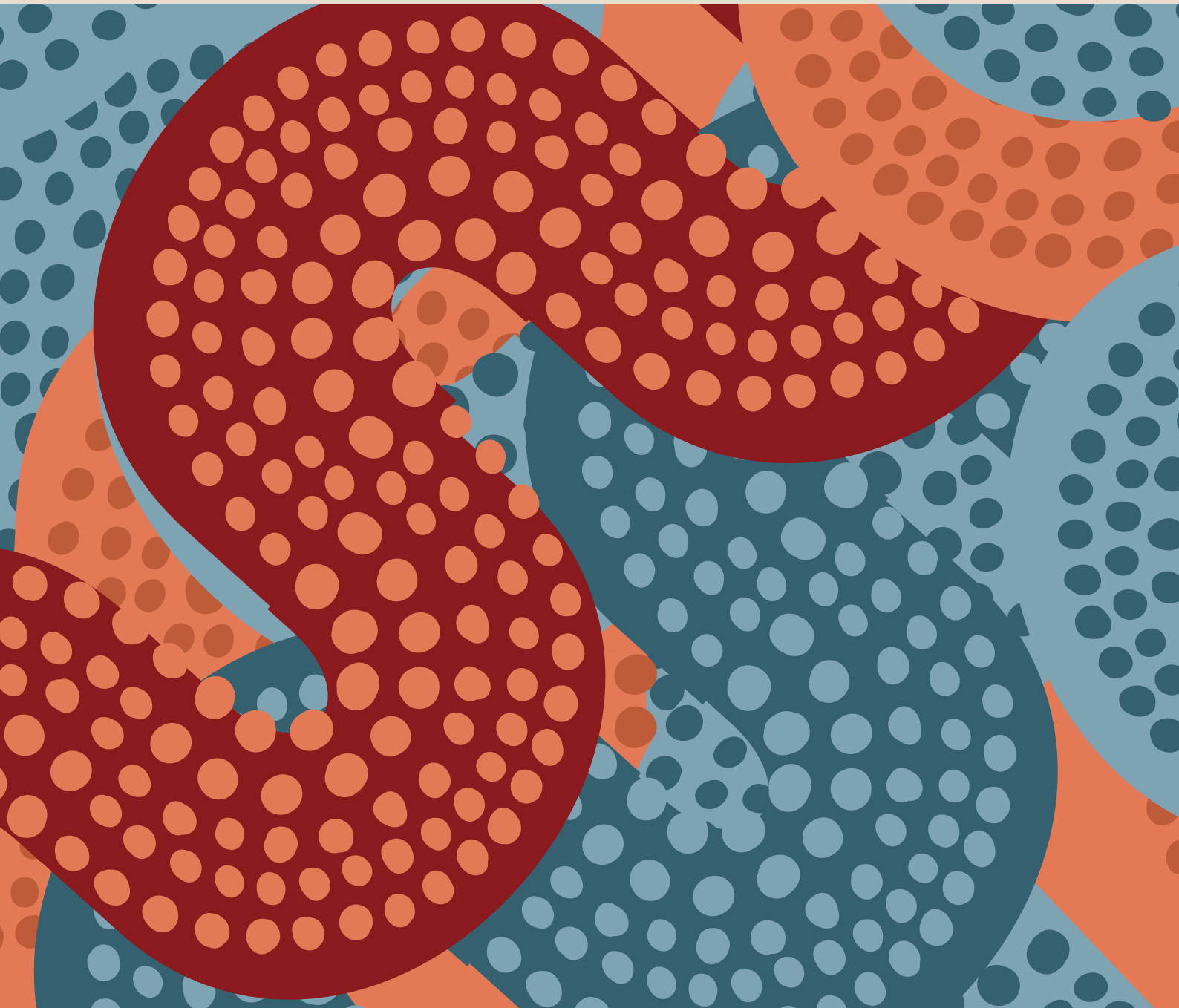




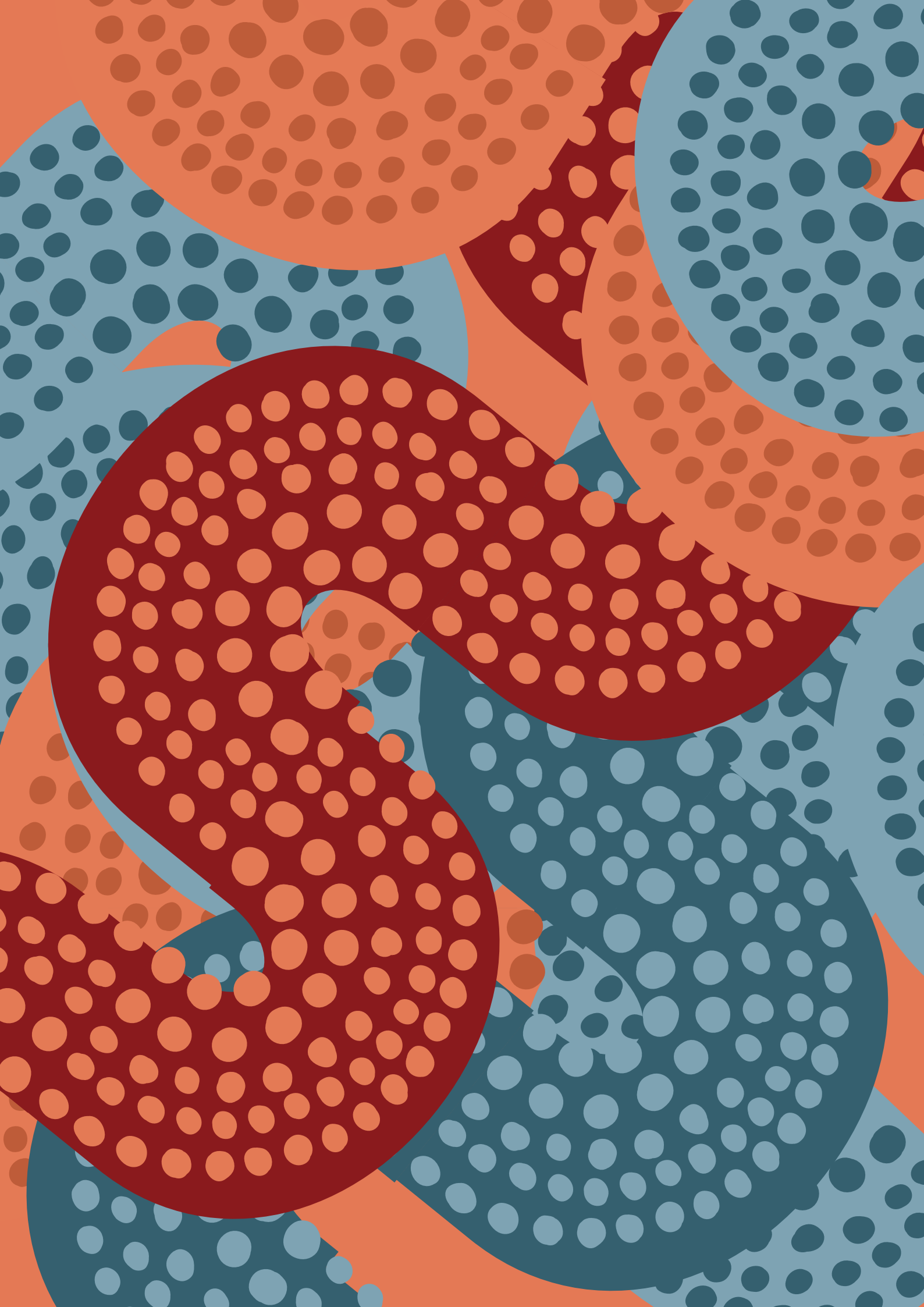
Dhawura Ngilan

BUSINESS & INVESTOR INITIATIVE



PRINCIPLES FOR BUSINESSES AND INVESTORS

Dhawura Ngilan (Remembering Country):
A Vision for Aboriginal and Torres Strait Islander Heritage





Dhawura Ngilan

BUSINESS & INVESTOR INITIATIVE

PREPARED BY

Terri Janke and Company Pty Ltd



DHAWURA NGILAN BUSINESS AND INVESTOR INITIATIVE

<https://culturalheritage.org.au/dhawura-ngilan-business-investor-initiative-2023/>

This document was prepared by Terri Janke and Company – Dr Terri Janke, Founder and Solicitor Director, and Laura Melrose, Solicitor. Dr Janke is a Wuthathi, Yadhagana and Meriam woman and an international authority on Indigenous Cultural and Intellectual Property (ICIP). Terri Janke and Company is a 100% Indigenous owned and run law and consulting firm that empowers clients to achieve success in business and innovation. Terri Janke and Company is a multi-award-winning firm and a Certified Indigenous Supplier with Supply Nation.

Various stakeholders across the First Nations, business and investor environment provided input into the development of this Principles document. Oversight was provided by the Steering Committee of the Dhawura Ngilan Business and Investor Initiative. The committee is chaired by Cath Brokenborough (Executive Lead, First Nations Engagement and Reconciliation, Lendlease), and composed of the Initiative's core partners (First Nations Heritage Protection Alliance, Responsible Investment Association Australasia, UN Global Compact Network Australia, National Native Title Council (Secretariat)).

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FOREWORD

Aboriginal and Torres Strait Islander Peoples are the custodians of a profound, unbroken cultural legacy spanning over 65,000 years. The sites, artefacts, customs, practices, and rich stories of the people and the landscapes of this country make Australia unique and are of international significance.

Protecting this cultural heritage is the responsibility of all Australians.

It is widely acknowledged that current Australian legislative frameworks in place do not adequately protect First Nations cultural heritage, and are not in line with international legal standards, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

These Principles and the Business and Investor Guide present an opportunity for the private sector to go beyond legislative standards and actively contribute to the Dhawura Ngilan (Remembering Country) Vision for Aboriginal and Torres Strait Islander heritage in Australia.

First Nations leadership and empowerment in decision making is key to leading practice cultural heritage protection. First Nations people must be the ones to speak for their cultural heritage, as it is a living heritage.

The First Nations Heritage Protection Alliance and its members are calling upon businesses and investors to stand with us and set an example of leading practice, to ensure the protection, strength and endurance of First Nations cultural heritage for centuries to come.





PREAMBLE

These Dhawura Ngilan Business and Investor Principles are a set of standards which collectively illustrate the expectations of First Nations peoples for how the private sector will interact with First Nations cultural heritage. This document should be read in conjunction with the accompanying Business and Investor Guide, which provides further detail.

The Principles build on *Dhawura Ngilan (Remembering Country): A vision for Aboriginal and Torres Strait Islander heritage in Australia (Dhawura Ngilan)*, embodying the long-held aspirations of First Nations people for their heritage,¹ which were endorsed by the Heritage Chairs of Australia and New Zealand following extensive consultations with First Nations stakeholders and peak representative bodies, advisory councils and committees. The Vision aims to inform policy, underpin legislative change and inspire action to protect and conserve Indigenous Cultural Heritage (ICH).²

The Dhawura Ngilan Vision has four broad statements:

- 1) Aboriginal and Torres Strait Islander people are the Custodians of their heritage. It is protected and celebrated for its intrinsic worth, cultural benefits and the wellbeing of current and future generations of Australians.
- 2) Aboriginal and Torres Strait Islander heritage is acknowledged and valued as central to Australia's national heritage.
- 3) Aboriginal and Torres Strait Islander heritage is managed consistently across jurisdictions according to community ownership in a way that unites, connects and aligns practice.
- 4) Aboriginal and Torres Strait Islander heritage is recognised for its global significance.

These Principles are intertwined and should be read holistically. Together, they signify leading practice in First Nations cultural heritage management by businesses and investors. The Principles are also relevant for governments when they are project proponents.

In order to demonstrate alignment with the Dhawura Ngilan Vision, businesses and investors must implement all of the Principles. It is recognised that some Principles will be more relevant to some sectors than others, but others can be implemented by actors in any field. Where a Principle touches the value chain of a business, that business has a responsibility to ensure that it is not doing harm.

It is a core element of these Principles that good practice does not offset bad practice. Adherence to ten, or twelve, or fifteen principles does not excuse negligence of the remainder.

Implementation of these Principles should be proportionate to the size and influence of the organisation.

¹ Heritage Chairs of Australia and New Zealand, *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation* (Report, 16 September 2020) 4. <<https://www.dcceew.gov.au/sites/default/files/documents/dhawura-ngilan-vision-atsi-heritage.pdf>>.

² Dhawura Ngilan Vision



RESPECT AND SELF-DETERMINATION

1. The company respects, values and celebrates First Nations cultural heritage.

The company respects, values and celebrates First Nations cultural heritage, and respects First Nations peoples' rights to their cultural heritage.

*"[Cultural heritage] is protected and celebrated for its intrinsic worth, cultural benefits and the wellbeing of current and future generations of Australians."*³

The company recognises that respecting First Nations rights requires embedding First Nations values in all areas of the business and throughout the organisation, rather than on a transactional or project-centric basis. This is a prerequisite to proper implementation of the Principles that follow, including self-determination, meaningful engagement, Free, Prior and Informed Consent (FPIC) and truth telling.

2. The company empowers First Nations leadership and respects First Nations peoples' right to self-determination.

The company recognises that First Nations peoples have the right to be the leaders and decision-makers in relation to their cultural heritage.

Under the UNDRIP, Indigenous Peoples have the right to

*"maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions..."*⁴

Self-determination means that First Nations peoples have the right to make decisions around things that impact them and their culture, Country and heritage.

As the company implements the Dhawura Ngilan Principles, it supports self-determination by facilitating First Nations-led projects and engaging First Nations thought leaders and cultural authorities to make decisions on all matters relating to cultural heritage. When engaging in activities which impact or relate to cultural heritage, the company engages First Nations consultants, experts, and cultural authorities to have meaningful input in decision making.

3. The company recognises the rights of First Nations peoples as Custodians of their cultural heritage.⁵

The company respects and advocates for First Nations rights to their cultural heritage.

The company acknowledges that First Nations peoples have a cultural obligation to care for culture and Country. First Nations Custodians are connected to their Country, community, and ancestors. It is this connection that gives them rights, responsibilities and duties to Country and culture.⁶ It is solely the right of First Nations peoples, as Custodians, to determine the cultural significance of individual and collective elements of both tangible and intangible cultural heritage (see Principle 11).

The company respects and advocates for the rights of First Nations Custodians to be the interpreters of culture, and to speak for Country.

4. The company respects First Nations cultural heritage as living heritage.

The company acknowledges that Australian First Nations peoples have the oldest living cultures on the planet, and that their cultural heritage continues to be practiced and nurtured by them.

The company supports this intergenerational practice of culture by committing to doing business in a manner that empowers First Nations peoples to share their cultural heritage on their terms.

The company respects the rights of First Nations peoples to experience, practice and celebrate their culture, including bringing the richness of Aboriginal and Torres Strait Islander languages into everyday use. It demonstrates respect for cultural practices, traditions, and beliefs.

³ Dhawura Ngilan Vision, Key Focus Area 1, p. 14.

⁴ United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) Art 31(1) ('UNDRIP').

⁵ Dhawura Ngilan Vision, Key Focus Area 1, p. 14. 'Custodians' is written here with a capital 'C' to reflect the language used in the Vision.

⁶ Dhawura Ngilan Vision, Connection to Country, p. 9.

COLLABORATION AND CONSENT

5. The company engages early and widely with interested First Nations parties on cultural heritage matters.

The company builds relationships with the First Nations groups connected to Country or the subject matter of their projects and work areas. Strong relationships enable early engagement and are a foundation of FPIC (see Principle 7). Early engagement means involving First Nations groups at the beginning of cultural heritage matters and projects.

“A central component of the principle of Free, Prior and Informed Consent under UNDRIP is that the affected Indigenous community has adequate information and adequate time to consider that information in making any decision that may affect their ICH [Indigenous Cultural Heritage].”⁷

The company goes beyond the legally required standards for First Nations engagement. The company recognises that native title and land rights laws and determinations in Australia are not always reflective of First Nations customary laws and connections to lands and waters. The company seeks to find and engage with any First Nations parties who may wish to be consulted in relation to a particular area of Country or cultural heritage project, whether or not they are legally recognised as native title holders.

6. The company has culturally appropriate engagement processes.

The company has developed inclusive and culturally safe engagement processes for working with First Nations peoples and communities. Engagement strategies are developed early and with flexibility during the design and planning process, to ensure that First Nations peoples are involved from the beginning and have both visibility and control over projects.

The company develops engagement methodologies in collaboration with people with cultural authority, to ensure that ongoing engagements are culturally appropriate and support building long term relationships with First Nations peoples and communities.

The company understands that it must connect and engage with relevant traditional owners of cultural heritage that are impacted by their place-based projects, and may also need to manage local, regional and national engagement depending on the project’s scope and focus.

7. The company holistically applies Free, Prior and Informed Consent (FPIC) in cultural heritage matters.

The company recognises the importance of FPIC in respecting the right of First Nations peoples to self-determination. It respects and applies FPIC to all activities and decisions which affect First Nations peoples, communities and cultures. True FPIC requires that all elements are met – 1. Free, 2. Prior, 3. Informed and 4. Consent. The company actively questions in planning and decision-making processes whether each principle has been satisfied before proceeding.

FPIC is included as a Best Practice Standard in Part 3 of the Dhawura Ngilan Vision.

“The ultimate decision regarding whether interference with ICH is acceptable or not, must rest with the affected Indigenous community”⁸

Consent processes are conducted without undue rush, coercion, intimidation or manipulation to ensure that all consents by First Nations peoples are wholly voluntary and without duress. The company provides all relevant information about projects, including the project design, risks and benefits, and allows sufficient time for culturally appropriate decision-making.

The company implements FPIC as both a process and an outcome. It seeks and does not proceed without obtaining consent during and throughout all stages of any project, including exploration, design, development, implementation, and rehabilitation. The company recognises that respecting First Nations peoples’ right to self-determination means not proceeding with an activity or project for which FPIC has not been obtained or has been actively withheld or revoked.

The company takes into account the rights and interests of all Aboriginal and Torres Strait Islander people in relation to land or sea heritage before the approval of any decision which may affect it.⁹ The company recognises that First Nations peoples are not homogenous, and viewpoints may differ between and within communities.

Where a First Nations party makes a decision relating to activities and projects on their Country or affecting their cultural heritage, the company commits to respecting that decision, including the right to say no to a project, or to conditionally agree to a revised version of the proposal. This includes the right of First Nations peoples to amend or revoke their consent at any time. Where consent has been provided, the company recognises its duty to enact all commitments made and conditions agreed to as part of the consent process.

⁷ Dhawura Ngilan Vision, Pt 3: Best Practice Standards in ICH Management and Legislation, p. 36.

⁸ Dhawura Ngilan Vision, Pt 3: Best Practice Standards in ICH Management and Legislation, p. 36.

⁹ Dhawura Ngilan Vision, Key Focus Area 1.1, p. 15.

8. The company engages in agreement-making on equal terms with First Nations peoples in relation to cultural heritage decisions.

The company collaborates with relevant First Nations peoples, organisations and business, and enters into respectful partnerships for the furtherance of shared goals. The company commits to reaching agreement with First Nations parties before acting and recognises that seeking consent is about more than consultation.

The company acknowledges the continuing impact of colonisation and recognises the inherent power imbalance between First Nations communities and corporations. The company strives to mitigate this imbalance and meet and negotiate with First Nations peoples on their terms. The company will actively identify and enable conditions required to enable agreement making, collaboration and partnership to proceed on equal terms.

The company remunerates First Nations representatives and communities during consultation and negotiations for their time and knowledge at appropriate market rates.¹⁰

9. The company has effective feedback processes and grievance mechanisms.

The company is responsive to feedback and requests from First Nations communities and partners on how they wish to be engaged. It supports First Nations partners to provide feedback in good faith and without undue burden.

The company has an effective and culturally safe method for receiving and resolving complaints.¹¹ The company respects the rights of First Nations peoples to just and fair procedures for the resolution of conflicts and disputes by being open to receive complaints and works toward collaborative solutions.¹² The company respects the customs, traditions, rules, and legal systems of the First Nations peoples concerned within the dispute resolution system.

¹⁰ Dhawura Ngilan Vision, Pt 3: Best Practice Standards in ICH Management and Legislation, p. 37-37.

¹¹ Companies should refer to the United Nations Guiding Principles for Business and Human Rights here, specifically GP31. <https://globalnaps.org/ungp/guiding-principle-31>.

¹² UNDRIP, Article 40.

TRUTH AND HOLISTIC HERITAGE

10. The company actively supports First Nations peoples engaging in truth telling about heritage.

The company recognises Australia's complex and divided history and seeks to amplify First Nations voices and perspectives to walk together toward healing.

*"Telling the truth about Indigenous history is the foundation for a full understanding on the basis of which all Australians can come together in acknowledgement of a shared past and a shared future."*¹³

The company supports First Nations peoples to talk truth about their history, stories and experiences, and to revise and respond to colonial narratives.

11. The company recognises and values intangible cultural heritage and upholds Indigenous Cultural and Intellectual Property rights.

The company acknowledges that the tangible and intangible elements of cultural heritage are inseparable.¹⁴ Intangible cultural heritage makes up an intrinsic part of the heritage landscape including songs, stories, art, knowledge, and other cultural values connected to those places.

The company recognises that the legal parameters of cultural heritage and intellectual property are narrow, and do not represent the full range of Indigenous rights as designated by the UNDRIP.

The company supports a holistic view of heritage and protects intangible cultural heritage including the cultural values of landscapes, and the inseparable connections between physical elements of heritage (e.g. sites and objects) and intangible elements (songlines, knowledges, histories and values).

The company understands and applies best practice standards for working with and protecting Indigenous Cultural and Intellectual Property, or ICIP.

12. The company supports First Nations peoples to maintain and ensure the endurance of First Nations cultural heritage.

The company participates in programs and initiatives that seek to protect and expand First Nations cultures. These programs and initiatives are culturally appropriate and reflect Principles 2 and 3, namely that First Nations people are the decision-makers, Custodians and interpreters of culture and heritage.

The company supports cultural maintenance by supporting and facilitating the intergenerational transfer of knowledge via customary methods within First Nations communities.

The company recognises that Aboriginal and Torres Strait Islander heritage is central to the national tapestry of Australia's heritage,¹⁵ and is intrinsically vital to the wellbeing of current and future generations of Australians.¹⁶

13. The company respects Indigenous Data Sovereignty.

The company actively supports the rights of First Nations peoples to exercise sovereignty over data and information that relates to them. Sovereignty of data can be expressed through the creation, collection, access, analysis, interpretation, management, dissemination, and reuse of Indigenous Data.¹⁷

Indigenous Data Sovereignty requires that First Nations peoples have governance of data that is generated about them, allowing them to shift the agenda and give equal weight to First Nations aspirations rather than just deficits. It also requires access and control of data for governance: information that adequately reflects First Nations cultural diversity, worldviews, and priorities, and facilitates First Nations-led decision making.¹⁸

The company strives to support both First Nations governance of data and data for governance. The company facilitates First Nations access to information stored by the company, collects data from sources considered credible by First Nations peoples, and stores, manages and applies data in alignment with the wishes of the First Nations peoples and communities who are the subjects of the data. Further, where appropriate and where desired by a First Nations community, the company repatriates data back to that community.

¹³ Dhawura Ngilan Vision, Appendix C: Truth Telling, p. 44.

¹⁴ Dhawura Ngilan Vision, Key Focus Area 1.2, p. 16.

¹⁵ Dhawura Ngilan Vision, Key Focus Area Vision 2, p. 7.

¹⁶ Dhawura Ngilan Vision, Key Focus Area Vision 1, p. 7.

¹⁷ Maïam nayri Wingara Indigenous Data Sovereignty Collective.

¹⁸ Walter, M. and S. R. Carroll, (2021) 'Indigenous Data Sovereignty, governance and the link to Indigenous policy'. In Walter, M. et al, (eds) Indigenous data sovereignty and policy (pp. 1-20) (New York: Routledge, 2021) p. 10.



CARING FOR COUNTRY AND CULTURE

14. The company empowers First Nations peoples to care for Country.

The company understands and respects the intrinsic connection between First Nations people, culture, and Country. It actively supports First Nations aspirations and priorities in relation to caring for Country, environment, land, waters, plants, and animals.

Cultural heritage includes the unique and significant relationship First Nations peoples have to Country. Country includes land, sea, and sky Country. The company understands the impact their projects may have on First Nations peoples and their lands, water and resources.

Australia's landscape, waters, and seas, collectively referred to as 'country', are alive with a profusion of heritage places. Imbued with the essence of ancestral beings that created them, it is through these places that family descent and kinship connections flow.¹⁹

15. The company engages in First Nations-led remediation of Country affected by land-use activities and projects.

The company recognises that First Nations heritage is intrinsically connected to Country and cultural landscapes. The company commits to working with First Nations peoples as the carers and Custodians of Country, to sustainably rehabilitate and remediate sites affected by land-use activities and projects with consideration for cultural values, both during and after activities.

The company supports First Nations prosperity (Principle 18) by working with First Nations peoples where possible to action opportunities for decommissioned sites that achieve benefit for First Nations peoples.

16. The company cares for cultural material and supports repatriation of Secret/Sacred material and ancestral remains, as advised by First Nations cultural authorities.

The company actively works to counter and undo the dispossession of First Nations peoples from their culture, by supporting the repatriation of ancestors, secret / sacred knowledge and materials, and other cultural materials to their rightful custodians.²⁰ The company empowers and supports communities to care for ancestors and cultural material on Country.

SUPPORTING FIRST NATIONS PROSPERITY

17. The company enters into benefit sharing agreements with First Nations peoples for use of their knowledge, heritage, resources and assets.

When working with First Nations partners and stakeholders, the company upholds the right of First Nations peoples to benefit from the sharing and use of their cultural heritage and knowledge. This includes knowledge about sites which may be shared during surveying, cultural mapping, or other sources of information or heritage.

When the company is entering into negotiations and partnerships with First Nations peoples about cultural heritage matters (Principle 8), those agreements include provision for benefit sharing arrangements. Benefits flowing to First Nations communities can be either monetary or non-monetary.

The company pays First Nations consultants and advisors for their knowledge and contribution to projects, both in design and execution. The company remunerates participants in consultation and stakeholder engagement sessions when seeking feedback on proposals.

18. The company supports First Nations economic advancement in relation to cultural heritage.

Across its broad scope of operations, the company supports First Nations cultural heritage businesses and First Nations entrepreneurship generally. Supported businesses might include cultural heritage surveyors, consultancy services, engagement facilitators, community managed keeping places or resting places, cultural tourism ventures, or other heritage-related organisations or activities.

The company aims to support First Nations communities and cultural heritage businesses to attain economic sustainability in line with their own priorities and aspirations.

The company seeks to use its influence and position in the supply chain to affect other businesses downstream and support First Nations economic prosperity, and protect cultural heritage.

¹⁹ Dhawura Ngilan Vision, 'Connection to Country', p. 9.

²⁰ Dhawura Ngilan Vision, Key Focus Area 3.5 and 3.6, pp. 23-24.





ADVOCACY AND LEADERSHIP

19. The company is involved in industry-based solutions for working with First Nations cultural heritage.

The company collaborates with other companies and organisations in its sector to drive collective action for better coordination of heritage management. It seeks opportunities to advocate and work with other companies to multiply leverage and drive change.

20. The company promotes and supports First Nations-led education about cultural heritage in Australia and internationally.

The company supports First Nations peoples to share the value and significance of Aboriginal and Torres Strait Islander heritage, culture and stories with a domestic and global audience.²¹ It demonstrates by its actions the importance and value of cultural heritage and seeks to instil the same respect and values in others.

The company aims to work together with First Nations people to elevate the significance of First Nations cultural heritage in Australia, and to guide the actions of Australian governments in recognising and protecting this heritage.²²

The company facilitates empowerment in heritage education via innovative methods, led by First Nations peoples and communities, including using technology and available knowledge systems to raise the profile of First Nations cultural heritage in Australia and internationally.

The company uses its influence to advance Aboriginal and Torres Strait Islander heritage values. It advocates for the listing of Aboriginal and Torres Strait Islander heritage on domestic and international lists where that is desired by First Nations peoples and communities, and works with First Nations peoples to identify heritage places and achieve better equity on statutory lists.²³ It acknowledges that any decision to list sites on heritage lists must be driven by First Nations groups. It supports legislative reform agendas in line with the wishes of First Nations communities, engages in debates, and offers public platforms to First Nations voices.

²¹ Dhawura Ngilan Vision, Key Focus Area Vision 2, p. 18.

²² Dhawura Ngilan Vision, 'Working together', p. 13.

²³ Dhawura Ngilan Vision, Key Focus Area 1.2, p. 18.

About the Dhawura Ngilan Business and Investor Initiative

The Dhawura Ngilan Business and Investor Initiative is a First-Nations led project that brings together First Nations, business and investor communities to create a shared vision for strengthening Australia's Aboriginal and Torres Strait Islander heritage laws and standards for the private sector in line with international agreements and community expectations.

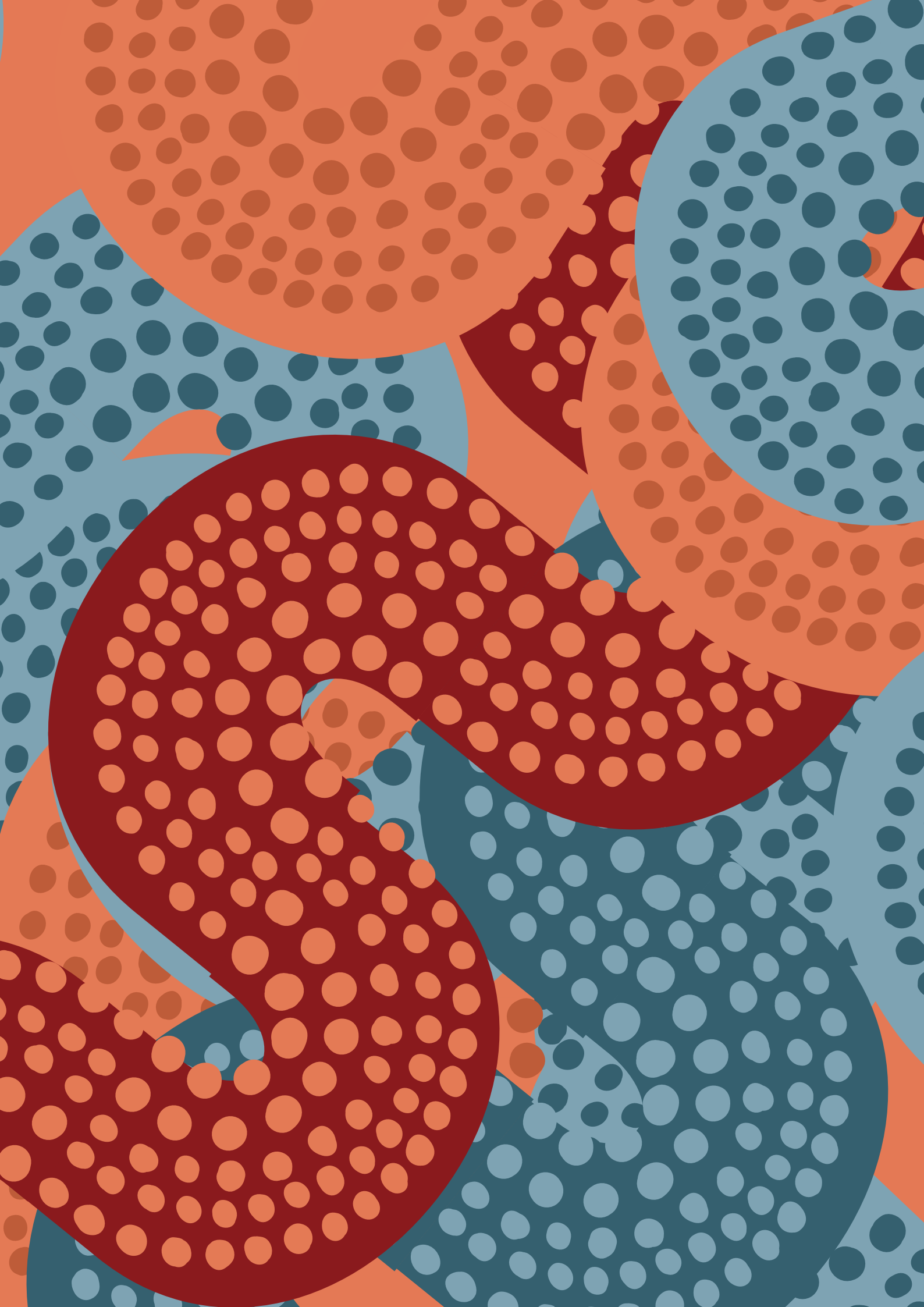
Dhawura Ngilan (Remembering Country) is a vision that embodies the long-held aspirations of Aboriginal and Torres Strait Islander people for their heritage.

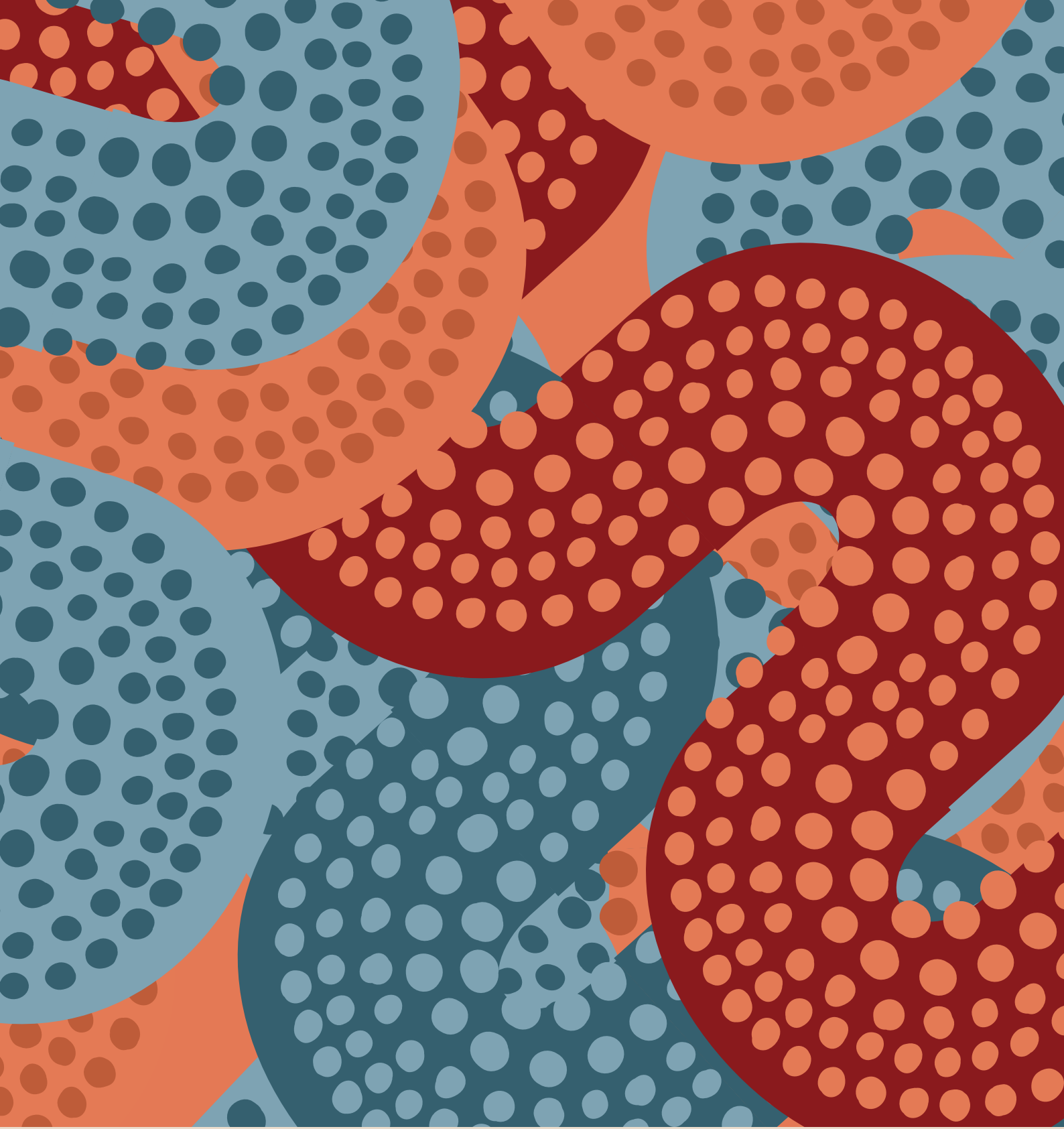
Led by the First Nations Heritage Protection Alliance, and in partnership with Responsible Investment Association Australasia and the UN Global Compact Network Australia, the Initiative is working to provide practical guidance to businesses and investors on how to ensure that their actions and policies contribute to the protection of First Nations' cultural heritage in a way that upholds the right to self-determination and free, prior and informed consent.

See the Initiative's website for more information:

<https://culturalheritage.org.au/dhawura-ngilan-business-investor-initiative-2023/>







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