

# First Right of Refusal Obligations

If you want to assign, licence, sublease, sell, transfer, or part with possession of your interest in your Dugout you must comply with the first right of refusal obligations contained in your lease or licence. This Fact Sheet summaries your obligations and sets out a flow chart for you to work through when carrying out your obligations relating to the first right of refusal.

## FAQs

### 1. What is a first right of refusal?

It is a contractual right that gives a third party the first option over everyone else in the market to purchase your interest in your Lease or Licence if you decide to assign, licence, sublease, sell, transfer, or part with possession of your interest in your Lease or Licence.

### 2. Who has a first right of refusal to my Lease or Licence?

Barkandji Native Title Group Aboriginal Corporation RNTBC (ICN 4740) (**Barkandji Corporation**). This is because the Federal Court has recognised Barkandji Corporation as the traditional owners of the land your Lease or Licence is subject to.

### 3. What triggers a first right of refusal?

- Assigning, licencing, subleasing, selling, transferring or otherwise parting with possession of your interest in the Lease or Licence;
- You are a corporation and there is a change in control of the corporation;
- You are a trustee and alter the control of the trust; or
- Proposal of any other dealing or action which would result in a third party occupying the land subject to your Lease or Licence.

If one of the above occurs, this is called a **First Right of Refusal Trigger**

### 4. Are there exceptions to the first right of refusal?

Yes, there are **three** exceptions to the first right of refusal:

1. where the proposed transferee/assignee/sublicensee is a Relative; or
2. where the proposed transferee/assignee/sublicensee is a beneficiary of the Licensee's deceased estate; or
3. where You propose to sublicense this Tenure for the purposes of short term rental accommodation arrangements within the meaning of section 54A of the Fair Trading Act 1987 (NSW),

A “**relative**” means: a spouse, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendent or adopted child of that person, or of that person’s spouse or the spouse of any of those listed persons including beyond couples and children and their parents’ by treating any couple (whether of the same sex or different sexes) as a married couple and treating any child as a natural child and any grandparent, parent, sibling, child, grandchild, niece, nephew, uncle or aunt as either related by blood or adoption.

**5. Where do I access the Forms mentioned in this Fact sheet?**

They will be made available on the Department – Crown Lands website

**6. What are More Favourable Terms and what if I want to accept them in Step 6 below?**

More Favourable Terms means a lower purchase price, a longer or shorter settlement period, a lesser deposit, or any variation to the terms and conditions set out in the Intent to Sell Form.

Where you are willing to accept More Favourable Terms than the terms and conditions offered to Barkandji Corporation you must re-offer those More Favourable Terms to Barkandji Corporation in accordance with Steps 4 to 6 below (as applicable).

This does not apply to sale through public auction.

**Step 1 - Do you want to assign, licence, sublease, sell, transfer or otherwise part with possession of your interest in you Dugout?**

<b>YES</b> This may be a First Right of Refusal Trigger, Move to Step 2	<b>NO</b> No further action required
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**Step 2 - Does the transfer qualify as a First Right of Refusal Exception? \*please see definition in FAQ no. 4 above**

<b>YES</b> You must comply with the Standard Assignment and Sublease Provisions. No further action required	<b>NO</b> Move to Step 3
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**Step 3 - Are you selling your interest in your Dugout by public auction?**

<b>YES</b> You <b>must</b> give Barkandji Corporation and the Department 15 Business Days prior written notice inviting Barkandji Corporation to attend the public auction. Notice should be in the form of the Proposed Auction Form	<b>NO</b> Move to Step 4
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**Step 4 - Are you selling your interest in you Dugout by private treaty?**

<b>YES</b> You <b>must</b> give Barkandji Corporation and the Department 20 Business Days prior written notice offering to sell your interest in your Dugout on terms acceptable to You.	<b>NO</b> Move to Step 5
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**Step 5 - Have you received an unsolicited offer to purchase your interest in your Dugout and the terms and conditions of the offer are acceptable to you?**

<b>YES</b> You <b>must</b> give Barkandji Corporation and the Department 20 Business Days prior written notice offering to sell your interest your Dugout on terms acceptable to You.	<b>NO</b> move to Step 6
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**Step 6 - After 20 Business Days of service of the Intent to Sell Form, you must follow one of the 2 avenues below. This will depend on the response from Barkandji Corporation**

<b>You recieve an Agreement to Purchase Form from Barkandji Corporation</b> You must dispose of your interest in your Dugout to Barkandji Corporation in accordance with the terms of the Intent to Sell Form	<b>You <u>do not</u> receive an Agreement to Purchase Form</b> - You may dispose of your interest in your Dugout provided you - do not dispose of your interest on More Favourable Terms than those contained in the Intent to Sell Form; and - you comply with the Standard Assignment and Sublease Provisions.
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