

**SEA WALL AGREEMENT**

**STRATA PLAN 61034**

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**THIS AGREEMENT** made the 2nd day of March 2012

**BETWEEN** the Owners of **Strata Plan 61034** being that Strata Plan that is situate at **32 Lewis St, Old Bar** in the **State of New South Wales** hereinafter referred to as the **"Owners Corporation"** and

Ross Keys being the owner(s) of all that land situate at 34 & 36 Lewis St Old Bar hereinafter referred to as "Lot B & C DP 381295 owners" and

Malcolm Dudley Black being the owner(s) of all that land situate at 24 Lewis St Old Bar hereinafter referred to as "Lot 1DP524933 owners" and

Ivan Handel being the owner(s) of all that land situate at 26 Lewis St Old Bar hereinafter referred to as "Lot 1 DP 617961 owners" and

National Australia Bank being the owner(s) of all that land situate at 38 Lewis St Old Bar hereinafter referred to as "Lot 1,2,3 SP 76533 owners" and

National Australia Bank being the owner(s) of all that land situate at 40 Lewis St Old Bar hereinafter referred to as "Lot 5 DP1028979 owners" and

\_\_\_\_\_ being the owner(s) of all that land situate at \_\_\_\_\_ hereinafter referred to as "Lot \_\_\_\_ owners" and \_\_\_\_\_ being the owner(s) of all that land situate at \_\_\_\_\_ hereinafter referred to as "Lot \_\_\_\_ owners"

**WHEREAS** the Owners Corporation is desirous of making application to all relevant authorities including but not limiting itself to the Greater Taree City Council for a

development Application for the erection of a sea wall that will traverse its boundary and the boundaries of all parties hereto between them and the Pacific Ocean and such sea wall will be constructed and terminated along the boundaries of the properties of the above listed Owners' of Lots **AND SUCH SEA WALL** will be as generally depicted in Annexure "A" hereto **AND WHEREAS** the Owners Corporation by this agreement seeks to set out the terms and conditions under which the above listed Owners' of Lots will give their permission, consent and execute all necessary documents to all such applications to relevant authorities including the Greater Taree City Council to obtain development approval for the construction of the sea wall and the cost of all design work related to the Development Applications shall initially be born by the Owners Corporation but is then to be apportioned amongst the parties hereto if such design work is to be used by any of the parties in the construction of such part of the sea wall that fronts their boundaries **AND WHEREAS** for the information only of the parties hereto preliminary diagrams, design of the wall and placement of it are attached marked "A" "B" but the parties acknowledge these attached documents are draft only and can be changed when final design and placement is determined. Any change does not give a party to the Agreement any right to withdraw their approval vary their obligations under the Agreement or rescind this Agreement.

**NOW THIS AGREEMENT WITNESSETH:**

1. That the Owners Corporation will at its cost, estimated to be in the vicinity of twenty-five thousand dollars (\$25,000.00) arrange for all necessary design work to be carried out and prepared to accompany any application for the construction of a sea wall along the boundaries of the properties of the parties hereto and the Pacific Ocean to relevant authorities including the Greater Taree City Council and will lodge with application with those authorities.
2. That the Owners Corporation will at all times own any copy right or property of whatsoever nature interest in those design plans and at no time will any of the other parties hereto have any right or interest in those plans unless they have made a contribution to the cost of those plans as set out herein.



3. All parties hereto will consent and permit the entry upon their properties of any person or their workmen or agents engaged by the Owners Corporation to carry out such design work and will not restrict the movement of such persons upon their lands and will allow them to carry out any tests as required whilst performing such work and will equally give permission for the officers, servants or agents of any authority from which approval is sought including the Greater Taree City Council entry onto such land and will allow them to carry out such work as is required for the purpose of obtaining the approval for the construction of a sea wall.
4. The Owners Corporation will obtain appropriate insurances and will indemnify the parties hereto against liability for any claims that maybe made as the result of the permission and consent given in accordance with clause 3. above.
5. For the purpose of the lodgement of any application to relevant authorities and in particular a Development Application to the Greater Taree City Council that for the execution of this agreement by a party hereto it is deemed by such execution to have consented to the application and each party will do all such things and sign all necessary documents within a reasonable time to allow all such application to relevant authorities.
6. The time at which any party hereto can seek an interest and claim a right to any property in the design plans as set out in clause 2. above is on such party paying part of the total cost of such plan and any application fees or other associated fees or costs calculated on the length of boundary of that parties property over which the sea wall is proposed and that length is to be divided into the total length of the sea wall to give the appropriate proportion. As an example if the sea wall is 100 metres and the length of the applicable boundary is 30 metres then that party will pay 30% of the costs referred to herein. Terms of amount payable for rights to use the design are to be acceptable to the Executive Committee of SP 61034.

7. The Owners, if required by the Greater Taree Council, to vary or make alterations to the Development Application in order to secure approval may do so without the further consent of the parties hereto BUT if such alterations are substantial and substantial means any alteration in area or linear measurement of more than 5% then the parties hereto will be notified of such alteration in writing and any party within 21 days of such notification may also in writing to the Owners elect to rescind their approval to the lodgement and approval of the altered Development Application but should such rescission not be received by the Owners within 21 days the parties hereto shall be deemed to consent to the alterations.
8. That this agreement can only be varied in writing with the consent of all parties.

#### **NOTATION**

1. If the parties hereto give their consent to the terms and conditions of this Agreement and approval is given for the construction of the sea wall the parties note and will co-operate in such construction of the sea wall and without limiting their co-operation to the matters listed herein they will co-operate to allow each section of the sea wall to be constructed to an appropriate standard and be properly certified. The construction is to comply with approved drawings and permit conditions. The construction of each section is to be the full length of the property boundary at the crest. Each section is to be properly linked with any previously constructed sections which includes partially re-stacking at the boundary to ensure adequate interlocking. If there is damage to existing wall sections as the result of construction of other sections of the wall then the person or entity causing such damage will at its own cost rectify such damage. The parties also understand that permission of neighbours may be required to construct returns with the crest at the boundary and the slop of the wall extending into adjacent property. The parties further note and understand that there could be loss of minor vegetation which is to be reinstated. There could be loss of major trees but this should be



avoided if possible and there must be negotiation in relation to the possible loss of any major tree. Any damage to buildings has to be rectified by the party causing such damage at no cost to other parties. Should a neighbour not build its part of the wall then the result could be that returns have to be extended. All parties also have to understand that failure to construct the whole sea wall could result in exacerbated erosion and there is a need to backfill prior to construction along the proposed alignment. If possible there can be no comeback on neighbours as a result of an adjacent owners' lack of construction.

2. That as regards Lot 1DP524933 owned by MALCOLM and Lot \_\_\_\_\_ owned by \_\_\_\_\_ being the lots that are at the ends of the Sea Wall and on which Lots it is proposed that the ends of the Sea Wall are proposed to be constructed subject to the consents and contribution of all other parties involved in the construction of the Sea Wall that the owners of these lots by giving their consent to this Agreement and executing same will not by that consent and execution of this Agreement will in any way be deemed to have consented to being required to contribute to the costs of design, development application and construction of the Sea Wall which may be on their property.

All these matters listed above as well as all other relevant matters have been taken into account by the parties hereto prior to the execution by them of this Agreement.

IN WITNESS the parties have signed this 2<sup>ND</sup> day of MARCH 2012

Signed by the Owners of Strata Plan 61034

Signed by Owner(s) of Lot \_\_\_\_\_



Signature of Owner

Signature of Owner

MALCOLM DUDLEY BLACK,

Full name of Owner

Full name of Owner

Signed by Owner(s) of Lot

*Ross Kers*  
Ross Kers

Signed by Owner(s) of Lot



Ivan M. Handel



HERE

Signed by Owner(s) of Lot 1, 2, 3 SP 76533

For and on behalf of the National Australia Bank

P. J. MAITZ

Signed by Principal's Agent  
Mortgagee Services Pty Ltd



HERE

Signed by Owner(s) of Lot 5 DP 1028979

For and on behalf of the National Australia Bank

P. J. MAITZ

Signed by Principal's Agent  
Mortgagee Services Pty Ltd

Signed by Owner(s) of Lot

Signed by Owner(s) of Lot



ANDREW THOMPSON

STRATA MANAGER OF

SP 61034

Signed by Owner(s) of Lot \_\_\_\_\_  
Signature of Owner \_\_\_\_\_ Signature of Owner \_\_\_\_\_

*Ross Keys*

Full name of Owner \_\_\_\_\_ Full name of Owner \_\_\_\_\_

*Ross Keys*

Signed by Owner(s) of Lot \_\_\_\_\_  
Signature of Owner \_\_\_\_\_ Signature of Owner \_\_\_\_\_

*[Signature]*

Full name of Owner \_\_\_\_\_ Full name of Owner \_\_\_\_\_

*Juan M. Handel*

Signed by Owner(s) of Lot \_\_\_\_\_  
Signature of Owner \_\_\_\_\_ Signature of Owner \_\_\_\_\_

Full name of Owner \_\_\_\_\_ Full name of Owner \_\_\_\_\_

Signed by Owner(s) of Lot \_\_\_\_\_  
Signature of Owner \_\_\_\_\_ Signature of Owner \_\_\_\_\_

Full name of Owner \_\_\_\_\_ Full name of Owner \_\_\_\_\_

Signed by Owner(s) of Lot \_\_\_\_\_  
Signature of Owner \_\_\_\_\_ Signature of Owner \_\_\_\_\_

Full name of Owner \_\_\_\_\_ Full name of Owner \_\_\_\_\_

Signed by Owner(s) of Lot \_\_\_\_\_  
Signature of Owner \_\_\_\_\_ Signature of Owner \_\_\_\_\_

*[Signature]*

Full name of Owner \_\_\_\_\_ Full name of Owner \_\_\_\_\_

*ANDREW THOMPSON*

*STRATA MANAGER OF  
SP 61034*