

GUNDITJMARA CONSULTATION & NEGOTIATION PROTOCOL



GUNDITJ MIRRORING
Traditional Owners
Aboriginal Corporation

Gunditj Mirring Traditional Owners Aboriginal Corporation (GMTOAC) "Gunditjmara Consultation and Negotiation Protocols" (the Protocols) provide an **entry point for discussions between GMTOAC, Gunditjmara Native Title Holders and proponents** about how **consultation/negotiations** are to be **conducted** between them.

These Protocols will **assist proponents to consult** with **GMTOAC** and **Gunditjmara** in a **respectful** and **meaningful way**.

GMTOAC and **Gunditjmara** will **only enter consultation/negotiation** with **prospective proponents** if they **meet criteria** within these Protocols.

DOCUMENT INFORMATION

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On behalf of: Gunditj Mirring Traditional Owners Aboriginal Corporation

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GMTOAC will conduct an annual review of this document. Any potential changes will be communicated with and approved by the Gunditjmara native title holders.

Version control will vest with the GMTOAC CEO.

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PURPOSE

1. The Guditj Mirring Traditional Owners Aboriginal Corporation (GMTOAC) Guditjmarra Consultation and Negotiation Protocol (the Protocols) set out the Guditjmarra's standards and expectations for consultation and negotiation in relation to activities on Guditjmarra Mirring (Country).
2. The Protocols provide an entry point for discussions between GMTOAC, Guditjmarra and proponents about how the consultation/negotiations are to be conducted and will form the basis for any framework agreement entered between the parties. By outlining the GMTOAC and Guditjmarra's needs and expectations in this way, GMTOAC seeks to foster Proponents' understanding of the Guditjmarra's relationship to their Mirring, and their responsibilities and obligations to protect and care for their Mirring in accordance with their traditional lores and customs.
3. Proponent means a person(s) who seeks to undertake a relevant development, use or extractive activity or activities on Guditjmarra land and sea Mirring, or has the potential to impact on Guditjmarra land and sea Mirring. This can include direct or indirect impacts on the native flora and fauna of Guditjmarra land and sea Mirring, from activities occurring outside the boundaries of Guditjmarra Mirring. Activity or Activities can also include an offshore or onshore energy project (including renewable and petroleum activities).
4. The Protocols contain key principles and processes for meaningful consultation with the Guditjmarra consistent with the principle of Free, Prior and Informed Consent (FPIC), described below. The principles and processes are intended to facilitate the establishment of ongoing, sustainable, and respectful relationships, and to support culturally safe engagement that meets the goals and legal and cultural obligations of each party.
5. The principles outlined in this document are not intended to be exhaustive, but to guide discussions between the parties about how to proceed with the consultations/negotiations.
6. This document has been informed and should be read along with (where relevant to your engagement):
 - GMTOAC website
 - GMTOAC Rule Book
 - Jessica K Weir, The Guditjmarra Land Justice Story
 - Guditjmarra People, Wettenhall, G., (2022) The people of Budj Bim, Engineers of aquaculture, builders of stone house settlements and warriors defending Country
 - GMTOAC, Guditjmarra Nyamat Mirring Plan 2023-2033
 - GMTOAC, Ngootyoong Guditj Ngootyoong Mara South West Management Plan 2015
 - GMTOAC, Cultural Values Assessment Guidelines 2022
 - GMTOAC, Research Principles and Guidelines – creating partnerships for research with Guditjmarra and/or on Guditjmarra Country 2022
 - Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), Engaging with Traditional Owners
 - First Nations Clean Energy Network, Best Practice Principles for Clean Energy Projects
 - Victoria State Government, Community Engagement and Benefit Sharing in Renewable Energy
 - Development in Victoria: A Guide for Renewable Energy Developers
 - Clean Energy Council, Community Engagement Guidelines for the Australia Wind Industry
 - Victoria State Government, Victorian Aboriginal Affairs Framework 2018-2023
 - Dhawura Ngilan Business and Investor Initiative, Principles for Businesses and Investors
 - Dhawura Ngilan Business and Investor Initiative, Guide for Businesses and Investors
 - Department of Energy, Environment and Climate Action (DEECA), Pupangarli Marnmarnepu 'Owning Our Future' Aboriginal Self-Determination Reform Strategy 2020-2025

WHAT IS GUNDITJMARA MIRRORING AND WHO ARE GUNDITJMARA?

7. Gunditjmarra Mirring (Country) is a complex, connected landscape incorporating four Mirring; Wooroowarook Mirring (Forest Country), Bocara Wooroowarook Mirring (River Forest Country), Tungatt Mirring (Stone Country) and Nyamat Mirring (Sea Country), each with their own unique values, stories and ecological systems connected to the Gunditjmarra.
8. The Gunditjmarra are the first peoples for Mirring described above, located in far south-western Victoria, bordered by Bocara (the Glenelg River) in the west, the Wannon River to the north and the Hopkins River in the east, and extends out to sea. Gunditjmarra Mirring encompasses volcanic plains, coastline, Nyamat Mirring, limestone caves, forests and rivers. Nyamat Mirring is connected to the rest of Gunditjmarra Mirring as part of a continuous, connected landscape.
9. Gunditjmarra land and Nyamat Mirring is shown in Map 1 (dark blue and light blue shading). It should be noted that the extent of Nyamat Mirring is indicative only and does not demonstrate its interconnectedness with the rest of Gunditjmarra Mirring and its full extent both inland and out to sea.
10. The Gunditjmarra's cultural authority to speak for and care for their Mirring is derived from their traditional lores, customs, and knowledge passed down through the generations since time immemorial.
11. Building on the common law recognition of the Gunditjmarra's rights as Traditional Owners in the High Court's decision in *Onus v Alcoa of Australia Ltd. (1981) 149 CLR 27*, the Gunditjmarra received formal recognition under the *Aboriginal Heritage Act 2006* (Vic) and the *Native Title Act 1993* (Cth). GMTOAC represents the Gunditjmarra as a Registered Aboriginal Party and the Registered Native Title Body Corporate for the Gunditjmarra native title determinations: *Lovett on behalf of the Gunditjmarra People v State of Victoria [2007] FCA 474* and *Lovett on behalf of the Gunditjmarra People v State of Victoria (No 5) [2011] FCA 932*.
12. The GMTOAC Registered Aboriginal Party (RAP) area is shown in Map 2. This is not reflective or representative of the extent of Gunditjmarra Nyamat Mirring.

Map 1 - Map of Gunditjmara land and sea



- GMTOAC boundary
- Gunditjmara Country
- Nyamat Mirring (Sea Country)

Map 2 - Map of GMTOAC RAP Area



Gunditj Mirring Traditional Owners Aboriginal Corporation
Registered Aboriginal Party area

Gunditj Mirring Traditional Owners Aboriginal Corporation
and Eastern Maar Aboriginal Corporation are appointed over
the same area as represented by the darker shading

THE AREA COVERED BY THESE PROTOCOLS

13. These Protocols cover all Gunditjmarra Mirring as defined above and managed by GMTOAC, including Nyamat Mirring.

GUNDITJMARA CULTURAL VALUES

14. Gunditjmarra cultural values are understood as relating to all aspects of Ceremony/Obligation, Skin/Totems/Kin/Relationships, Law/Lore/Learning, Wurrung/Communication and Mirring in line with GMTOAC's (2022) Cultural Values Assessment Guidelines. This can include (but is not limited to, or defined by): Creation Stories and Song-lines, spirit, ceremonial sites, cultural material (tangible, archaeological), landscape and seascape features, site lines, living and camping places, resource places, water above and below the ground including Nyamat Mirring, Sky Mirring, soils and rocks, plants, animals, fungi, algae (and other biota at all stages of life), ecological systems, relationships, family stories, pathways and trade routes, cultural practices, and historical events and periods.
15. Consideration of Gunditjmarra cultural values can only occur through engagement with the relevant Gunditjmarra cultural knowledge holders and should be considered early in any consultation/negotiation. GMTOAC is the first point of contact to identify Gunditjmarra who speak for particular knowledge, or an area of Gunditjmarra Mirring.

PRINCIPLES

16. All consultation/negotiation must be conducted in accordance with these principles. Decisions about Gunditjmara Mirring have intergenerational impacts and must be made in accordance with Gunditjmara lore, customs, and beliefs, as mentioned above. The Gunditjmara principles for consultation/negotiation are informed by Gunditjmara decision-making protocols (as described below) and best practice standards to ensure that Gunditjmara cultural obligations are met.

FREE, PRIOR AND INFORMED CONSENT

17. Free, Prior and Informed Consent (FPIC) provides a framework that recognises and respects the critical decision-making role of Gunditjmara and supports meaningful participation, informed decision-making, and timely sustainable outcomes. Consultation/negotiation processes that embed FPIC lead to greater certainty, lower transaction costs and reduced risk of legal challenges and disputation. Any engagement processes that involve the Gunditjmara must be based on FPIC as a minimum standard.

MUTUAL RESPECT

18. Gunditjmara value a consultation/negotiation process that exhibits respect for the opinions of both parties. To build and establish a positive and long-term relationship with Gunditjmara, there needs to be a respect of Gunditjmara cultural values, and their Protocols, and adequate time provided for the Gunditjmara to understand and consult on any proposal being presented to them.

EQUAL RELATIONSHIP BUILDING BETWEEN GUNDITJMARA AND PROPONENTS

19. An understanding of Gunditjmara comes with and through consultation. Consultation with Gunditjmara is dependent on relationship building and meaningful engagement between proponents and the community, likely over the long term. Gunditjmara expect that a

meaningful consultation process will be used to establish relationships, build trust, and create mutual respect. Understanding the cultural values of the Gunditjmara and recognising their views and opinions, plus embracing these viewpoints, ideas and cultural values will deliver a stronger outcome for all parties. This requires Proponents being willing and flexible to genuinely listen to what Gunditjmara say in consultation/negotiations.

20. Proponents must acknowledge the inequality of resourcing, between them and Gunditjmara and must commit to participating in a consultation/negotiation process that aims to mitigate that disparity.

ACCOMMODATING GUNDITJMARA MIRRORING AND CULTURE

21. Accommodating Gunditjmara and Gunditjmara Mirring is an essential component to fostering a strong rapport with the Gunditjmara. This accommodation must recognise that Gunditjmara were in prior possession and occupation of Gunditjmara Mirring, and that they maintain their sovereign right to Mirring and identity, and have done so for thousands of years.
22. Gunditjmara have a circular spiritual connection to Mirring and are the voice for Mirring. There is an expectation that through engagement with the relevant Gunditjmara cultural knowledge holders, proponents consider Gunditjmara cultural values and understand and respect why Mirring and culture are important. A lack of understanding can limit the value of the consultation/negotiation.

OBJECTIVES AND POWERS OF GUNDITJ MIRRORING TRADITIONAL OWNERS ABORIGINAL CORPORATION

23. Through GMTOAC, Gunditjmarra ensure that their cultural obligations and responsibilities, which arise from Gunditjmarra Mirring and under Gunditjmarra lore, customs, and beliefs are upheld and recognised for the protection and management of Mirring, and the promotion, protection, and management of Gunditjmarra cultural heritage, and for our respect to our Gunditjmarra ancestors and Elders.
 24. GMTOAC is governed by a Board descended from the Gunditjmarra Apical Ancestors: Jenny Green (Alberts), Timothy James Arden, Barbara Winter, Mary (Mother of James Egan), Billy & Mary Gorrie, William & Hannah King, James Lancaster, Susannah McDonald (Lovett), James and Mary McKinnon, Eliza Mitchell (Saunders), John Henry Rose, James and Mary Sutton, Louisa Taylor (mother of Agnes and Alex Taylor), Andrew and Ellen Winter, Lucy Sutton.
 25. GMTOAC is authorised to carry out its functions and responsibilities by its members and the Gunditjmarra native title holders. GMTOAC engages formally with its membership and the Gunditjmarra native title holders through GMTOAC general and native title meetings. It should be noted that meetings are not regular and not all native title holders have the capacity to participate. As a consequence this could lengthen the consultation process.
 26. GMTOAC is responsible for decisions relating to operational and cultural heritage matters in accordance with its statutory obligations and functions under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) and *Aboriginal Heritage Act 2006* (Vic).
 27. The decision-making authority for native title related matters rests with the native title holders. As a Registered Native Title Body Corporate (RNTBC) with statutory obligations and functions under the *Native Title Act 1993* (Cth) and *Native Title (Prescribed Bodies Corporate) Regulations 1999*, GMTOAC is obligated to consult with and obtain the consent of the Gunditjmarra native title holders in relation to decisions that affect the native title rights and interests of Gunditjmarra. GMTOAC also liaises with its members in relation to broader matters related to Gunditjmarra Mirring, including on offshore petroleum matters.
 28. Gunditjmarra seeks to work with governments and Proponents to establish a consultation process that supports the protection of Mirring, including Gunditjmarra relationships to Mirring, from harm and share in the benefits from the developments on their lands and waters.
 29. Additional detail about GMTOAC's objectives and powers can be found within the GMTOAC Rule Book.
 30. A diagram depicting GMTOAC's role and relationship with Gunditjmarra is at Appendix 1.
- Early and ongoing engagement with the Gunditjmarra will enable informed decision-making and sustainable outcomes and reduce the risk of legal challenges and disputation resulting in project uncertainty and delay. Gunditjmarra interests in Mirring are held communally and consultation must take place directly with Gunditjmarra. Subject to appropriate timelines and resourcing, GMTOAC can assist Proponents in facilitating and enabling reasonable opportunities for Gunditjmarra to identify, express and convey those interests to Proponents as part of the consultation process.

PROTOCOLS

CONSULTATION/NEGOTIATION WITH GUNDITJMARA

31. The Gunditjmara's preferred approach is for the parties to co-design a process that is in line with these Protocols for consultation/negotiation, and matters relating to, but not limited by: timeframes, costs, dispute resolution, confidentiality and intellectual property.

EARLY ENGAGEMENT AND TIMING

32. The Gunditjmara require timely, comprehensive information about the Activity to determine their engagement with the consultation/negotiations. This includes initial meetings, undertaken in accordance with this Protocol, between the Proponent and Gunditjmara, targeted at establishing a relationship and process prior to the commencement of the consultation/negotiation of substantive issues.

33. The Proponent must respect GMTOAC's internal governance processes by engaging early. This will save time and mitigate against difficulties for all parties in the long term. The Proponent must take the time to understand what GMTOAC needs to gain sufficient endorsement from Gunditjmara regarding a request from a Proponent to consult/negotiate with Gunditjmara. Sufficient time must be allowed for GMTOAC to process the information provided by the Proponent (including any technical reports), coordinate and discuss with its membership and the Gunditjmara native title holders, and develop a response.

34. The Proponent must acknowledge and understand that Gunditjmara governance is complex, multi-layered and it will take time for meaningful consultation/negotiation to occur. The Proponent must set-up realistic timeframes in their management process to allow GMTOAC to engage with its membership and community on and off Mirring, and the GMTOAC Board, where appropriate.

35. Proponents should expect that consultation may take time, depending on the complexity of their Activity and the number of concurrent Activities on which consultation with Gunditjmara is sought. Timeframes will vary on a case-by-case basis, having regard to the above factors as well as: internal resourcing, and technical specialisation required of GMTOAC and its members and others. It is likely to be unrealistic for Proponents to expect meaningful consultation to occur within weeks or months of the process commencing. In some cases, it may take much longer to complete a meaningful consultation process.

36. It is important that Proponents contact GMTOAC at the commencement of Activity planning and design, discuss and settle an appropriate timeframe, remembering that Gunditjmara live their culture, often have competing obligations, and are usually engaged with family and other undertakings.

37. Where Proponents are aware of multiple, concurrent activities proposed to occur on or with risk of impacting upon Gunditjmara Mirring, that require consultation/negotiation, Proponents will need to be aware that this will affect timeframes for consultation and may wish to stagger or coordinate consultation between Proponents and prioritise amongst Proponents about the timing for each proposal.

38. Sorry Business is a time of loss, mourning and reflection. Sorry business will always take priority over other commitments, no matter how important or time sensitive the Activity is.

DECISION-MAKING

39. The Guditjmarra play a critical role in decision-making about Activities on Guditjmarra Mirring. Decision-making processes can vary depending upon the Activity and its statutory or policy trigger.
40. It is expected that a decision-making process is established early between GMTOAC and the Proponent.
41. Decisions that affect native title rights and interests are made by the Guditjmarra Native Title Holders at their native title meetings, usually held regularly. Proponents are expected to negotiate directly with the Guditjmarra Native Title Holders at these meetings. Proponents would also be expected to pay an attendance fee at these meetings in line with the relevant GMTOAC fee schedule.

INFORMATION

Information provided by Proponents

42. Guditjmarra expect that the Proponent will work with GMTOAC to issue information in nontechnical plain language. This does not reduce the obligation of Proponents to provide full information about their Activity and its potential impacts.
43. All communications, including the information about prospective activities provided by the Proponent throughout the process, must be in plain English. GMTOAC can advise Proponents on how to best communicate with the Guditjmarra, to support informed consultation and/or decisionmaking. Please note that the timing of GMTOAC advice will be impacted by the number of concurrent activities proposed and demands on GMTOAC and Guditjmarra time.

Information commissioned by GMTOAC

44. The Guditjmarra may require a cultural values assessment prior to the commencement of consultation/negotiations to inform their decision-making. The Guditjmarra use cultural values assessments to identify and capture the historical and contemporary cultural values related to all aspects of their Mirring, people and culture. Assessment reports record the identified values and map locations of cultural value and areas of cultural sensitivity. Cultural values assessments go beyond traditional heritage assessments such as Cultural Heritage Management Plans prescribed by the Aboriginal Heritage Act that typically focus on tangible cultural heritage. A cultural values assessment shall be conducted by a third party, selected by GMTOAC, and shall be funded by the Proponent. Further information about cultural values assessments is found in the GMTOAC Cultural Values Assessment Guidelines 2022.
45. Guditjmarra may need to engage their own technical experts or specialists in order to review technical, scientific or other information and data to advise GMTOAC and its members accordingly of possible risks and impacts of an Activity. Technical experts or specialists would be selected by GMTOAC and shall be funded by the Proponent.

Information to include assessment of cumulative risks or impacts

46. Guditjmarra are keenly aware of the risk of intersecting and/or compounding impacts on land and sea Mirring by the cumulative impacts of Activities over time. Guditjmarra may require Proponents to provide GMTOAC with cumulative impacts assessments (CIAs) that refer to all concurrent and proposed Activities with risk to impact upon their land and sea Mirring.

47. Alternatively, GMTOAC must be resourced in order to commission an independent CIA. 48. CIAs must take into account impacts on Mirring temporally and spatially as a result of proposed Activities.

GUDITJMARRA JUDGE THE COMPLETENESS OF THE CONSULTATION/NEGOTIATION PROCESS

49. Guditjmarra are the ultimate judges on whether the consultation/negotiation process has been meaningful and completed in accordance with Figure 1.

CONFIDENTIALITY

50. Guditjmarra take privacy and confidentiality seriously. Proponents must understand that some of the cultural values Guditjmarra have relating to Guditjmarra Mirring cannot and will not be openly shared. This information should simply be acknowledged and dealt with in accordance with Guditjmarra guidance.
51. If cultural values are shared, it is expected that Proponents are guided by GMTOAC in how this information, knowledge and expertise is appropriately used and stored.

Figure 1 - Engaging with Traditional Owners - Free, Prior and Informed consent (AIATSIS), 2020



INDIGENOUS CULTURAL AND INTELLECTUAL PROPERTY

52. Ownership of Indigenous Cultural and Intellectual Property (ICIP) rights will remain with the relevant custodians of such ICIP. Proponents will ensure ICIP rights are respected and upheld. Proponents will agree to act in accordance with and respect any cultural protocols which may apply to ICIP as notified by GMTOAC or the relevant custodians. Where a Proponent proposes to use ICIP, it must obtain the informed consent to do so from the relevant owners and custodians of the ICIP.

RESOURCING

53. Gunditjmara are not adequately funded to participate in all consultations/negotiations and are managing various competing priorities.

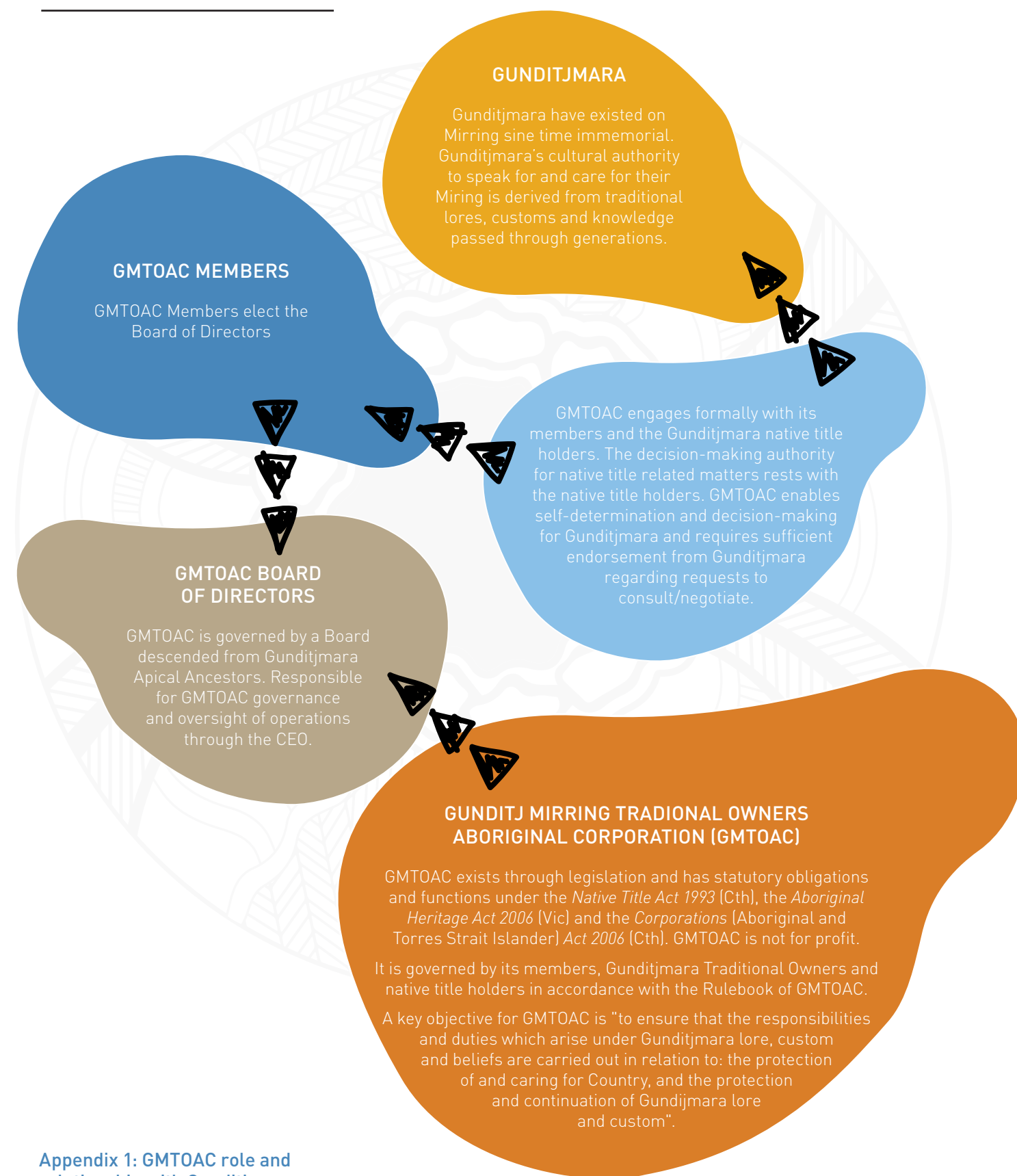
54. Funding and other support from the Proponent will be required to enable genuine consultation/negotiation, and allow GMTOAC to continue to build its capacity to engage in a timely and informed manner with Gunditjmara and the Proponent. This may include, but is not limited by: GMTOAC administration, sittings fees, travel costs, meeting costs, accommodation, catering, IT and audio-visual recording, legal and technical advice, cultural values assessments, CIAs and other resources as required.

55. A GMTOAC fee schedule is available on request.

CONTACTS

56. Contact GMTOAC Reception to discuss the relevant program officer for the Activity proposed by the Proponent: Reception@gunditjmirring.com (03) 5527 1427

APPENDIX



Appendix 1: GMTOAC role and relationship with Gunditjmara





GUNDITJ MIRRORING
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www.gunditjmirring.com