions were illegal and therefore not enforceable. However, the evidence shows that planning law offers the conditions for those actors that pursue objectives with the most extreme aims: in that sense, real estate developers that could exploit better an urbanistic rule could offer more to the owner of a land plot, and therefore, they had more probability of buying the land and make the investment. However, not all actors follow the same paths in their compliance with the law. Planning law potentially presents a path for those actors that pursue more radical stands in the built environment. For instance, the developers aiming to exploit land in most profit-driven way have legal techniques to increase the density of new projects causing the most change to the local built

environment. These technicalities allow a specific developer to offer more money to a landowner and probably prevail against other competitors.

An example of the consequences of these technicalities is in how actors differentiate themselves in the use of planning law. A number of respondents used the term “vulture real estate development” meaning those developers who bend rules to the maximum, without caring about the environment, public space, or even, in the medium term, the sustainability of the business since the bad press they gave to the real estate industry in general (Priv3, 16.01.17; Law3, 15.12.16). After a municipality reacts by limiting urban development, *vulture* real estate development, finds another place to continue the strategy of exploiting land with permissive urbanistic rules. Although in private interviews developers sliced critics of this kind of development, in the media and Courts there was no hesitation in defending the legality of Construction Permits such as those in Estación Central, based on the argument of legal certainty. However, according to one interviewee, this affects the long-term sustainability of the urban development business (Priv2, 10.01.17) because the permanent disruption of the urban environment in extreme cases like Estación Central gives the real estate developers bad press and provides arguments for changes in legislation.

On the other hand, the lack of better legal instruments with which to defend urban life or rights to the city is also part of the binary manifestation. The problems with new urban developments have motivated several neighbourhood associations to obtain legal heritage protection. In Providencia, an “unprecedented” number of applications for different areas were made to obtain declarations of a “typical heritage area”, which prevents an area being changed or developed by prohibiting the granting of Construction Permits without a special Commission under strict urbanistic rules (Prov1, 05.01.17). According to an official of DDU, in the last years, there has been a dramatic increment of these requests while problems derived from the agglomeration of mega-densities has created political pressure for local governments to limit the height of neighbourhoods (Alcaino). This type of urban development is challenged through changing the terms of Land Use Plans, shown in the case studies, where decreasing the maximum height of developments became the main objective of planning. The reaction of residents and political representatives aiming to limit urban development the most they can also be considered in binary terms.

The interpretation of the technicalities of planning law to look for problems in Construction Permits is also a strategy used by actors who are not real estate developers. Both public officials and civil groups also search for exceptions in planning law that support their actions against Construction Permits. For instance, strategic action was taken by the civil servants of the Municipality in Independencia to prevent new Construction Permits being issued when the time limit of the “freeze” had been reached but the new Land Use Plan was still not ready. Most of the strategic decisions by NGOs and residents was focussed on mistakes in the procedures for obtaining Construction Permits. According to representatives of residents and NGOs, rather than linking the problems of Construction Permits detected with specific effects of buildings on the neighbourhoods, the real reason for applying to the Courts was to have a ‘correct’ interpretation of the law upheld and avoid the new urban development to continue. Because of this, NGOs have developed legal expertise in order to limit the development of unwanted projects (NGO1, 25.01.17).

The binaries of legal/illegal, formal/informal, public/ private, do not normally take account of ranges, scales and circumstances that fall between the extremes. Law is deeply implicated in the division of things into legal and illegal. These binaries are materialised spatially by planning law, in which actors are forced to struggle to succeed in the terms of that dichotomy. The promise of certainty in planning law is based on a binarism: of doing something that will be legal, or in repealing what is illegal. Actors focussed their action on legal processes, but also in discourses regarding the legality/ illegality of Construction Permits. This division works not only for real estate developers and the logic of legal certainty, but for residents who want to know if their neighbourhood will be affected, and for public actors, who try to frame their decisions to fit with legality. All the cases sought legality but had to deal with the complex practicalities and procedures of that interpretation, where the logic of obtaining a final and secure result was, at least in the cases that we followed, difficult to obtain.

According to the views of some of the private developers interviewed, in the next few years, the built environment of the inner centre Municipalities of Santiago will be a strange mix of extremely high buildings and low-rise single storey housing. Whilst these extremes could be a little exaggerated, it is a good way to understand the results that development and regulation have produced in the city: all or nothing.

The enforcement of planning law is prescriptive and legal devices are severely limited by the GLUD. LUPs are required to produce procedures and to limit their intervention in accordance with planning law through the enactment of urbanistic rules. At the same time, the grant of Construction Permits also demands that procedures be followed and legal boundaries on what can be included be accepted. Illegal procedures make legal devices illegal and therefore mean they are invalid.

#### **7.4 Conclusion**

This chapter has examined the constitutive role of the social practice of planning law in the built environment. It has provided an account of the changes to the physical environment of the Municipalities in the three case studies. It then discussed ways in which the social practice of planning law constitutes the spatial results observed. The concepts of legalistic practice, visions through the law and binaries were explained.

By examining the role of planning law and exploring how it is constitutive of the built environment, the chapter aimed show what this approach can bring to the discussion of planning law by considering the spatialization of legal binaries, the reception of the visions of the city from different actors and formalistic strategies. With these reflections, in the next chapter I give some concluding remarks for the Thesis.

## Chapter 8. Final Remarks.

The initial interest of this research was to investigate the role of planning law in the spatial configuration of Santiago. Chapter 7 considered this interest in the light of the research undertaken. Social practices contribute to the constitution of the built environment of the inner centre of Santiago through discourses -legalism and legal certainty-; through visions and conceptualizations of what planning law should be. These are canalised through legal devices; and through strategies expressed in the form of legal/illegal binaries. The production of the the built environment is canalized by planning law providing limited parameters for public and private actors to engage in ordinary but yet significant interactions about the enactment of the built environment. Drawing on these elements of practices of planning law identified in the constitution of the built environment, I intend to discuss how this evidence enriches an understanding of planning law in the context of urban reform and planning outcomes, providing better insights into ‘the legal’ and its role in the constitution of place.

This final chapter intends only to reevaluate some of the initial thoughts and present areas for future research. These remarks are structured as follows. First, I reflect on the findings of the research and the answers to the research question. Secondly, I discuss some implications of the research for the practice of planning law and planning studies. Finally, I suggest areas for further research.

### 8.1 Summary of Research findings on social practices

The aim of this Thesis has been to discover how the social practice of planning law is spatialised in the built environment. I have been inspired by methodologies that start from the reconceptualization of planning law as constitutive of the built environment through its social practice. The previous chapter describes events in which the effects of planning law were manifested. The evidence comes from cases located in three municipalities of Santiago, in the period between 2007-2017 and focuses on the research themes of technicalities, discourses and ways of doing planning law used by actors involved in city making.

The material examined in this Thesis has supported the claim that the social practices of the practitioners of planning law - lawyers, civil servants, developers, NGOs, and residents - are also constitutive of the built environment and showed that these actors’ “ways of doing things”

through planning law are certainly significant. I researched the paths of these ways of doing - from legal rules and regulations to their spatial results. Particularly, a formalistic approach to law is a central element in the social practice that I have examined in this Thesis. This formalism relies on strict interpretations of 'the letter of the law' rather than interpretations of planning law that refer to the objectives of planning and the social contexts of its implementation. Formalism affects the ways in which planning law rules and regulations become enmeshed in the legal cultures and perceptions of actors in the Chilean legal system and in legal procedures which determine the relevance of planning law in spatial processes. The next paragraphs are dedicated to reflecting on how the analysis made throughout the thesis allow me to answer the sub research questions posed in the First Chapter. After that, I discuss the impact of this research for future research on planning law.

8.1.1. What are the elements that constitute the social practice of planning law? How do actors use planning law for their objectives in the city?

The social practice of planning law understood as the common understandings held by legal and non-legal actors involved in the interpretation of planning law and its enforcement was documented in the Chapter 4-6. The research revealed that the legal devices created by planning law canalised actors into making formalistic interpretations that were disputed and reconfigured through spatial processes. That canalisation of the objectives and intentions certainly influenced strategies for obtaining results and the results of planning processes.

The first element that constitutes this social practise is related to the design of the planning system by the relevant rules and regulations of planning law based on legal devices of Construction Permit and LUPs. The analysis of rules and regulations of planning law revealed that social practice was configured through two elements. First, legal devices canalised planning spatial objectives through the design of urban legal rules and regulations: Land Use Plans and Construction Permits established a distinct path for planners and for any actor involved in the discussion of the future of the city. These legal devices are entangled with private property. The design of legal rules tends to reduce limitations on, and create incentives for, rights in private property, while landowners interpret planning law rules and regulations to assure these rights in Construction Permits.

Secondly, the research found that legal devices have increasingly encountered conflict and resistance in their spatial manifestations. The research showed how actors develop legalistic interpretations of planning law, which were especially evident from the examination of the rulings of the CGR. On the one hand, this examination explained the process of legal interpretation by the CGR and the motivations for strict interpretations of the rules and regulations of planning law. Planning processes were limited and transformed through legal conceptualisations based on the formalist interpretations elaborated in the CGR offices. On the other hand, the research showed how actors involved in controversies felt it necessary to design legal strategies that followed the CGR's process of conducting urban discussions within a formalist interpretation of planning law. In that sense, the social practice of planning law is a legalistic procedure in which actors find a legal narrative that suits their particular objectives. The research found that in the 10 years covered by the analysis, almost all private developers obtained favourable results, and from this point of view, there is room for changes to the legalistic approach of the CGR.

Thirdly, the case studies revealed that the social practice of planning law constitutes the built environment through translations of the law by lawyers, Courts and civil servants. Central, Regional and local authorities, the Courts and the CGR make up a complex system where the uniformity and abstraction of planning law is transformed into a variable, multiple and complicated arrangement. Following the three cases showed how the associated neutrality and clarity of planning law is transformed, interpreted, constituted and disputed: time and power allowed the development of buildings that materialised an instance of legality which ensured the spatial consolidation of a specific moment. The specific interpretation of actors was consolidated in specific documents (the construction permits in Estación Central, Providencia and Independencia) which revealed crucial in order to protect those construction processes after legal procedures were filed against them. The notion of legal certainty was consolidated under the defence on how the legal documents translated an interpretation of planning law that could be contested but not demolished.

In that sense, although the constitution of law on space is continually happening, there are elements that make this perpetual constitution concrete, the legal devices that sustain concrete decisions. In that sense, the construction permits and LUPs in Estación Central, Providencia and Independencia concretized a through the translations of a specific moment of

translations made by actors of a specific moment. The strategies the actors used to enforce the law showed that the influence of strategic but literal interpretation of planning law rules and regulation was central in the constitution of the built environment. The case studies revealed that the interpretation of rules and regulations of planning law was instrumentalised by actors with technicalities of legal knowledge through the achievement of legal devices.

### 8.3 Research into planning law

If this Thesis had taken a positivist approach to the law, it would have argued for several changes to the rules and regulations of planning law, and these kinds of changes are also indicated in the narrative of events the research developed. The irrelevance of public rights and their lack of recognition in LUPs and other planning instruments would be central to a positivist critique. At the same time, a call for processes allowing negotiations and agreements to overcome the binaries in the spatial constitution of planning law would be developed. But rather than advocate a more exact crafting of the rules and regulations of planning law implied by such an approach, this Thesis argues that legal reforms of planning should critically reflect on “the ways of doing” that the legal system presents and their effect on spatial outcomes such as those in Estación Central. Even though Estación Central produced a range of legal reforms, restricting the creation of areas with no urbanistic rules in order to limit the intervention of the CGR, “the ways of doing” of actors involved in the controversy will remain almost unchanged, particularly if the ways of crafting planning laws remain the same.

The research has focussed on a little-noticed element in the discussion of legal change in Chile: the role of social practices through planning law adopted by actors involved in city making. A focus on the constitutive role of the social practices of planning law on space can help escape the reduction of research on planning law to research on how to craft better rules and regulations of planning law. Although it is almost a platitude that the legal frameworks of planning matter in spatial outcomes, this has not been rendered as research that accounts for how actors’ “ways of doing things legally” affect planning and spatial results. And although planning law is, of course, interested in space, the theoretical approaches are limited. For example, research in planning law does not conceive that space could relativize core concepts of legal practices such as the rule of law or the interpretations of judges. Also, at least in Chile, how planning law canalisation of planning naturalises its outcomes. Things such the value of a construction permit for private developers or conceiving LUPs as ways to produce changes in

the production of neighbourhoods and cities are fixed in the legal terms and narratives that were described during this thesis.

Reading rules and regulations of planning law, rulings and cases, spatially has allowed the examination of the social practice of planning law to produce narratives that challenge prevailing understandings and to explore possible alternatives to the existing material results in the built environment of Santiago. By researching the social practices of planning law from a spatial perspective, I suggest an understanding of how these practices are implicated in the formation of the built environment of the three municipalities of Santiago.

#### 8.4 Further Research

This research has decoded the role of the social practice of planning law in the spatial configuration of three municipalities of Santiago and considered the significance of the concept of social practice. There are many unknowns and limitations to this line of research. With regards to the social practice of planning law, the context and configuration of places can be used to compare relational aspects of planning law. Alternative consequences of different or similar rules and regulations of planning law studied as “ways of doing” require research that includes the particularities of places in cities. This topic has previously been explored in research at the municipal level as a way of decentralising assumptions about abstract or nationally-applicable notions of planning law (Hubbard and Prior, 2018). However, there is little research specifically on the meaning of the social practices of planning law, although there has been a call for research on how the practice of law coproduces places (Bennett and Layard, 2015).

Given that there are a whole range of actors involved in the social practice of planning law, further research needs to be conducted in order to determine the specific rationales of specific actors regarding their roles, relations and contexts. Very little is known, for instance, of the rationales and motivations of actors such as private developers, or the influence of the attitudes to planning law of specific civil servants, such as DOMs. Continuing the studies that Valverde (2003) developed on the formation of legal knowledges in different arenas, research could gain a far deeper understanding of planning law if the rationales and experiential interpretations of what planning law is and should be were examined from the perspectives of those who craft and interpret its logic on an everyday basis.

Such an endeavour requires in-depth methodologies such as ethnographic approaches that can document everyday practices in relation to planning law in order to expand this kind of research. This opens lines of investigation that go beyond the focus on Construction Permits and Land Use Plans developed in this Thesis. Sassen (2017) has argued that a better understanding of the legal mechanisms behind urbanisation processes in global cities requires inter-disciplinary studies of planning and law. The conclusions of this research suggest that a focus on the social practices of actors involved in city making is essential to understanding how planning law could better serve its objectives.

## 9. Bibliography

- Aalbers, M. B. and Gibb, K. (2014) 'Housing and the right to the city : introduction to the special issue', *International Journal of Housing Policy*. Taylor & Francis, 14(3), pp. 207–213. doi: 10.1080/14616718.2014.936179.
- Adshead, J. (2014) 'Revisiting the ideologies of planning law', *International Journal of Law in the Built Environment*, 6(1/2), pp. 174–193. doi: 10.1108/IJLBE-10-2013-0038.
- Alexander, E. R. (2016) 'There is no planning—only planning practices: Notes for spatial planning theories', *Planning Theory*, 15(1), pp. 91–103. doi: 10.1177/1473095215594617.
- Alterman, R. (2013) 'Guest editorial : comparative research at the frontier of planning law The case of compensation rights for land use regulations', *International Journal of Law in the Built Environment*, 3(2), pp. 100–112. doi: 10.1108/17561451111148220.
- Amin, A. and Graham, S. (1997) 'The Ordinary City', *Transactions of the Institute of British Geographers*, 1(2), pp. 14–429. doi: 10.1111/j.0020-2754.1997.00411.x.
- Azuela, A. (2016) *La ciudad y sus reglas Sobre la huella del derecho en el orden urbano*. 1st edn. Ciudad de México: UNAM, Instituto de Investigaciones Sociales.
- Azuela, A. and Cosacov, N. (2013) 'Transformaciones urbanas y reivindicaciones ambientales: En torno a la productividad social del conflicto por la construcción de edificios en la Ciudad de', *EURE (Santiago)*, 39(118), pp. 149–172. doi: 10.4067/S0250-71612013000300007.
- Azuela, A. and Mussetta, P. (2009) 'Algo mas que el ambiente. Conflictos sociales en tres áreas naturales protegidas en México.', *Revista de Ciencias Sociales*, 1(15), p. 311.
- Azuela, A., Saavedra, C. and Herrera, C. (2016) 'Tumulto de sentencias. Una exploración cuantitativa del litigio urbano en México.', in Azuela, A. (ed.) *La ciudad y sus reglas. Sobre la huella del derecho en el orden urbano*. Ciudad de México, p. 482.
- Banakar, R. and Travers, M. (eds) (2013) *Law and Social Theory*. Oregon: Hart Publishing.
- Bartel, R. *et al.* (2013) 'Legal geography: An Australian perspective', *Geographical Research*, 51(4), pp. 339–353. doi: 10.1111/1745-5871.12035.
- Bartel, R. and Graham, N. (2016) 'Property and place attachment : a legal geographical analysis of biodiversity law reform in New South Wales', 54(August), pp. 267–284. doi: 10.1111/1745-5871.12151.
- Bayón, M. C. and Saraví, G. A. (2013) 'The Cultural Dimensions of Urban Fragmentation', *Latin American*

- Perspectives*, 40(2), pp. 35–52. doi: 10.1177/0094582x12468865.
- Bennett, A. and Checkel, J. T. (2015) *Process Tracing: from philosophical roots to best practices*. Cambridge: Cambridge University Press.
- Bennett, L. and Layard, A. (2015) ‘Legal Geography: Becoming Spatial Detectives’, *Geography Compass*, 7, pp. 406–422.
- Berrisford, S. (2011) ‘Why It Is Difficult to Change Urban Planning Laws in African Countries’, *Urban Forum*, 22(3), pp. 209–228. doi: 10.1007/s12132-011-9121-1.
- Blaikie, N. (2010) *Designing Social Research*. 2ns edn. Cambridge: Polity Press.
- Blomley, N. K. (2003) ‘From “What?” to “So What?”: Law and Geography in Retrospect’, in *Law and Geography*. Law and Geography. doi: 10.1093/acprof.
- Blomley, N. K. (2009) ‘Making Space for Law’, *The SAGE handbook of political geography*, 5608(October), pp. 155–167. doi: 10.1080/00045608.2014.941738.
- Booth, P. (2007) ‘The control of discretion: Planning and the common-law tradition’, *Planning Theory*, 6(2), pp. 127–145. doi: 10.1177/1473095207077585.
- Booth, P. (2016) ‘Planning and the rule of law’, *Planning Theory & Practice*, 9357(July), pp. 1–17. doi: 10.1080/14649357.2016.1183810.
- Braverman, I., Blomley, N. K., et al. (2014) *The Expanding Spaces of Law*. 1st edn. Edited by I. Braverman et al. Stanford, California: Stanford University Press.
- Braverman, I., Blomley, N., et al. (eds) (2014) *The Expanding Spaces of Law: A Timely Legal Geography*. Stanford, California: Stanford University Press.
- Butler, C. (2015) ‘Critical Legal Studies and the Politics of Space’, pp. 1–29.
- Campbell, H., Tait, M. and Watkins, C. (2014) ‘Is there Space for Better Planning in a Neoliberal World? Implications for Planning Practice and Theory’, *Journal of Planning Education and Research*, 31(1), pp. 45–49.
- Cheshire, P., Nathan, M. and Overman, H. (2014) ‘Planning: reforms that might work and ones that won’t’, *Urban Economics and Urban Policy*, pp. 127–154. doi: 10.4337/9781781952528.00015.
- Cordero, E. (2009) ‘LOS PRINCIPIOS Y REGLAS QUE ESTRUCTURAN EL ORDENAMIENTO JURÍDICO CHILENO \* THE STRUCTURAL RULES AND PRINCIPLES OF THE CHILEAN LEGAL ORDER’, *Ius Et Praxis*, 15(2), pp. 11–49.
- Cordero, E. and de Derecho, X. I. X. (2006) ‘La Dogmática Constitucional de la propiedad en el Derecho Chileno.’, *Revista 1 pp*, pp. 125-148 SRC-GoogleScholar FG-0.
- Cordero, L. (2006) ‘La Contraloría General De La República Y La Toma De Razón: Fundamento De

Cuatro Falacias', XXXVI *Jornadas de Derecho Público, el 01 de diciembre de 2006.*, pp. 1–21. Available at: [https://www.google.cl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB0QFjAA&url=https://www.ucursos.cl/derecho/2011/1/D123A0632/3/material\\_docente/bajar?id\\_material=350409&ei=lTMfVbKTCcnfsAWMgYHIBw&usg=AFQjCNE9tb8o](https://www.google.cl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB0QFjAA&url=https://www.ucursos.cl/derecho/2011/1/D123A0632/3/material_docente/bajar?id_material=350409&ei=lTMfVbKTCcnfsAWMgYHIBw&usg=AFQjCNE9tb8o).

Cordero Quinzacara, E. (2007) 'El Derecho Urbanístico, los instrumentos de planificación territorial y el régimen jurídico de los bienes públicos', *Revista de Derecho de la Pontificia Universidad Católica de Valparaíso*, 2do Semest(XXIX), pp. 269–298.

Cordero Quinzacara, E. (2017) 'La formación del Derecho urbanístico chileno a partir del siglo XIX: de la legislación urbanística al Derecho urbanístico integrado', *Revista de derecho (Valdivia)*, 30(1), pp. 127–152. doi: 10.4067/S0718-09502017000100006.

Dagan, H. (2018) 'The Real Legacy of American Legal Realism', 38(1), pp. 123–146. doi: 10.1093/ojls/gqy001.

Davy, B. (2012) *Land policy: planning and the spatial consequences of property*.

Delaney, D. (2003) 'Beyond the World: Law as a Thing of This World', in *Law and Geography*. doi: 10.1093/acprof.

Delaney, D. (2014) 'Legal geography I: Constitutivities, Complexities, and Contingencies', *Progress in Human Geography*, 39(1), pp. 96–102. doi: 10.1177/0309132514527035.

Von Der Dunk, A. *et al.* (2011) 'Defining a typology of peri-urban land-use conflicts - A case study from Switzerland', *Landscape and Urban Planning*, 101(2), pp. 149–156. doi: 10.1016/j.landurbplan.2011.02.007.

Fainstein, S. (2000) 'New Directions in Planning Theory', *Urban Affairs Review*, 35(4), pp. 451–478. doi: 10.1177/107808740003500401.

Fainstein, S. S. (2010) *The Just City*. 1st edn. Cornell University Press.

Fainstein, S. S. and Defilipis, J. (eds) (2016) *Readings in Planning Theory*. 4th edn. West Sussex: Wiley Blackwell.

Fernández, E. (2003) 'Del Código Civil al Estatuto de la Ciudad: algunas notas sobre la trayectoria del Derecho Urbanístico en Brasil', *Eure*, 29, pp. 63–78. doi: 10.4067/S0250-71612003008700005.

Fernandes, E. and Maldonado, M. M. (2009) 'Law and Land Policy in Shifting Paradigms and Possibilities for action', *Policy*, (July).

Fischel, W. A. (2015) *Zoning Rules! The economics of land use regulation*. Lincoln Institute of Land Policy.

Ford, R. T. (2012) 'Law and borders', *Alabama Law Review*, 64(1), pp. 123–139.

- Forest, B. (2000) 'Placing the law in Geography', *Historical Geography*, 28, pp. 5–12.
- Friedman, L. M. (1969) 'Legal Legal Culture Culture and Social Development', *Law & Society Review*, 4(1), pp. 29–44.
- Frug, G. (1999) *City Making: Building communities without building walls*. 4th edn. Princeton: Princeton University Press.
- Frug, G. (2010) 'A " rule of law " for cities'.
- Gil, D. (2013) 'The Political Fragmentation of Land Use Governance in Santiago , Chile , and its Implications for Socioeconomic Residential Segregation', (August), pp. 119–164.
- Gilbert, A. (2002) 'Power, Ideology and the Washington Consensus: The Development and Spread of Chilean Housing Policy', *Housing Studies*, 17(2), pp. 305–324. doi: 10.1080/02673030220123243.
- Glasser, M. D. (2014) 'The World Bank Legal Review, Volume 5:Fostering Development through Opportunity, Inclusion, and Equity', *The World Bank Legal Review, Volume 5:Fostering Development through Opportunity, Inclusion, and Equity*, (March). doi: 10.1596/978-1-4648-0037-5.
- Gunder, M., Mandanipour, A. and Watson, V. (2020) *The Routledge Handbook of Planning Theory, Urban Policy and Research*. doi: 10.1080/08111146.2020.1801140.
- Gutiérrez, G. and Peña Cortés, F. (2011) 'Estado y situación actual de los planes reguladores comunales en la región de la Araucanía (Chile)', *Daapge*, 11(16), pp. 97–119. Available at: <http://dialnet.unirioja.es/servlet/articulo?codigo=3912547&info=resumen&idioma=ENG>.
- Gyourko, J., Saiz, A. and Summers, A. (2008) 'A new measure of the local regulatory environment for housing markets: The Wharton residential land use regulatory index', *Urban Studies*, 45(3), pp. 693–729. doi: 10.1177/0042098007087341.
- Harris, J. W. (1989) 'Unger ' s Critique of Formalism in Legal Reasoning : Hero , Hercules , and Humdrum', *The Modern Law Review*, 52(1), pp. 42–63.
- Harrison, C. and Bedford, T. (2003) 'Environmental Gains? Collaborative Planning, Planning Obligations, and issues of closure in Local Land-Use Planning in the UK', in Harrison, C. and Holder, J. (eds) *Law and Geography*. Oxford: Oxford University Press.
- Harvey, D. (1976) 'Capital , and Class Struggle Capitalist Societies around the Built Environment in Advanced Capitalist Societies', *Politics & Society*, 6(3), pp. 265–295.
- Harvey, D. (2005) *A brief History of Neoliberalism*. 5th edn. Oxford: Oxford University Press.
- Harvey, D. (2012) *Rebel Cities: From the right to the city to the Urban Revolution*.
- Hatcher, C. (2014) 'Law , Space and the City : A Legal Geography of Urban Change of Post-Socialist

Bishkek, Kyrgyzstan', p. 234.

Hengstermann, A. and Hartmann, T. (2018) *Instruments of land policy, Instruments of Land Policy*. doi: 10.4324/9781315511658-3.

Hernando, A. and Razmilic, S. (2015) 'Propuestas de Política Pública'.

Holder, J. and Harrison, C. (2003) 'Connecting Law and Geography', in *Law and Geography*. doi: 10.1093/acprof.

Houston, D. *et al.* (2018) 'Make kin , not cities ! Multispecies entanglements and “ becoming-world ” in planning theory'. doi: 10.1177/1473095216688042.

Hubbard, P. and Lees, L. (2018) 'The right to community?', *City*. Taylor & Francis, 22(1), pp. 8–25. doi: 10.1080/13604813.2018.1432178.

Hubbard, P. and Prior, J. (2018) 'Law, pliability and the multicultural city: Documenting planning law in action', *Geographical Journal*, 184(1), pp. 53–63. doi: 10.1111/geoj.12212.

Israel, R. and Oñate, E. (2012) 'La Función Controlara, Políticas Públicas y Calidad de la Democracia', in *La Contraloría General de la República: 85 años de vida institucional (1927-2012)*. Santiago: Contraloría General de la República, p. 494.

James, A. (2012) 'Seeking the analytic imagination: reflections on the process of interpreting qualitative data', *Qualitative Research*, 13(5), pp. 562–577. doi: 10.1177/1468794112446108.

Jimenez, G. (2008) *LA OBLIGACIÓN DE CESIÓN DE TERRENOS EN MATERIA URBANÍSTICA*. Universidad de Chile.

Latour, B. (2010) *The Making of Law: An Ethnography of the Conseil D'Etat*. Cambridge: Polity Press.

Layard, A. (2010) 'Shopping in the Public Realm: The Law of Place', *Journal of Law and Society*, 37(May), pp. 412–441.

Layard, A. (2018) 'Property and planning law in England: facilitating and countering gentrification', *Handbook of Gentrification Studies*, pp. 444–466. doi: 10.4337/9781785361746.00038.

Lefebvre, H. (1991) *The Production of Space*. Oxford: Blackwell.

Levi, R. and Valverde, M. (2008) 'Studying Law by Association: Bruno Latour Goes to the Conseil d'État', *Law & Social Inquiry*, 33(03), pp. 805–825. doi: 10.1111/j.1747-4469.2008.00122.x.

MacCormick, N. (1989) 'The Ethics of Legalism', *Ratio Juris*, 2(2), pp. 184–193. doi: 10.1111/j.1467-9337.1989.tb00036.x.

Macleod, G. (2002) 'From Urban Entrepreneurialism to a “ Revanchist City ”? On the Spatial Injustices

of Glasgow 's Renaissance'.

Mandelker, D. R. and Stamper, H. A. (2002) 'Derecho urbanístico y ordenación urbanística excluyente en los Estados Unidos de América \*', pp. 169–186.

Marcuse, P. (2009) 'From critical urban theory to the right to the city', *City*, 13(2–3), pp. 185–197. doi: 10.1080/13604810902982177.

Martin, D. G., Scherr, A. W. and City, C. (2010) 'Making law, making place: lawyers and the production of space', *Progress in Human Geography*, 34(2), pp. 175–192. doi: 10.1177/0309132509337281.

Martin, Deborah G., Scherr, A. W. and City, C. (2010) 'Making law, making place: Lawyers and the production of space', *Progress in Human Geography*, 34(2), pp. 175–192. doi: 10.1177/0309132509337281.

McAuslan, P. (2013) 'Towards a just planning system: The contribution of law', *Journal of Planning and Environment Law*, (2), pp. 145–157.

Mora, R. and Zapata, I. (2004) 'Comercio, espacio público y gestión local: el caso de Providencia en Santiago de Chile. Trade, public space and local governance: the case of Providencia in Santiago, Chile.', *Revista de Urbanismo*, (9), pp. 29–48.

Murray, M. J. (2017) *The Urbanism of Exception: the dynamics of global city building in the twenty first-century*. New York, NY: Cambridge University Press.

O'Donnell, T. (2016) 'Legal geography and coastal climate change adaptation: the Vaughan litigation', *Geographical Research*, 54(3), pp. 301–312. doi: 10.1111/1745-5871.12170.

Ochoa Tobar, F. E. (2012) 'El camino al infierno está empedrado de buenas intenciones: urbanismo, medio ambiente y deberes constitucionales', *Revista de derecho (Valdivia)*, 25(2), pp. 159–175. doi: 10.4067/S0718-09502012000200007.

OECD (2015) *In It Together: Why Less Inequality Benefits All*. Paris: OECD Publishing.

Parizeau, K. and Lepawsky, J. (2015) 'Legal orderings of waste in built spaces', *International Journal of Law in the Built Environment*, 7(1), pp. 21–38. doi: 10.1108/IJLBE-01-2014-0005.

Paunio, E. (2009) 'Beyond Predictability - Reflections on legal Certainty and the Discourse Theory of Law in the EU Legal Order', *German Law Journal*, 10(11), pp. 1469–93.

Peck, J., Theodore, N. I. K. and Brenner, N. (2013) 'Neoliberal Urbanism Redux?', 37(May), pp. 1091–1099. doi: 10.1111/1468-2427.12066.

Pendall, R., Puentes, R. and Martin, J. (2006) 'From Traditional to Reformed: A Review of the Land Use Regulations in the Nation's 50 largest Metropolitan Areas', *Brookings Institution Research Brief*, pp. 1–39. Available at: [http://www.brookings.edu/metro/pubs/20060802\\_Pendall.pdf](http://www.brookings.edu/metro/pubs/20060802_Pendall.pdf).

- Philippopoulos-Mihalopoulos, A. (2007) 'Law and the City', p. 302. doi: 10.4324/9780203945155.
- Philippopoulos-Mihalopoulos, A. (2010) 'Spatial justice: law and the geography of withdrawal', *International Journal of Law in Context*, 6(August 2010), pp. 201–216. doi: 10.1017/S174455231000011X.
- Philippopoulos-Mihalopoulos, A. (2018) 'And For Law: Why Space cannot be understood without Law', *Law, Culture and the Humanities*. doi: 10.1177/1743872118765708.
- Pinson, G. and Journel, C. M. (2016) 'The Neoliberal City – Theory , Evidence , Debates', *Territory, Politics, Governance*. Taylor & Francis, 4(2), pp. 137–153. doi: 10.1080/21622671.2016.1166982.
- Platt, R. H. (1996) *Land Use and Society: Geography, Law and Public Policy*. Washington, D.C.: Island Press.
- Poduje, I. (2008) 'Participación ciudadana en proyectos de infraestructura y planes reguladores', *Temas de la Agenda Pública, Instituto de Estudios Urbanos y Territoriales Facultad de Arquitectura, Diseño y Estudios Urbanos UC.*, 3(22).
- Pue, W. W. (1990) 'Wrestling With Law: (Geographical) Specificity vs. (Legal) Abstraction', *Urban Geography*, 11(6), pp. 565–585. doi: 10.2747/0272-3638.11.6.566.
- Rajevic, E. (2000) 'Derecho Y Legislacion Urbanistica En Chile', *Revista de Derecho Administrativo Económico*, II(Julio-Diciembre), pp. 527–548.
- Rajevic, E. (2010) 'El paulatino pero insuficiente desarrollo del Derecho urbanístico en Chile: en tránsito de la adolescencia a la madurez', *Fórum de Direito Urbano e Ambiental*, 9(54), pp. 61–70.
- Rajevic, E. (no date) 'Rajevic, Enrique'.
- Rajevic, E. and Garcés, M. F. (2009) 'Control de legalidad y procedimiento de toma de razón', in Consorcio para la Reforma del Estado (ed.) *Un mejor Estado para Chile, Propuestas de modernización y reforma*. Santiago de Chile, pp. 613–646.
- Ratnapala, S. (2013) *Jurisprudence*. 2nd edn. New York: Cambridge University Press.
- Rickards, L. *et al.* (2016) 'Urban studies after the age of the city', *Urban Studies*, 53(8), pp. 1523–1541. doi: 10.1177/0042098016640640.
- Riles, A. (2004) 'A New Agenda for the Cultural Study of Law: Taking on the Technicalities', *Ssrn*. doi: 10.2139/ssrn.558605.
- Riles, A. (2011) *Collateral Knowledge: Legal Reasoning in the Global Financial Markets*. Chicago: Chicago Series in Law and Society.
- Robinson, D. F. (2013) 'Legal geographies of intellectual property, “traditional” knowledge and biodiversity: Experiencing conventions, laws, customary law, and Karma in Thailand', *Geographical Research*, 51(4), pp. 375–386. doi: 10.1111/1745-5871.12022.

- Rydin, Y. (2012) 'Using Actor – Network Theory to understand planning practice : Exploring relationships between actants in regulating low-carbon commercial development'. doi: 10.1177/1473095212455494.
- Rydin, Y. (2013) *The future of planning: beyond growth dependence*. Bristol: Policy.
- Sabatini, F. (2000) 'Reforma de los mercados de suelo en Santiago, Chile: efectos sobre los precios de la tierra y la segregación residencial', *Eure (Santiago)*. Available at: <http://www.scielo.cl/scielo.php?pid=S0250-71612000007700003&scr..>
- Schlack, E. and Vicuña, M. (2011) 'Componentes normativas de alta incidencia en la nueva morfología del Santiago metropolitano: Una revisión crítica de la norma de "Conjunto Armónico"', *Eure*, 37(111), pp. 131–166. doi: 10.4067/S0250-71612011000200006.
- Sebok, A. J. (1995) 'Misunderstanding Positivism', *Michigan Law Review*, 93(7), pp. 2054–2132.
- Shapiro, S. J. (2011) 'Legality'.
- Silva, E. R. (2011) 'Deliberate improvisation : Planning highway franchises'. doi: 10.1177/1473095210386067.
- Stinchcombe, A. L. (1999) 'Certainty of the Law: Reasons, Situation-Types, Analogy, and Equilibrium', *Journal of Political Philosophy*, 7(3), pp. 209–224. doi: 10.1111/1467-9760.00074.
- Storper, M. (2016) 'The neo-liberal city as idea and reality'. doi: 10.1080/21622671.2016.1158662.
- Swyngedouw, E., Moulaert, F. and Rodriguez, A. (2002) 'liberal Urbanization in Europe : Large-Scale Urban Development Projects and the New Urban Policy', *Antipode*, (July), pp. 542–577.
- Talen, E. (2012) *City Rules: how regulations affect urban form*. London: Island Press.
- Tamanaha, B. Z. (2017) *A realistic theory of law, A Realistic Theory of Law*. doi: 10.1017/9781316979778.
- Theodore, N., Peck, J. and Brenner, N. (2009) 'Urbanismo neoliberal: la ciudad y el imperio de los mercados', *Temas Sociales SUR*, p. 12. Available at: [www.sitiosur.cl](http://www.sitiosur.cl).
- Treviño, A. J. (2013) 'Sociological Jurisprudence', in Banakar, R. and Travers, M. (eds) *Law & Social Theory*. 2nd edn. Portland, Oregon, p. 368.
- Uitermark, J. and Nicholls, W. (2017) 'Planning for social justice: Strategies, dilemmas, tradeoffs', *Planning Theory*, 16(1), pp. 32–50. doi: 10.1177/1473095215599027.
- UN-Habitat (2016a) *Urban Law*. Nairobi.
- UN-Habitat (2016b) *Urbanization and Development : Emerging Futures: World Cities Report*.
- UNCTAD (2016) *The United Nations Conference on Trade and Development, Trade and Development Commission*

- Intergovernmental Group of Experts on Competition Law and Policy*. doi: 10.4324/9781315070629-5.
- Unger, R. M. (1976) *Law in Modern Society: Toward a Criticism of Social Theory*. New York: The Free Press. doi: ISBN 0-02-932860-8.
- United Nations: Department of Economic and Social Affairs (2018) *World Urbanization Prospects: The 2018 Revision, Online Edition*. Available at: <https://esa.un.org/unpd/wup/> Publications.
- Valverde, M. (2003) *Law's Dream of a Common Knowledge, The Cultural Lives of Law*. Princeton: Princeton University Press.
- Valverde, M. (2011) 'Seeing like a city: The dialectic of modern and premodern ways of seeing in urban governance', *Law & Society Review*, 45(2), pp. 277–312.
- Valverde, M. (2012) *Everyday Law On The Street: City Governance In an Age of Diversity*. 12st edn. Chicago and London: The University of Chicago Press. doi: 10.1177/0094306114531284zz.
- Vergara, A. and Zuñiga, F. (2008) 'Contrapunto sobre el rol de la Contraloría General de la República.', *Revista Chilena de Derecho*, 35, pp. 393–398.
- Vicuña del Río, M. (2013) 'El marco regulatorio en el contexto de la gestión empresarialista y la mercantilización del desarrollo urbano del Gran Santiago, Chile', *Revista INVI*, 28, pp. 181–219. doi: 10.4067/S0718-83582013000200006.
- Viveros, F. (2002) 'Estado y Legalidad: El peso de la noche en la sociedad civil chilena', in Sociedad Chilena de Filosofía Jurídica y Social (ed.) *Anuario de Filosofía Jurídica y Social*. Valparaíso, p. 700.
- Watson, V. (2009) 'Seeing from the South: Refocusing Urban Planning on the Globe's Central Urban Issues', *Urban Studies*, 46(11), pp. 2259–2275. doi: 10.1177/0042098009342598.
- Weinrib, E. J. (1988) 'Legal Formalism : On the Immanent Rationality of Law', *The Yale Law Journal*, 97(6).
- Wood, D. (1999) *Law and the Built Environment*. London: Macmillan.
- Friedmann, J. (1987) *Planning in the Public Domain: From Knowledge to Action*, Princeton, NJ: Princeton University Press.

