Can an HOA's architectural rules be stricter than the municipal scheme?

The Baronetcy judgment raises a potentially far-reaching question for residential estates — but its effect must be understood carefully.

By Auren Freitas dos Santos

In Parts 1 and 2 of this series, we considered two important lessons arising from the Western Cape High Court's judgment in *Baronetcy Estate Homeowners Association v Mohamed Abdulahi*.

Part 1 dealt with the relationship between municipal approval and HOA enforcement. Part 2 considered the HOA's substantial penalty claim.

But the judgment raises a third, and potentially more significant, question:

Can an HOA impose architectural or development restrictions that are more stringent than those imposed by the municipality?

For many residential estates, that question goes to the heart of the HOA model.

Architectural guidelines exist precisely because estates often want to impose a higher or more consistent design standard than the municipality would ordinarily require. Height restrictions, setbacks, coverage limits, building lines, aesthetic controls and landscaping requirements are all commonly used to preserve the character of an estate.

The *Baronetcy* judgment places an important qualification on that assumption.

The Court interpreted section 62(1)(b)(i) of the City of Cape Town's Municipal Planning By-law, 2015 as prohibiting an owners association from introducing design guidelines containing development rules that are more restrictive than those contained in the City's Development Management Scheme.

That conclusion is potentially far-reaching.

But it must also be read carefully.

The Court did not declare the estate's architectural rule invalid. Its finding was made on an alternative basis, and the relevant statutory wording is specific to the City of Cape Town.

The judgment should therefore prompt HOAs to review their architectural rules — not assume that every private design standard exceeding a municipal requirement is automatically unenforceable.

The rule at the centre of the dispute

The dispute concerned the estate's height restriction.

The 2016 Architectural Rules provided that no portion of a building could exceed 7.5 metres above natural ground level, measured either vertically to the highest point of the building or by reference to the grade line.

The City's Development Management Scheme applied a different standard.

The property was zoned Single Residential 1 and, for a property of its size, the municipal scheme permitted a maximum height of 11 metres to the top of the roof.

The methods of measurement were not identical.

The estate rule referred to natural ground level or the grade line and effectively restricted every point of the building. The City's rule used a different measurement methodology.

Despite those differences, the Court considered the gap between 7.5 metres and 11 metres too substantial to be explained by measurement methodology alone.

The estate rule was, in the Court's view, materially more restrictive.

That brought section 62(1)(b)(i) of the Municipal Planning By-law into play.

What does section 62 say?

Section 62 regulates the constitutions of owners associations established under the City's planning regime.

Section 62(1)(b)(i) permits an owners association to regulate the control, administration and management of design guidelines for buildings and landscaping.

But the power comes with an important limitation.

The design guidelines may not introduce **more restrictive development rules or land uses** than those contained in the City's Development Management Scheme.

The Court considered the estate's 7.5 metre restriction to fall within that prohibition.

On that interpretation, the issue was no longer simply whether the owner had agreed contractually to comply with the estate's rules.

The more fundamental question became whether the HOA was legally entitled to impose that restriction in the first place.

Why *Mount Edgecombe* did not answer the question

The HOA relied on the well-known Supreme Court of Appeal judgment in *Mount Edgecombe Country Club Estate Management Association II (RF) NPC v Singh and Others* [2019] ZASCA 30; 2019 (4) SA 471 (SCA).

As discussed in Part 1 of this series, *Mount Edgecombe* confirms that HOA rules ordinarily operate contractually.

In that case, the Court upheld an estate speed limit that was lower than the speed limit applicable on a public road.

The reasoning was straightforward: owners had voluntarily agreed to the private rules of the estate, and the National Road Traffic Act did not prohibit an HOA from imposing a stricter private speed limit.

The Court in *Baronetcy* considered the planning legislation to be materially different.

The Cape Town Municipal Planning By-law does not merely establish the public planning rules.

It expressly regulates owners associations and, importantly, expressly addresses the content of their design guidelines.

The distinction is crucial.

The question was not whether a private agreement can **generally** impose a stricter standard than public law.

It was whether an HOA can impose a stricter development rule where the legislation governing that HOA expressly says that it may not.

Contractual freedom cannot ordinarily be used to circumvent an express statutory prohibition.

Could the older rules survive?

Baronetcy Estate was established under the former Land Use Planning Ordinance 15 of 1985 (LUPO).

The HOA therefore argued that its earlier planning approval and constitution were preserved when the Municipal Planning By-law came into force.

Section 142 of the By-law does preserve approvals granted under earlier planning legislation and treats them as approvals granted under the new regime, subject to their original conditions.

But the Court drew an important distinction between **preserving an existing approval** and **adopting new rules after the new legislation had commenced**.

Section 61(10) provides that HOAs established under previous planning legislation are deemed to be owners associations established under the new By-law.

The architectural rules relied upon by the HOA had been adopted in 2016 — approximately fourteen months after the By-law came into effect.

The Court therefore held that the HOA could not rely on its historical origins to avoid the restrictions imposed by the new legislation when adopting later architectural rules.

Timing mattered.

That distinction may prove particularly important for older estates.

A rule contained in the original constitution or architectural guidelines may raise a different legal question from a similar rule introduced or amended after the relevant planning legislation came into operation.

Did that make the height restriction invalid?

Importantly, the Court did **not** go that far.

There is a difference between saying that legislation prohibits a particular contractual provision and saying that the provision is automatically void.

The legal consequences depend on the wording, purpose and context of the legislation.

The Court referred to *Cool Ideas 1186 CC v Hubbard and Another* [2014] ZACC 16; 2014 (4) SA 474 (CC), where the Constitutional Court recognised that a statutory prohibition does not necessarily mean that every agreement concluded in contravention of it is automatically void.

There were also practical reasons for caution.

A declaration that the 7.5 metre rule was invalid could potentially affect hundreds of other owners in the estate.

Those owners were not parties to the litigation.

The City was also not before the Court.

Section 62 itself does not expressly state that a rule adopted in contravention of the section is void.

The Court therefore stopped short of declaring the height restriction invalid.

Instead, it considered whether the rule should be enforced against **this particular owner**.

Invalidity and enforcement are different questions

This is one of the more important distinctions to emerge from the judgment.

A court may decline to enforce a contractual provision in particular circumstances without declaring the provision invalid for all purposes.

The Court approached the issue through the principles of public policy discussed in *Beadica 231 CC and Others v Trustees for the time being of the Oregon Trust and Others* [2020] ZACC 13; 2020 (5) SA 247 (CC).

The question was ultimately whether it would be consistent with public policy for a court to order demolition in order to enforce a restriction which the Municipal Planning By-law appeared to prohibit the HOA from introducing.

The Court concluded that it would not.

The 7.5 metre rule was therefore **not declared void**.

Rather, the Court declined to enforce it against the owner through the demolition order sought by the HOA.

That distinction matters enormously.

The judgment should not be read as a blanket declaration that the architectural rules of Cape Town estates are invalid simply because they impose standards stricter than municipal requirements.

Each rule, its history and its legal source must be considered individually.

Why the judgment must be applied cautiously

There are several reasons not to overstate the effect of the decision.

First, the finding was made in the alternative.

The Court had already concluded that demolition should be refused in the exercise of its discretion. The section 62 issue was considered because it could become important if that conclusion were overturned on appeal.

Second, the Court did not decide the status of the estate's earlier architectural guidelines.

The evidence concerning the pre-2015 rules was insufficient.

The judgment therefore does not determine whether a comparable restriction contained in an older instrument, preserved under the transitional provisions of the By-law, would face the same difficulty.

Third, the judgment did not declare the rule generally invalid.

The Court confined itself to whether the restriction should be enforced against the owner in the proceedings before it.

Fourth, municipal by-laws differ.

The Court itself noted that the Stellenbosch Municipal Land Use Planning By-law, 2022 takes a different approach and expressly permits certain design guidelines to be more restrictive than the municipal zoning scheme.

The *Baronetcy* conclusion therefore cannot simply be transplanted from Cape Town to another municipality.

Finally, not every HOA has the same legal origin.

Some associations arise directly from subdivision approvals. Others operate through companies, title conditions, contractual arrangements or combinations of different legal instruments.

Their legal position may not necessarily be identical.

Not every architectural rule is a "development rule"

Another distinction is equally important.

Architectural guidelines frequently contain a mixture of different types of controls.

Some are aesthetic. They may regulate colours, roofing materials, window styles, landscaping or architectural themes.

Others regulate matters more closely associated with municipal planning — such as height, coverage, setbacks, building lines or land use.

Section 62(1)(b)(i) refers specifically to **development rules and land uses**.

It therefore does not necessarily follow that every architectural standard imposed by an HOA is affected simply because it is more demanding than the municipality's requirements.

The correct enquiry is to identify what the private rule actually regulates and compare it with the relevant municipal planning control.

That analysis must be done rule by rule.

What Cape Town HOAs should do now

The judgment provides a useful framework for reviewing architectural rules.

Identify where the HOA's powers come from.
Determine whether the association was established through a subdivision approval, title conditions, contractual arrangement or a combination of these.

Establish the history of the rule.
Identify when the constitution and architectural guidelines were adopted, when they were amended and when the applicable municipal planning legislation came into force.

For Cape Town estates, the date of 1 July 2015 may be particularly important.

Compare the private rule with the municipal rule.
Do not merely compare numbers. Consider the zoning, the nature of the development rule, the measurement methodology and the actual effect of the private restriction.

Distinguish aesthetic controls from development controls.
A rule prescribing a particular architectural style is not necessarily the same thing as a rule regulating height, coverage, setbacks or land use.

Check the HOA's own constitution.
An architectural rule may fail for internal reasons before the statutory question even arises. If the constitution requires municipal approval, certification or another procedural step before the rules become binding, those requirements must also have been satisfied.

Be careful about seeking declarations of invalidity.
A challenge to the validity of a rule may affect every owner in the estate and potentially the municipality itself. The necessary parties, evidence and relief may therefore be very different from those required in an ordinary enforcement dispute.

Conclusion

The *Baronetcy* judgment exposes a genuine tension at the heart of many residential estates.

One of the reasons owners buy into an estate is precisely because the HOA promises a consistent architectural environment — often one that is more controlled than the surrounding municipal area.

But an HOA's contractual powers do not exist independently of the legislation governing it.

Where municipal planning legislation expressly limits the development rules an owners association may impose, a private agreement cannot simply be assumed to override that limitation.

For Cape Town HOAs established under the municipal planning regime, architectural rules adopted or amended after 1 July 2015 deserve particularly careful scrutiny against section 62(1)(b)(i) of the Municipal Planning By-law.

For estates outside Cape Town, the judgment provides a methodology rather than a universal answer:

identify the source of the HOA's authority, establish when the rule was adopted, read the applicable municipal legislation and then determine whether the private rule falls within any statutory limitation.

The fact that an architectural rule has existed for years does not necessarily establish that it is enforceable.

And, as the *Baronetcy* litigation demonstrates, that question should ideally be answered **before** an HOA seeks drastic relief to enforce it.

This is Part 3 and the final instalment of our three-part series on the *Baronetcy Estate* judgment. Part 1 considered whether HOA rules remain enforceable despite municipal approval, while Part 2 examined HOA penalties and the Conventional Penalties Act. In this final article, we considered perhaps the most far-reaching aspect of the judgment: the extent to which an HOA may impose architectural and development restrictions that are more stringent than those contained in the applicable municipal planning scheme.

If you have any questions about architectural guidelines, the validity or enforcement of HOA rules, or the implications of the *Baronetcy* judgment for your estate, feel free to contact us at **info@theadvisory.co.za** for a no-obligation quotation.