



STAATSKOERANT

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KANTOOR VAN DIE EERSTE MINISTER

OFFICE OF THE PRIME MINISTER

No. 1786.

29 Augustus 1984

No. 1786.

29 August 1984

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

—o. 125 van 1984: Paarlbergwysigingswet, 1984.

No. 125 of 1984: Paarl Mountain Amendment Act, 1984.

PAARL MOUNTAIN AMENDMENT ACT, 1984

Act No. 125, 1984

GENERAL EXPLANATORY NOTE:

- []** Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Paarl Mountain Act, 1970, in order to further regulate the letting and hiring of certain land; and to provide for incidental matters.

*(Afrikaans text signed by the State President.)
(Assented to 12 July 1984.)*

WHEREAS a hybrid Bill was introduced in the House of Assembly during 1968 to transfer the land known as Paarlberg (hereinafter referred to as the commonage) to the Paarl Municipality for the purposes of a nature reserve: Preamble.

AND WHEREAS owners of land adjoining the commonage, by way of a petition to the House of Assembly, dated 14 March 1968, objected to the proposed change of the ownership in the commonage and the expropriation of their commonage rights without compensation:

AND WHEREAS the select committee on the Bill recommended certain amendments thereof which in substance contemplated the preservation of grazing rights on the commonage:

AND WHEREAS the recommendation was not acceptable to the said Municipality for the reason that its intention to use the commonage as a nature reserve would have been frustrated by the preservation of the grazing rights:

AND WHEREAS the said Municipality and owners concluded an agreement on 27 March 1969 in connection with the use of the commonage as a nature reserve and the letting to such owners of such portion of the commonage as would not fall within the boundaries of the nature reserve:

AND WHEREAS the Paarl Mountain Act, 1970, was thereupon passed by Parliament, in terms of which the ownership in the commonage and all other rights therein, with certain exceptions relating to water and water works, were transferred to the said Municipality on 13 October 1970 and the Municipality established a nature reserve on a portion of the commonage and transferred another portion to the State for the purposes of a language monument:

AND WHEREAS that Act authorizes the said Municipality to let for agricultural purposes any portion of the commonage not required by it for a nature reserve or for transferring to the State, to any owner of land adjoining the commonage, as contemplated in the aforesaid agreement:

AND WHEREAS there are portions of the commonage that are not required as aforesaid by the said Municipality:

AND WHEREAS a dispute over the letting of the last-mentioned portions of the commonage and the implementation of the aforesaid agreement has arisen between the said Municipality and owners of land adjoining the commonage:

AND WHEREAS it is therefore expedient to amend the said Paarl Mountain Act, 1970, so as to make further provision for the letting and hiring of the relevant portions of the commonage and to provide for other incidental matters:

PAARL MOUNTAIN AMENDMENT ACT, 1984

Act No. 125, 1984

BE IT THEREFORE ENACTED by the State President and the House of Assembly of the Republic of South Africa, as follows:—

1. Section 2 of the Paarl Mountain Act, 1970 (hereinafter referred to as the principal Act), is hereby amended—

Amendment of section 2 of Act 83 of 1970.

- (a) by the substitution for subsection (3) of the following subsection:
- “(3) Subject to the provisions of subsections (1) and (4) and ~~[(7)]~~ section 2A, the municipality shall not alienate the land transferred to it in terms of this section, and may use it only as a nature reserve.”;
- (b) by the substitution in subsection (4) for the word “Agriculture” of the words “Community Development”; and
- (c) by the deletion of subsection (7).

2. The following section is hereby inserted in the principal Act after section 2:

Insertion of section 2A in Act 83 of 1970.

“Letting and hiring of certain portions of commonage.

2A. (1) In this section—

- (i) ‘fixed date’, in relation to the owner of adjoining land referred to in subsection (2), means—
- (a) if he is a party to a dispute of which notice has been given to the municipality in terms of subsection (4), the date 180 days after the date on which the arbitration tribunal’s final award in the dispute is delivered according to law;
- (b) if he is not a party to such a dispute, the date 180 days after the date on which the Paarl Mountain Amendment Act, 1984, comes into operation; (iii)
- (ii) ‘remnant of land’ means any portion of the commonage which, on the date on which the Paarl Mountain Amendment Act, 1984, comes into operation—
- (a) does not fall within the boundaries of the Paarl Mountain Nature Reserve as described in *Provincial Notice P.N. 1/1977* in *Official Gazette* No. 3924 of 7 January 1977 of the Province of the Cape of Good Hope; and
- (b) has not been transferred to the State in terms of section 2 (4); (ii)
- (iii) “the agreement” means the agreement of which a translation is set out in the Schedule. (i)
- (2) The owner of the land which has a common boundary with any remnant of land and which does not belong to the State or the municipality (hereinafter referred to as adjoining land) is, subject to the provisions of subsections (3) and (5), entitled to hire—
- (a) if his land is the only adjoining land in relation to the remnant of land in question, that remnant of land; or
- (b) if his land is not the only adjoining land in relation to that remnant of land, the portion of that remnant of land determined and allotted to him *mutatis mutandis* in accordance with clause 4 of the agreement, from the municipality—
- (i) for a period expiring 32 years after the fixed date;
- (ii) at a rental of 25 cents per annum, and, in the case of arable land, at a rental of R100 per hectare per annum: Provided that the latter rental shall be adjusted every three years to the extent of 50 per cent of the average percentage change

PAARL MOUNTAIN AMENDMENT ACT, 1984

Act No. 125, 1984

over the preceding three years in the consumer price index published by the Central Statistical Services of the Republic; and

(iii) *mutatis mutandis* in accordance with the other terms and conditions contained in clauses 4, 5, 6, 7, 8 and 9 of the agreement.

(3) If the owner of adjoining land wishes to exercise the right conferred upon him by subsection (2), he shall, before or on the fixed date, serve on the municipality by sending by registered post to or otherwise lodging with the Town Clerk of Paarl—

(a) a notice, signed by or on behalf of the owner, that he wishes to hire in terms of that subsection the remnant of land or the portion of a remnant of land, as the case may be, in respect of which the right is conferred;

(b) a diagram, approved by the surveyor-general, of the remnant of land or portion of a remnant of land in question;

(c) a draft of the lease proposed by him for the hiring.

(4) An owner of adjoining land who is a party to a dispute which has been referred to arbitration in terms of clause 4 of the agreement as applied by this section, shall before or on the date 180 days after the date on which the Paarl Mountain Amendment Act, 1984, comes into operation, give notice in writing to the municipality, by sending such notice by registered post to or otherwise lodging it with the Town Clerk of Paarl, that he is a party to such dispute.

(5) The right conferred on the owner of adjoining land by subsection (2) shall lapse if he fails to comply with the provisions of subsection (3) or (4), and no owner of land adjoining the commonage shall by virtue of the agreement have any right to hire any portion of the commonage save as provided in this section."

3. The Schedule is hereby added to the principal Act as a Schedule thereto.

Addition of
Schedule to
Act 83 of 1970.

4. This Act shall be called the Paarl Mountain Amendment Act, 1984.

Short title.

Schedule

MEMORANDUM

Of an agreement entered into between

the Municipality of Paarl, herein represented by ALFRED ROBERT KING and WILLEM JACOBUS WAGENAAR in their respective capacities as Mayor and Town Clerk duly authorized thereto in terms of a resolution by the Town Council dated 25 February 1969 (hereinafter referred to as the Town Council)

and

the owners of the land bordering on the outer boundary of Erf No. 1, Paarl, known as Paarl Mountain, as defined in Crown Grant (Stellenbosch, Freehold 3-7) dated 2 December 1838, herein represented by the Petitioners to Parliament, namely JAN MARTINUS KIRSTEN, owner of the farm Irene, JACOBUS JOHANNES CHRISTOFFEL JANSEN VAN VUUREN, Director of Leeuwenjacht (Pty) Limited, and SYBRAND STRAUSS VAN WYK, attorney of Paarl, duly authorized thereto as set out in the Petition to Parliament (hereinafter referred to as the Owners).

WHEREAS the Town Council and the Owners regard it as expedient that the disposal of Paarl Mountain be determined by legislation;

AND WHEREAS the Town Council and the Owners are unanimous that Paarl Mountain be transferred in ownership to the Municipality of Paarl subject to the protection of certain rights and interests of the Owners;

PAARL MOUNTAIN AMENDMENT ACT, 1984

Act No. 125, 1984

AND WHEREAS the Town Council and the Owners desire that the conditions in respect whereof unanimity has been reached be embodied in a written agreement, which document shall be accepted as a supplement to the proposed legislation.

BE IT WITNESSED AS FOLLOWS:

1. That the Honourable the Minister of Agricultural Credit and Land Tenure be courteously advised that the Paarl Mountain Disposal Bill, as amended by the Select Committee, is accepted by the two parties provided the following further amendments thereto be effected, namely—

- (a) that the word "grazing" in paragraph 2 (1) be deleted; and
- (b) that the prohibition in respect of the alienation of the land and the exclusive use thereof as a nature reserve may, for the purposes of paragraph 3 hereof, be lifted subject to the approval of the Administrator.

2. That the Town Council shall, as soon as the Act comes into force, determine the boundaries of that portion of Paarl Mountain which will be proclaimed a nature reserve in terms of the Nature Conservation Ordinance, No. 26 of 1965, and that the demarcation shall be submitted to the Administrator for approval.

3. That the portion of Paarl Mountain that does not fall within the boundaries of the nature reserve shall, subject to the approval of the Administrator, be let to the owners of adjoining farms for a period of 50 years at a rental of 25c (twenty-five cents) per annum.

4. That the Owners shall mutually and at their own cost arrange and obtain the division of the land that may be hired from the Town Council, the survey thereof and the registration of the leases. For the division amongst the adjoining owners the following provisions shall apply:

- (a) The appropriate boundary lines of the original grants of the adjoining properties shall be extended in a straight line until they meet the said nature reserve.
- (b) Should there be two or more adjoining owners in the particular area, they shall mutually determine which portion each may hire.
- (c) In the absence of such an agreement, the dispute shall be subject to arbitration in terms of the law and the following principles shall apply:
 - (i) The appropriate boundary lines of the properties concerned shall be extended in a straight line up to the nature reserve and each owner shall be entitled to that portion bordering on his property.
 - (ii) Should the arbitrators be of the opinion that an unfair division has been brought about, taking into account the extent (of the property of the adjoining owner), the access roads to Erf 1 and the location of the existing water works of each owner, the portions shall be determined at the discretion of the arbitrators and their decision shall be final.

5. That the land thus let to the Owners shall be used for bona fide agricultural purposes only, provided that no buildings or structures shall be erected thereon without the permission of the Town Council and that the Owners shall eradicate all vegetation declared noxious on the leased land. The Owners shall also within a period of 3 years from the date of signature of the lease remove all foreign vegetation which in the opinion of the Town Council may have a detrimental or defacing effect on the nature reserve.

6. That the Town Council shall make the necessary application for the approval of the Administrator in respect of the exemption of the leased land from municipal rates.

7. That if an owner or his successors terminate the lease of the land or if the use thereof for agricultural purposes together with the adjoining land by the same owner is no longer possible, the leased land shall revert to the Town Council in full ownership, provided that the Town Council may allow the land to be sublet.

8. That the Town Council may not recover any contribution to the cost of fencing the nature reserve from the adjoining owners.

9. That the Town Council shall, in so far as the use of the Paarl Mountain as a nature reserve allows, provide the Owners with access to the leased land from the public roads that serve the nature reserve, if there is no convenient access from the lessee's property.

THUS DONE AND SIGNED at Paarl, this 27th day of March 1969.

WITNESSES:

1. H. D. LIEBENBERG

A. R. KING
MAYOR

2. E. I. PULLEN

W. J. WAGENAAR
TOWN CLERK
on behalf of the Town Council

WITNESSES:

1. E. W. NIEUWOUDT

J. M. KIRSTEN

2. E. I. PULLEN

J. J. C. J. VAN VUUREN

S. S. VAN WYK
on behalf of the Owners