

**BATHURST REGIONAL COUNCIL
(ABN 42 173 522 302)**

and

**NON-EXCLUSIVE DEVELOPMENT AGENCY
AGREEMENT**

THIS AGREEMENT is made on

2025

BETWEEN

BATHURST REGIONAL COUNCIL (ABN 42 173 522 302) of 158 Russell Street, Bathurst in the State of New South Wales (**Owner**)

and

(**Agent**)

RECITALS

- A. The Owner is the registered proprietor of the Available Lots comprised in the Development.
- B. The Owner requires marketing and sales services to assist it in selling the Available Lots in the Development
- C. The Agent has agreed to market and arrange sales of the Available Lots in the Development on a non-exclusive basis.
- D. The Owner agrees to appoint the Agent to market and arrange sales of the Available Lots in the Development on a non-exclusive basis to enable the sale of the Available Lots in the Development and the Agent accepts the appointment on the terms and conditions set out in this Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement unless the context or subject matter or circumstances indicate otherwise:

Available Lots means the lots in the Development which are unsold as at the date of this Agreement as set out in Annexure "A".

Business Day is a day other than a Saturday, Sunday or public holiday in NSW.

Claim means any actions, suits, claims, demands, proceedings, losses, damages, compensation, costs, legal costs, charges and expenses.

Commencement Date means the date in Item 6 of Schedule 1.

Confidential Information means:

- (a) information relating to the Development and/or which in the course of and as a result of the Agent's engagement by the Owner the Agent has access to or may become acquainted with including but not limited to documents or information received or developed by the Agent in the performance of its duties hereunder, trade secrets, marketing information, customer lists, financial information and business plans in respect of the Development, the Owner, its clients, customers and any other parties with whom the Owner has had dealings in the course of this engagement; and
- (b) any document, information or data whatsoever that is in any way related to the number, value, parties or particulars of any Contract of Sale, including but not limited to the price list, marketing materials, marketing strategy and any other confidential information relating to the Development.

Contract of Sale means the contract or contracts for the sale of an Available Lot or Available Lots.

Development means the residential land development comprised in Deposited Plan 1304135.

Fee means the amount described in Item 5 of Schedule 1 payable pursuant to clause 9.

GST has the same meaning as in the GST Legislation.

GST Legislation includes A New Tax System (Goods and Services Tax) Act 1999; A New Tax System (Goods and Services Transition) Act 1999 and any other related legislation (whether or not currently in force) and any rulings, additions, amendments or alterations to the preceding legislation;

Marketing Fee means the Agent's costs to market an Available Lot which forms part of the Fee.

Party means a party to this Agreement and **Parties** has a corresponding meaning.

Reserve Price means the minimum price for an Available Lot which is described in Item 4 of Schedule 1.

Sale Price means the price (inclusive of GST) for an Available Lot as set out in the Contract of Sale.

Services means causing the sale of the Available Lots and includes but is not limited to:

- (a) the provision of all sale services reasonably required to effectively procure sales of each of the Available Lots in the shortest possible time as is reasonably practicable and in accordance with the Owner's appropriate requirements;
- (b) conducting work administration activities required for the marketing and the sale and promotion of the Available Lots including conducting an appropriate trust account if required by the Owner;
- (c) dealing with any enquiries including first contact enquiries from prospective purchasers concerning the Available Lots or if necessary, the Development, recording those enquiries and ensuring that any information given to any party concerning the enquiries, or any aspect of it is consistent in all respects and does not by omission or amendment incorrectly reflect the information provided to the Agent by the Owner;
- (d) providing regular reports to the Owner concerning the services including weekly and monthly sales process reports, visitation reports, contract status reports and sales and marketing budgeting forecasts.

Term means three (3) months from the date of this Agreement.

1.2 Interpretation

In this Agreement, unless a contrary intention appears:

- (a) a reference to this Agreement or another instrument includes any variation or replacement of them;
- (a) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements or any of them;
- (b) the singular includes the plural and vice versa;
- (c) the word "person" includes a firm, body corporate, an unincorporated association or an authority;
- (d) a reference to a party includes a reference to its executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (e) an agreement on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;

- (f) a reference to any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them;
- (g) the word "include" (in any form) when introducing one or more specific items does not limit the meaning of the general words to those items or to items of a similar kind;
- (h) in the interpretation of this Agreement no rule of construction applies to the disadvantage of one party on the basis that that party put forward this Agreement.
- (i) where a word or phrase has a defined meaning, another part of speech or grammatical form in respect of that word or phrase has a corresponding meaning.

2. APPOINTMENT

- 2.1 The Owner appoints the Agent as its agent for the Term to provide the Services on non-exclusive basis for the Fee and the Agent accepts this appointment and undertakes to provide the Services.
- 2.2 The Parties agree that this appointment shall not extend beyond the Term unless agreed to in writing by both Parties.
- 2.3 The Parties agree that this appointment is for the sale of the Available Lots only. The Owner may amend, change and vary the list of the Available Lots at any time and from time to time by written notice to the Agent.
- 2.4 The Agent acknowledges that any of the Available Lots may not be available at the time of any proposed sale by the Agent, and the Agent must verify the availability of the Available Lots prior to accepting any offer from any prospective purchaser.

3. TERM OF APPOINTMENT

- 3.1 This Agency Agreement commences on the Commencement Date and continues for a period equivalent to the Term or such other period as the Parties may agree in writing from time to time.

4. NON-EXCLUSIVE APPOINTMENT

- 4.1 The Agent acknowledges that the authority granted in this Agreement is not exclusive.
- 4.2 The Owner is entitled to appoint other agents to represent it in relation to the sale of the Available Lots during the Term of this Agreement without any notice to the Agent.
- 4.3 The Owner is entitled to market and sell Available Lots during the Term of this Agreement without any notice to the Agent.

5. QUALIFIED SALES

- 5.1 The Agent acknowledges and agrees that the objective the Services is to sell the Available Lots in accordance with the terms of this Agreement and the Reserve Price.
- 5.2 Sales of the Available Lots will be considered as unconditional ("Qualified Sales") if the following conditions are satisfied:
- (a) The Contract of Sale is unconditional and validly exchanged between the Owner and the purchaser; and
 - (b) The Contract of Sale provided to the Owner's legal practitioner with the particulars of sale properly completed; and
 - (c) A 10% cash deposit (or such other lesser deposit that is acceptable and approved by the Owner in writing) is received by the Owner's legal practitioner; and
 - (d) The Contract of Sale is unconditional and not subject to the satisfaction of any conditions precedent (except for any other conditions precedent approved by the Owner in writing); and
 - (e) The Sale Price of the relevant Available Lot under the Contract of Sale shall not be less than the Reserve Price; and
 - (f) The Contract of Sale is enforceable against the purchaser.

6. OBLIGATIONS OF THE AGENT

- 6.1 Without limiting any other duty or obligation of the Agent under this Agreement, the Agent must and undertakes to the Owner that it will:
- (a) provide the Services in a proper and efficient manner and according to law;

- (b) introduce purchasers to the Available Lots in order to effect Qualified Sales at the applicable Sales Price;
- (c) use its best endeavour to effect Qualified Sales of each Available Lot;
- (d) be duly bound to employ any material and information obtained by reason of this agency for the purposes of this agency solely and not in any manner inconsistent with good faith and must not divulge any information or materials to any third parties or use them in unfair competition with the Owner;
- (e) exercise proper care, skill and diligence in carrying out its duties;
- (f) keep accurate records of all transactions including the details of the purchasers and sale price and produce them to the Owner as and when reasonably required;
- (g) not at any time during the Term or at any other time thereafter disclose or make known to any person except in connection with and for the purposes of supplying or providing the Services any Confidential Information being, in each case, information derived in connection with supplying or providing the Services;
- (h) not at any time during the Term or at any other time thereafter accept any appointment by any person for the re-sale of any Available Lot unless approved in writing by the Owner, who will not unreasonably withhold its approval;
- (i) not profit or make any commission or fee from the sale and settlement of the Available Lots other than the Fee payable under this Agreement; and
- (j) provide all administrative services required to perform the Services (subject to the other terms of this Agreement).

6.2 The Agent must until the end of the Term:

- (a) maintain its real estate agent's licence;
- (b) promptly notify the Owner of any proposal to alter any conditions currently imposed on its licence;
- (c) comply with all applicable laws to perform the Services.

7. AGENT'S ACKNOWLEDGEMENTS

7.1 The Agent expressly acknowledges that:

- 7.1.1 it has carefully read and understood the provisions of this Agreement;
- 7.1.2 it has had sufficient time to adequately review this Agreement and to make all enquiries they consider necessary of professional advisers in relation to this Agreement; and
- 7.1.3 it has not been induced to enter into this Agreement and has not relied on representations, warranties or statements whether oral or written made by the Owner, its officers, advisers, employees or agents except those contained in this Agreement.

8. RESERVE PRICE

- 8.1 The Parties agree that the Agent must only procure the sale of an Available Lot at the price equal to or greater than the Reserve Price, unless otherwise authorised in writing by the Owner.
- 8.2 The Parties acknowledge that the Owner has the full discretion to vary the Reserve Price from time to time during the Term. If the Owner varies the Reserve Price, the Owner will provide the revised Reserve Price to the Agent.
- 8.3 The Agent further acknowledges and agrees that the Owner is not obliged to sell the Available Lots at the Reserve Price or at any other price. The Owner reserves its rights to determine the final price.

9. PAYMENT OF FEE

- 9.1 In consideration of the Agent providing the Services and undertaking the obligations under this Agreement, the Owner agrees to pay to the Agent the Fee for the Qualified Sales effected by the Agent in accordance with this clause 8.
- 9.2 The Agent shall issue proper tax invoice for the Fee payable by the Owner for each Qualified Sales.
- 9.3 Subject to receipt of a proper tax invoice from the Agent, the Owner shall pay the Fee to the Agent for the Qualified Sales in 2 stages, and on the following basis:

(a) **Stage 1**

The Marketing Fee capped at \$1,100.00 inclusive of GST ("**Stage 1 Fee**") is payable 14 days after a Contract of Sale becomes a Qualified Sale, subject to receipt of a valid tax invoice.

(b) **Stage 2**

If settlement occurs, the remainder of the Fee (“**Stage 2 Fee**”) is paid on settlement of the Contract of Sale, subject to receipt of a valid tax invoice.

- (c) If the Purchaser fails to settle the purchase, the Agent is not entitled to any part of the Stage 2 Fee. The Agent is entitled to retain the Stage 1 Fee at the time the Contract is terminated/rescinded.

9.4 For avoidance of doubt, the Agent is only entitled to the Fees if the Agent presents the Contract of Sale signed by the purchaser which leads to the Qualified Sales. The Agent is not entitled to any of the Fee for any Qualified Sales relating to a Contract signed by a purchaser presented by other agents, even if the said Purchaser was first known to the Agent or was previously introduced by the Agent to the Owner.

10. TREATMENT OF THE FEE IN THE EVENT OF AGENT’S DEFAULT

Notwithstanding any other provisions in this Agreement, the Agent is not entitled to any part of the Fee if:

- (a) the Agent has breached its obligations and terms under this Agreement; or
- (b) the Agent has breached any of the applicable law; or
- (c) the Contract of Sale is rescinded or terminated as a result of the action or omission of the Agent.

11. REPORTING AND REVIEW BY OWNER

11.1 The Agent agrees to provide the Owner with monthly reports which outline the Services provided for the preceding month, including leads, offers received with the amount of each offer, the name of the offeror, numbers of offers for each Available Lot sales and any other information relevant to the Services (**Monthly Report**).

11.2 The Agent acknowledges that the Owner will review each Monthly Report to assess the adequacy of the performance of the Services by the Agent and may terminate this Agreement pursuant to clause 14.3 if the performance is not considered to be satisfactory to the Owner, acting reasonably.

12. MARKETING, PROMOTION AND SIGNAGE

12.1 Unless clearly approved by the Owner in writing, the Agent is NOT authorised to engage in any advertising or publicity whatsoever that would link their agency with the marketing and the sale of the Available Lots other than placing two (2) signs measuring no more than 1.1m² each in locations approved by the Owner as shown in red in Annexure “C”.

- 12.2 Following exchange of a Contract of Sale by the Agent, the Agent is permitted to erect a single "sold" sign measuring no more than 1.1m² on the Available Lot.
- 12.3 The Agent is not to undertake any form of advertising for the sale of Available Lots of the Development without seeking prior written approval from the Owner. Such approval can be granted or withheld in the absolute sole discretion of the Owner.
- 12.4 All and any intellectual property in any advertising for the sale of Available Lots of the Development will be retained by the Owner.

13. CONFIDENTIALITY

- 13.1 The Agent and the Owner acknowledge that during the course of the agency contemplated by this Agreement, the Agent may become acquainted with or have access to Confidential Information and agrees to use its best endeavours to maintain the confidence of the Confidential Information and to prevent its unauthorised disclosure to or use by any other person, firm or company.
- 13.2 The Agent will take all steps as are reasonably practicable to ensure that the Confidential Information will remain confidential. This Agent will:
- (a) use the Confidential Information only for the purposes of performing its obligations under this Agreement;
 - (b) disclose the Confidential Information only to those officers, employees and advisers of the Agent who have a need to know it for the purposes of this Agreement and who are aware that the Confidential Information must be kept confidential;
 - (c) take all steps as are reasonably practicable to ensure that each officer, employee and adviser of the Agent to whom the Confidential Information has been disclosed protects the confidentiality of the Confidential Information;
 - (d) promptly notify the Owner if the Agent becomes aware of a suspect or actual breach of the obligations of confidence imposed by this Agreement and take all reasonable steps to prevent or stop that suspected or actual breach;
 - (e) not, without the prior written consent of the Owner, photocopy or reproduce the Confidential Information; and
 - (f) safely and securely store the Confidential Information when not in use.

14. RELATIONSHIP

The relationship between the Parties is that of principal and agent and the parties covenant and agree that there is no relationship of employer and employee or partnership or otherwise.

15. TERMINATION

15.1 This Agreement may be terminated at any time by the Owner by immediate notice in writing to the Agent if:

- (a) the Agent commits a breach of any of the provisions of this Agreement; or
- (b) the Agent commits any act which amounts to a repudiation of this Agreement; or
- (c) there is a serious or wilful misconduct on the part of the Agent.

15.2 This Agreement may be terminated by the Agent at any time by notice in writing if the Owner fails to comply with any of its obligations under this Agreement or commits any act, which amounts to a repudiation of this Agreement.

15.3 The Owner may, in its absolute discretion, terminate this Agreement at any time during the Term after the date that is one month after the Commencement Date by giving the Agent 7 days' written notice.

15.4 Upon termination of this Agreement, the Agent will deliver to the Owner:

- (a) all advertising, promotional and marketing materials in relation to the Available Lots and/or the Development; and
- (b) all confidential and other materials related to the Development.

16. AGENT'S INDEMNITIES

The Agent agrees to indemnify the Owner against all liabilities, Claims, actions, suits, proceedings, demands, losses, damages, costs, fees and expenses incurred or arising out of or in connection or in consequence of the Agent:

- (a) failing to perform the Services and its other obligations under this Agreement; and
- (b) breaching the provisions of this Agreement, except where such liabilities, Claims, actions, suits, proceedings, demands, losses, damages, costs, fees and expenses arise or are incurred as a result of any wilful or negligent act or omission of the Owner or any of the Owner's employees, agents or contractors (other than the Agent).

17. ASSIGNMENT

The Agent must not assign any of its rights, benefits or obligations under this Agreement without the prior written consent of the Owner.

18. VARIATION TO THIS AGREEMENT

Any variation to this Agreement shall be of no force and effect unless it is in writing and signed by the parties.

19. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Owner and the Agent in relation to the Agent's appointment by the Owner.

20. SEVERANCE

Any term of this Agreement which is not applicable to the grant of the agency contemplated by this Agreement or which is repugnant to the general interpretation of this Agreement or which is invalid, unlawful, void or unenforceable shall be capable of severance without effecting any of the other terms of this Agreement.

21. CO-OPERATION AND GOOD FAITH

The Parties agree that they will co-operate with each other and at all times act in good faith and with the joint objective of successfully and expeditiously concluding all of the arrangements contemplated in this Agreement.

22. COSTS

Unless and except as specified otherwise herein, the parties will bear their own costs and expenses incurred in connection with negotiating, agreeing and executing this Agreement.

23. NOTICES

Any notice which may be given for any purpose pursuant to this Agreement shall be duly served:

- (a) on the Owner if delivered at or posted to the address specified in Item 8 of Schedule 1;
- (b) on the Agent if delivered at or posted to the address specified in Item 9 of Schedule 1.

24. GOVERNING LAW

If any dispute arises as to the obligations contained in this Agreement then that dispute will be governed by the laws of New South Wales.

25. DISPUTE RESOLUTION

- 25.1 The provisions of this clause apply if a dispute arises between the Owner and the Agent in connection with this Agreement.
- 25.2 The Owner and the Agent must seek to settle a dispute in good faith in accordance with this clause 23.
- 25.3 Where a dispute has arisen, a Party may not commence court proceedings or arbitration relating to the dispute except where a party seeks urgent interlocutory relief or in accordance with this clause.
- 25.4 Where the Owner and the Agent are unable to settle a dispute within 5 Business Days of one party giving notice to the other that a dispute exists, each party must appoint a representative with authority to settle the dispute.
- 25.5 The representatives must meet within a further 5 Business Days to settle the dispute. If they are unable to resolve the dispute within 10 Business Days of first meeting, the parties must within 10 Business Days of the end of that period, either refer the dispute to arbitration in accordance with clause 23.8 or seek to agree on a process for resolving the whole or part of the dispute through means other than litigation or arbitration, such as further negotiations, mediation, conciliation or independent expert determination.
- 25.6 The Parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute between them.
- 25.7 No Party may use any information or documents obtained through the dispute resolution process established by this clause for any purpose other than in an attempt to settle a dispute between the Parties.
- 25.8 If:
- (a) both Parties do not appoint a representative under clause 23.4;
 - (b) the Parties do not agree to deal with the dispute through a means other than litigation or arbitration; or
 - (c) the Parties are unable to settle the dispute within the time limits set out in this clause and any extended agreed time;
- then the dispute must be referred to the arbitration of a single arbitrator to be agreed upon by the parties or, failing agreement, to be nominated on the application of any party by the President for the time being of the Institute of Arbitrators Australia or his

nominee, such arbitration to be carried out in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitrations.

26. GENERAL PROVISIONS

- 26.1 Any variation to this Agreement will be of no force and effect unless it is in writing and signed by the parties.
- 26.2 This Agreement constitutes the entire agreement between the Owner and the Agent in relation to the Agent's appointment by the Owner.
- 26.3 Any term of this Agreement which is invalid, unlawful, void or unenforceable is capable of severance without effecting any of the other terms of this Agreement.

EXECUTED as an Agreement

EXECUTED by BATHURST REGIONAL COUNCIL ABN 42 173 522 302 by its authorised delegate pursuant to s 377 of the *Local Government Act 1993*, in the presence of:

.....
Signature of witness

.....
Name of witness (block letters)

.....
General Manager

.....
Name (block letters)

EXECUTED BY)
)
pursuant to Section 127 of the Corporations)
Act, 2001:)

.....
Signature of Director

.....
Name of Director (block letters)

.....
Signature of Director/Secretary

.....
Name of Director/Secretary (block letters)

SCHEDULE 1

Item 1	The Owner	Bathurst Regional Council (ABN 42 173 522 302)
Item 2	The Agent	
Item 3	The Development	The Reserve Wyndradyne being the land comprised in Deposited Plan 1304134
Item 4	Reserve Price	The amount set out in the price list annexed as Annexure B
Item 5	The Fee (If the Qualified Sales are effected by the Agent)	3% of the Sales Price for the relevant Available Lot inclusive of GST and all marketing costs
Item 6	The Commencement Date	
Item 7	The Term	Three (3) months from the Commencement Date
Item 8	The Owner's Address for Notices	Address: 158 Russell Street, Bathurst NSW 2795 Email : Matthew.elbourne@bathurst.nsw.gov.au
Item 9	The Agent's Address for Notices	Address: Phone: Email:

ANNEXURE A
AVAILABLE LOTS

Single service lots:

- 101
- 102
- 104-114
- 116-118
- 120-122
- 124-126
- 128-130
- 143
- 144
- 154-156
- 158-160
- 162
- 165
- 167-170
- 172
- 173
- 177-179
- 181-183
- 185-187
- 189

Dual Service lots:

- 115
- 119
- 123
- 127
- 139
- 145
- 157
- 162
- 166
- 171 and
- 176.

ANNEXURE B
RESERVE PRICES

Lot Number	Land Area (m2)	Dimensions	Market Value
100	893.1	Regular	\$361,000
101	572.9	Corner	\$315,000
102	599.8	Regular	\$315,000
104	608	Regular	\$333,000
105	638.3	Regular	\$338,000
106	638.5	Regular	\$333,000
107	1009	Regular	\$372,000
108	740.1	Regular	\$442,000
109	976.3	Irregular	\$371,000
110	5504.3	Corner	\$315,000
111	843	Regular	\$361,000
112	586.5	Corner	\$315,000
113	590.2	Regular	\$315,000
114	550.2	Regular	\$315,000
116	693.7	Regular	\$442,000
117	693.7	Regular	\$442,000
118	725	Irregular	\$342,000
120	924.5	Irregular	\$361,000
121	667.2	Irregular	\$342,000
122	618.8	Regular	\$315,000
124	637.5	Regular	\$333,000
125	637.5	Regular	\$333,000

Lot Number	Land Area (m2)	Dimensions	Market Value
126	637.5	Regular	\$333,000
128	637.5	Regular*	\$333,000
129	637.5	Regular	\$333,000
130	637.5	Regular	\$333,000
132	637.5	Regular	\$333,000
133	637.5	Regular	\$333,000
134	637.5	Regular	\$333,000
136	637.5	Regular	\$333,000
137	637.5	Regular	\$333,000
138	637.5	Regular	\$333,000
141	586.0	Corner	\$315,000
143	570.6	Corner	\$315,000
144	583.5	Regular	\$315,000
146	637.5	Regular	\$333,000
147	637.5	Regular	\$333,000
148	637.5	Regular	\$333,000
150	637.5	Regular	\$333,000
151	637.5	Regular	\$333,000
152	637.5	Regular	\$333,000
154	637.5	Regular	\$333,000
155	637.5	Regular	\$333,000
156	637.5	Regular	\$333,000
158	637.5	Regular	\$333,000

Lot Number	Land Area (m2)	Dimensions	Market Value
159	637.5	Regular	\$333,000
160	637.5	Regular	\$333,000
162	913.5	Irregular	\$361,000
165	618.8	Regular	\$315,000
167	610.3	Corner	\$315,000
168	658.9	Regular	\$342,000
169	966.6	Irregular	\$541,000
170	898.2	Irregular	\$361,000
172	889.8	Irregular	\$361,000
172	725.1	Irregular	\$342,000
175	637.5	Regular	\$333,000
177	637.5	Regular	\$333,000
178	637.5	Regular	\$333,000
179	637.5	Regular	\$333,000
181	637.5	Regular	\$333,000
182	637.5	Regular	\$333,000
183	637.5	Regular	\$333,000
185	637.5	Regular	\$333,000
186	637.5	Regular	\$333,000
187	637.5	Regular	\$333,000
189	561.4	Regular	\$315,000
190	607.4	Corner	\$315,000

ANNEXURE C
APPROVED SIGNAGE LOCATIONS

