

WESTCLIFF RESIDENTS ASSOCIATION

GUIDELINES FOR RESIDENTS WHO WISH TO DEVELOP THEIR PROPERTIES

1. Introduction

- 1.1 Westcliff is one of the older townships in Johannesburg and this, together with its location on a prominent ridge and the type of development found there, gives it a special character that the City Council and the residents of the area have over the years sought to retain. The Authorities recognise that the policy of densification within the City does not generally apply to Westcliff and have declared it an Environment Control Area. The ambience and character of our suburb is enhanced by large properties, the ridges, heritage architecture, visually penetrable boundary walls, beautiful gardens, and a sense of space.
- 1.2 Any proposed developments in the suburb, which include alterations, extensions or demolitions and rebuilding of structures or changing the usage of properties in Westcliff, will be subject to a number of controls and safeguards.
- 1.3 Residents may have unknowingly transgressed the provisions of some or a number of the above controls and have as a consequence suffered unnecessary anxiety, delays and/or cancellation of building programmes as a result.
- 1.4 This document has been developed by the Westcliff Residents' Association to assist you in avoiding these unnecessary pitfalls should you decide at any time to embark upon the development or improvement of your property. It seeks to explain the various laws and bodies that govern a new development of your property, or a change of its usage.
- 1.5 Whilst most architects, town planners, and estate agents should be conversant with the applicable laws and controls for any development in Westcliff, recent experience has shown that even these professionals are not always aware of all aspects of these requirements. You ought therefore to use this document as a checklist to be discussed with your adviser and insist that your development or application complies with the suggested processes in all respects.

2. The Legal and Regulatory Framework

The legal and regulatory framework is complex, the principal components of which are listed below:

- 2.1 the restrictive conditions contained in the **Title Deed** for your property (these limit usage and your rights and are enforceable by all other property owners in the township. Typically they allow for only one dwelling per erf with necessary outbuildings, prevent subdivision, prohibit usage for any purpose other than purely residential, outlaw unsightly fences, regulate building operations, prevent the commercial removal of timber and regulate the building line and aspect of the main dwelling);
- 2.2 the City Council of Johannesburg's **Town Planning Scheme (1979)** (imposes zoning and related controls, such as consent uses, which in turn determine property usage. Where an amendment to the Town Planning Scheme is sought in relation to your property (eg for a sub-division), if such amendment contradicts your title deeds, you will have to make an application to remove or amend the contradictory title deed condition. Generally, all properties in Westcliff are zoned Residential 1-one dwelling per erf. Any other usage may require an amendment to the Town Planning Scheme, as it applies to your property);
- 2.3 the Regional Spatial Development Framework ("**RSDF**") (a land use management policy plan which is promulgated yearly. This sets out the broad Council strategy for

managing development in the City for the year. Of particular relevance to Westcliff are the land use tables which govern the development objectives for a particular area, prescribe interventions and impose guidelines against which applications for a change in land usage are assessed. We fall within Region B Sub Area 7. The objective in our table is to ensure that development occurs in a coherent manner that promotes the amenity of the suburb. The interventions are to control densification and to stop the intrusion of offices, ensure the conservation of the Westcliff Ridge, support residential densification along Jan Smuts Ave and control fast moving traffic through the suburb. Guidelines limit sub-divisions to 2000m² or more, and to slopes of less than 1:3, declare Westcliff to be an Environment Control Area, link the ridge to JMOSS and protect structures identified in the Heritage List prepared by PWHT);

- 2.4 the **Gauteng Removal of Restrictions Act** (a legal mechanism to facilitate changes to title deeds where these would otherwise conflict with the Town Planning Scheme and RSDF);
- 2.5 **Environment Control Area** provisions (notably the requirement to produce a Site Development Plan (“SDP”) for any building work);
- 2.6 the Johannesburg Metropolitan Open Space System (“**JMOSS**”) (the Council’s policy for open spaces, in which the Westcliff ridge is specifically identified and which sets the environmental policy for protecting ridges and rivers);
- 2.7 the National Heritage Resources Act (“**NHRA**”) (this principally protects all heritage and provides that no structure may be altered or demolished if it is older than 60 years, without a permit from the local heritage authority. Contravention is a criminal offence);
- 2.8 the National Building Regulations Act and local by-laws (“**Building Control**”) (defines the system whereby the City approves building plans and monitors building operations and controls the usage of pavements);
- 2.9 the Development Facilitation Act (“**DFA**”) (a short cut legal mechanism primarily designed to expedite the establishment of townships but often used by developers to shortcut processes. Now it is the subject of a constitutional court battle over the competing jurisdictions of the local authorities and the Townships Board); and
- 2.10 the **WRA Mandate** (this mandate was developed by the Westcliff Residents’ Association, following a survey of all landowners in Westcliff, and approved in general meeting by the members of the WRA);
- 2.11 the **Heritage List** (this is a list of properties within Westcliff that have heritage value and are worthy of conservation. Buildings are graded from A to C depending on merit. The list has been prepared by the PWHT, through the voluntary efforts of its members and is recognised by Council through the RSDF. A similar list exists for Parktown. The fact that a building is not on the list does not mean that the NHRA does not apply- this Act is universally applicable to all buildings older than 60 years of age).

3. The Players

There are a number of bodies that you may encounter from time to time, all of whom interact with one another in the implementation of the above regulatory framework. Some of these are-

- 3.1 Westcliff Residents Association (“**WRA**”) (an unincorporated voluntary association not for gain, comprising of residents of Westcliff who pay their annual membership fee. It has a constitution and its committee is elected annually. It seeks to maintain the unique character of Westcliff and uphold the interests of residents. Its views are taken into account by Council as part of the consultative framework for local government and fed into the RSDF annually. It will object to applications it considers

inappropriate, will procure that Council and PHRA-G enforce their laws and will monitor pavement usage during building operations);

- 3.2 Parktown Westcliff Heritage Trust (“**PWHT**”) (a voluntary association which campaigns for the preservation of heritage, educates the public about our local history and generally acts to prevent the destruction of old buildings that are worthy of preservation);
- 3.3 Joint Plans Committee (“**JPC**”) (a committee of experts in all the areas of heritage, architecture, town planning and legal, drawn from PWHT, WRA, Parktown Association and Parkview Residents Association. It meets every 2 weeks on a Friday to assist residents involved in the above processes, it adjudicates on plans for building, renovations, subdivisions and town planning generally, it advises its participating associations and the heritage authorities and has a co-operative relationship with all organs of Council.
- 3.4 Provincial Heritage Authority-Gauteng (“**PHRA-G**”) (this is the local heritage authority responsible for upholding the NHRA and for granting permits to develop properties over 5000m² and to alter structures older than 60 years of age. It reports to the MEC in Pretoria and is funded by local government. The NHRA also establishes a national heritage body called the South African Heritage Resources Authority- **SAHRA**);
- 3.5 an ad-hoc independent Planning Committee-Department of Development Planning and Urban Management (“**Planning Committee**”) (the first body appointed by Council to consider and hear all town planning and removal of restriction matters associated with disputed applications for changes of rights under the Town Planning Scheme. This is the body that will decide in the first instance if you can subdivide or rezone)
- 3.6 **Townships Appeal Board** (the body that will hear appeals from decisions of a Planning Committee if any applicant or objector is unhappy about the outcome);
- 3.7 the local security initiatives (Westcliff Security Group-**WSG** for upper Westcliff, **Project Patrol** for lower Westcliff and Westcliff Extension Security Initiative- **WESI** for Westcliff Extension. These groups will seek to ensure that your builders and contractors comply with sound security practices during your building operations. They co-operate with the Community Policing Forum and the Parkview police station and proactively patrol and monitor the suburb through their security contractors); and
- 3.8 Johannesburg City Council (“**Council**”) (this acts through its various branches of local government with its headquarters in Braamfontein, and community liaison through the people centres. An important link with Council is the Ward Councillor for Ward 87, currently Councillor Sharon Sabbagh).

4. **Procedure to be followed when contemplating development of your property**

4.1 **Title Deeds**

- 4.1.1 Ensure that any proposals you may have comply with the conditions of the Title Deeds of your property. The Title Deeds are the most rigid and powerful constraints as to how you may use your property. Any resident on Westcliff may seek to enforce the conditions of your Title Deeds upon you, and it would be prudent to comply with them.
- 4.1.2 Fellow residents may choose to overlook or condone non-compliance, especially if such non-compliance is of a temporary, minor or technical nature and does not give rise to any nuisance to them. This ‘condonation’ could be withdrawn at any time and any risk arising out of such withdrawal rests with the owner / resident that is not in compliance. It is probably best to discuss the

matter with your neighbours and the WRA. Examples of this may be a granny flat, or a small work from home office.

- 4.1.3 A formal variation to your title deed can only be achieved by application to court or through an application process to the Council in terms of the Gauteng Removal of Restrictions Act. This latter process requires a process of advertising and notice to interested persons. You will probably require the services of a town planner. You will generally need to follow this route where you want to sub-divide, build more than one residence on a property or use the property for a business.
- 4.1.4 The Johannesburg City Council and, if necessary, a Planning Committee may amend a condition of your Title Deed should they agree that such amendment is generally in compliance with the relevant Town Planning Scheme and the RSDF.
- 4.1.5 Your neighbours and the WRA may object, in which case the matter will be referred to a Planning Committee for a hearing. If contested, the application for amendment may be the subject of lengthy hearings, administrative procedures and even litigation, which could delay your proposals, possibly for years.
- 4.1.6 Many town planners consider title deed restrictions to be outdated and advise their clients to apply for their complete removal. This is objectionable to the WRA and the residents of Westcliff. The WRA will always oppose the shotgun approach of **removal** of conditions of title but will support **amendments** to conditions that are strictly necessary to permit an acceptable Town Planning Scheme amendment or consent use to be granted. Failure of your town planner to adhere to this will result in unnecessary delays and costs and the matter will be taken on appeal to the Townships Appeal Board. Sometimes a Planning Committee will order title deed conditions to be removed as opposed to making an amendment. The resident will have to then re-instate the conditions by a notarial deed at the resident's expense if they wish to avoid the delays and cost of an appeal.
- 4.1.7 Be very wary if you are buying into Westcliff and an estate agent or the seller tells you how you can run a B&B or guesthouse, or your business from the property, or sub-divide. The procedure to amend title deeds must first be followed and this can be long and costly if the usage is contrary to the regulatory framework set out above.

4.2 **Town Planning Scheme**

- 4.2.1 Where you wish to change your land usage from Residential 1- one dwelling per erf, to Residential 1- one dwelling per 2000m², or you wish to sub-divide, or you wish to have townhouses or you wish to apply for a consent use that will allow you to run a business from your home or to have a second subsidiary dwelling on the property, you will, in addition to amending your title deeds, have to simultaneously apply to the Council for the necessary rezoning permission or consent use. Rezoning is generally applied for where there will be a permanent and significant change to the usage. Consent uses are generally applied for where the Council is asked to make an exception to the generally applicable Town Planning Scheme for the area but the permission is temporary or of a low impact.
- 4.2.2 Where such application is within the above regulatory framework and is not contrary to the WRA mandate, it will generally not result in objections. Applications for these approvals may have a significant impact on your rates bill. For example, where you have any form of consent use (for business purposes or even for a granny flat), your rates will double. You should therefore consider very carefully whether you wish to go this route.

- 4.2.3 It is advisable to consult at an early stage with the WRA and your neighbours regarding their attitude to any application you may wish to make. You should ensure that the application complies with the WRA mandate and the RSDF. If it is not, then it is likely that it will be opposed.

4.3 Building Plans and Alterations

- 4.3.1 All plans for new developments and alterations will have to be submitted to the Council for approval. Your architect will advise you on the format for successful submissions, in compliance with Building Control provisions.

- 4.3.2 As Westcliff is classified as an Environment Control Area you will be required to submit an Site Development Plan. An SDP should contain details of all aspects of the property, the location of adjacent properties, contours and vegetation. It should specify drainage of storm water and contain all elevations of the buildings, both existing and proposed. The JPC suggests that you submit the SDP/ your plans to it for assessment and advice before submission to Council. It is required that you should obtain your neighbours' consent for significant exterior alterations.

4.4 Heritage

- 4.4.1 As with most of Westcliff, your home is likely to be older than 60 years of age. This means you will have to comply with the NHRA and first submit an application to PHRA-G for a permit to alter or demolish an existing structure. This will require research on the historical/heritage significance of your home. The first point of consultation should be the heritage list which you will find on the web- parktownheritage.co.za

- 4.4.2 Application requirements for PHRA-G as well as the procedures and application form can be found on the PWHT website and downloaded. See parktownheritage.co.za

- 4.4.3 The JPC will advise you on various aspects of your proposal. Your architect will guide you on what may or may not be permissible. PHRA-G will invariably require that the JPC stamp your plans before they will consider your application. Generally where you have consulted with the JPC, the process becomes a great deal easier as the JPC has a close working relationship with PHRA-G

5. Joint Plans Committee

- 5.1 The residents of Westcliff, Parktown and Parkview and the Parktown Westcliff Heritage Trust have established a Joint Plans Committee to keep a watch on developments in these suburbs. The focus of the Committee is particularly on heritage matters, town planning issues and environmental considerations. The Committee aims to assist residents, developers, architects and town planners and will always seek to provide constructive input and suggestions.

- 5.2 The Committee enjoys an ad hoc status with both the Johannesburg City Council and the Provincial Heritage Resources Authority-Gauteng and as such its views carry some weight with those two authorities.

- 5.3 The Committee meets every fortnight and scrutinises proposals put before it. After engaging with applicants and traversing all the relevant issues, it concludes its work in successful matters by issuing a 'No Objection' finding which significantly enhances the application's chances of obtaining approval of plans by PHRA-G and the Council.

- 5.4 You can contact the Joint Plans Committee by telephoning its Chairman, Mr William Gaul, at 011 726 1720, to arrange a presentation to the Committee, or

alternatively submit an adequate set of plans for the Committee's consideration. Plans should be delivered to Mr Gaul's house at 28 Escombe Avenue, Parktown

6. Step 1 –Test the Water

Residents of Westcliff are requested to submit any proposals for development of their properties to the Joint Plans Committee in the first instance. This is an excellent way of 'testing the water'. The advice, support or concerns of this knowledgeable committee of residents will give you a clear early indication of the extent to which your proposals are compliant with the constraints mentioned above and consequently the likelihood of them being successful. Whilst the process may sound formidable, the Committee aims to assist and not to prohibit. Should you require advice on policy, or feel that the JPC will not be able to resolve your issues, you are invited to contact a committee member of the WRA.

7. Building Operations

Once you commence with your building operations, you will have to deal with all the stresses and strains of this process. The WRA, its residents and the security initiatives, namely WSG, Project Patrol and WESI will take an active interest in your building site. You will save yourself and the neighbourhood considerable hardship if you observe the following-

7.1 Stop orders

Please do not start before you have all permissions. A stop order from PHRA-G or the building inspectors is costly and unpleasant and will be sought in the case of any illegal activities.

7.2 Pavements

The pavements belong to the Council and all the residents. You need a permit to use the pavement for building material and rubble. Generally these are of a limited duration. The WRA will be more vigilant than in the past in ensuring that your operations have the least possible impact on our public spaces. Please co-operate as far as possible and instruct your builders to respect our neighbourhood. On a related topic, we are not in favour of high boundary walls that are visually impenetrable. These affect the beauty of our garden suburb.

7.3 Security

This is an aspect that you will be requested to observe and commit to. You should liaise with the appointed co-ordinators of the applicable security group who will advise you of specific requirements for your contractors and builders. These requirements are aimed at enabling your neighbourhood security provider to monitor your site and prevent any increase in crime that may be associated with building activities. In particular, you should anticipate the following requirements-

- 7.3.1 contractors should be requested to collect and drop off their staff at the site, or to arrange collection points on the perimeter of the suburb-Jan Smuts Ave/ Westcliff Drive. Contractors should further ensure that their staff remain on the site during work hours, unless transported in and out of the suburb;
- 7.3.2 contractors should ensure that their staff are in possession of proper forms of identification and where appropriate, should have conducted relevant background checks on their staff;
- 7.3.3 owners may be requested to grant permission for the neighbourhood's security contractor to enter the site from time to time for random inspections and checking of identity documents; and

7.3.4 where possible, only security personnel should live on building sites.

The above measures are not intended to be unduly restrictive but enable the suburb to maintain a pro-active approach to security, in the interests of all residents.

Best wishes and may your proposals achieve what you hope for. These guidelines aim to assist you and maintain a harmonious suburb that is a pleasure for all its residents to live in.

Westcliff Residents' Association

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