



He Tohu Ārahi

Guidelines for Protecting Cultural Intellectual Property in Research and Innovation



Te Kotahi
Research Institute

THE UNIVERSITY OF WAIKATO

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May 2024

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Property in Research and Innovation

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Guidelines for Protecting Cultural Intellectual Property in Research and Innovation

Introduction

As Māori communities engage in research and innovation, the issue of protecting Cultural Intellectual Property becomes a significant concern. It is a challenging one to address, given the wide range of elements to which the idea applies in an international context, including traditional knowledge, traditional cultural expressions, and genetic resources. Within Aotearoa New Zealand, we refer to mātauranga Māori (Māori knowledge) and taonga Māori, where taonga can refer to anything that Māori consider special or precious. The broadness of this approach is useful to reflect the things Māori consider important and worthy of protection. However, the types of protections, especially legal ones, that can be applied to cultural intellectual property are limited in scope and do not always align with community expectations.

Mātauranga Māori is integral to the unique and diverse culture of New Zealand, informing the ways in which we understand the world and engage with it. It has increasing value in research contexts both domestically and internationally. Despite such reliance, domestic and international Intellectual Property (IP) law and policies fail to acknowledge Māori rights and interests in mātauranga.

Moreover, there is minimal guidance on the incorporation of mātauranga in research, innovation, and commercialisation of any pre-existing and resulting IP and the protection of cultural IP rights, and when these have been implemented, questions remain as to their effectiveness.¹ Even with legal interest in the navigation of cultural and IP rights within research and commercialisation, uncertainty still exists.

Māori concerns regarding cultural IP rights and protection of mātauranga are not solely legal or commercial in nature. Mātauranga is part of our whakapapa (genealogy) and collective being. Forming genuine relationships with potential collaborators underpins appropriate research and innovation agreements. While there is already existing guidance on commercial-based research, and navigating IP law in relation to Māori culture, there is little in-depth guidance regarding the conversations to have, provisions required, and protection mechanisms for mātauranga Māori within research and their various associated agreements.² These IP guidelines, written by Māori for Māori, seek to provide this guidance and serve as a starting point for in-depth discussions between the parties.

Background

Current Legal Landscape

New Zealand's Intellectual Property laws cover trademarks, patents, copyright, designs, geographical indicators, and plant variety rights, which aim to safeguard creativity and innovation for limited periods. However, there are still gaps in relation to protecting Māori data, taonga species, and mātauranga Māori. International frameworks such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) support Indigenous rights without creating direct mechanisms for enforceability. On a more local level, there is a continual assertion of kaitiaki (guardianship) rights and interests, including expectations of governance over Māori data, taonga species, and mātauranga Māori.³

Reform is required to IP law and cultural IP policies to address the range of recommendations highlighted by the Waitangi Tribunal Wai 262 report,⁴ and operationalise the years of advocacy undertaken by Tiaki Taonga to see legal recognition for kaitiakitanga of taonga and mātauranga Māori. Internationally, agreements such as the Nagoya Protocol recognise Indigenous rights over genetic resources and traditional knowledge, emphasising the need for free, prior, informed consent, and fair benefit sharing. The Mataatua Declaration affirms a set of Indigenous rights of self-determination, extending to the right to be recognised as the exclusive owners of IP. While New Zealand is a United Nations Convention on Biological Diversity (CBD) signatory, it has not ratified the Nagoya Protocol. A survey of New Zealand's research institutions

reveals varying degrees of responsiveness to Māori interests in cultural IP policies and underlines the need for a comprehensive approach and guidance.⁴ Understanding potential research partners' policies on IP and benefit sharing is crucial for informed negotiations between the research partners, encouraging transparency and accountability. The current legal landscape is summarised in Figure 1.

Cultural Intellectual Property Rights

Indigenous Cultural Intellectual Property (ICIP) and IP are separate concepts that are deeply linked.⁶ ICIP refers to the intangible cultural heritage that is created, preserved, and transmitted within a particular culture, this can be in varying forms, such as traditional cultural expressions, traditional knowledge, taonga Māori, mātauranga Māori, and genetic resources.

Indigenous Cultural Intellectual Property Rights (CIPR) assert a set of moral and, sometimes, legal rights and interests to protect Indigenous Peoples' knowledge, data, and cultural practices from misuse.⁷ The misalignment between current IP law and CIPR policies inhibits the level of control kaitiaki would like to exert over their ICIP. Strengthening the relationship between IP law with CIPR policy provides greater accountability in the use of mātauranga, data, and taonga species enabling greater kaitiaki responsibility in research and innovation spaces.³ As noted in the Waitangi Tribunal Wai 262 report, it is not always possible for Māori to exert full autonomy over their mātauranga Māori and IP and so there is a need to address CIPR in more creative ways.⁸

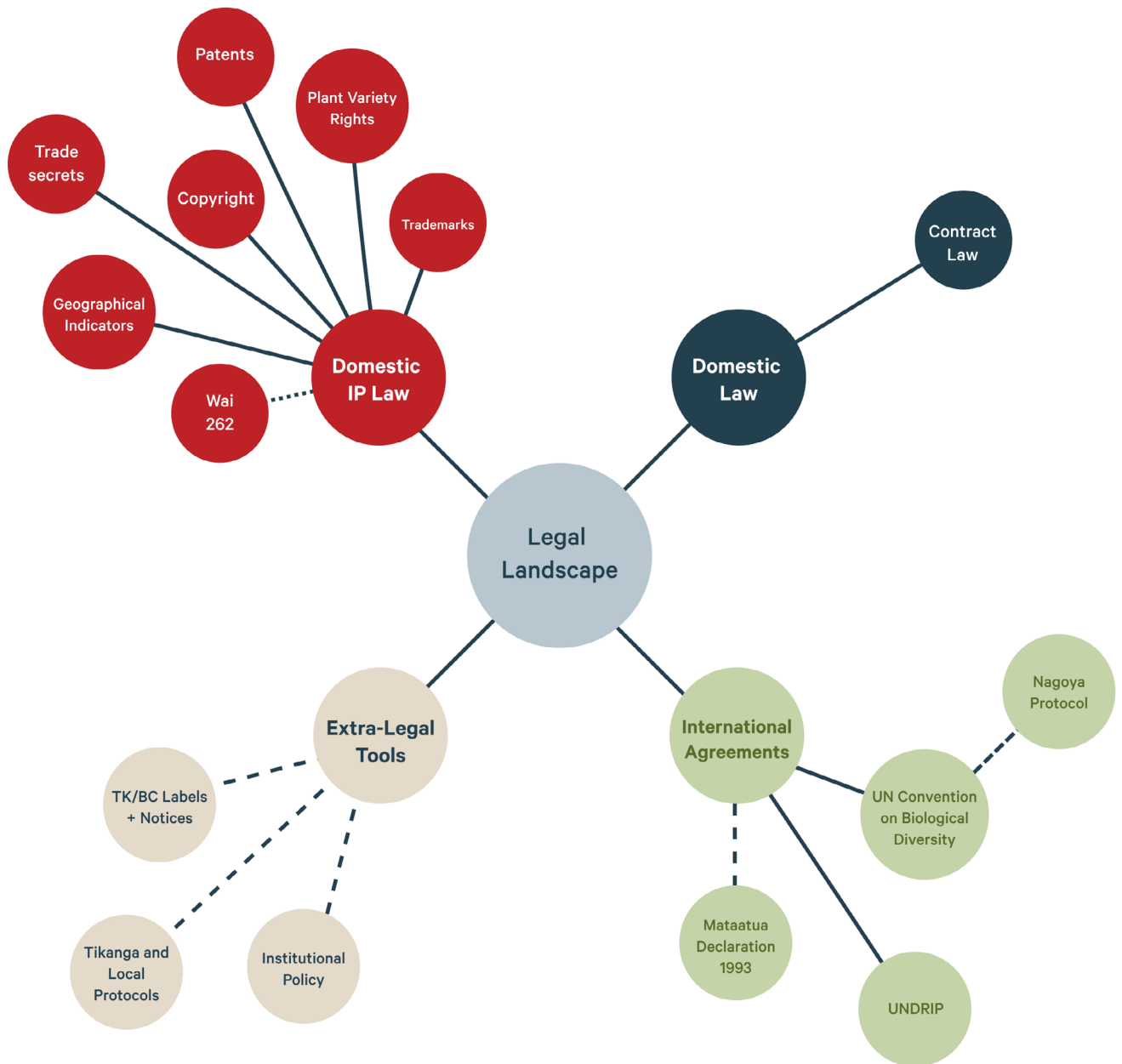


Figure 1: Legal Landscape

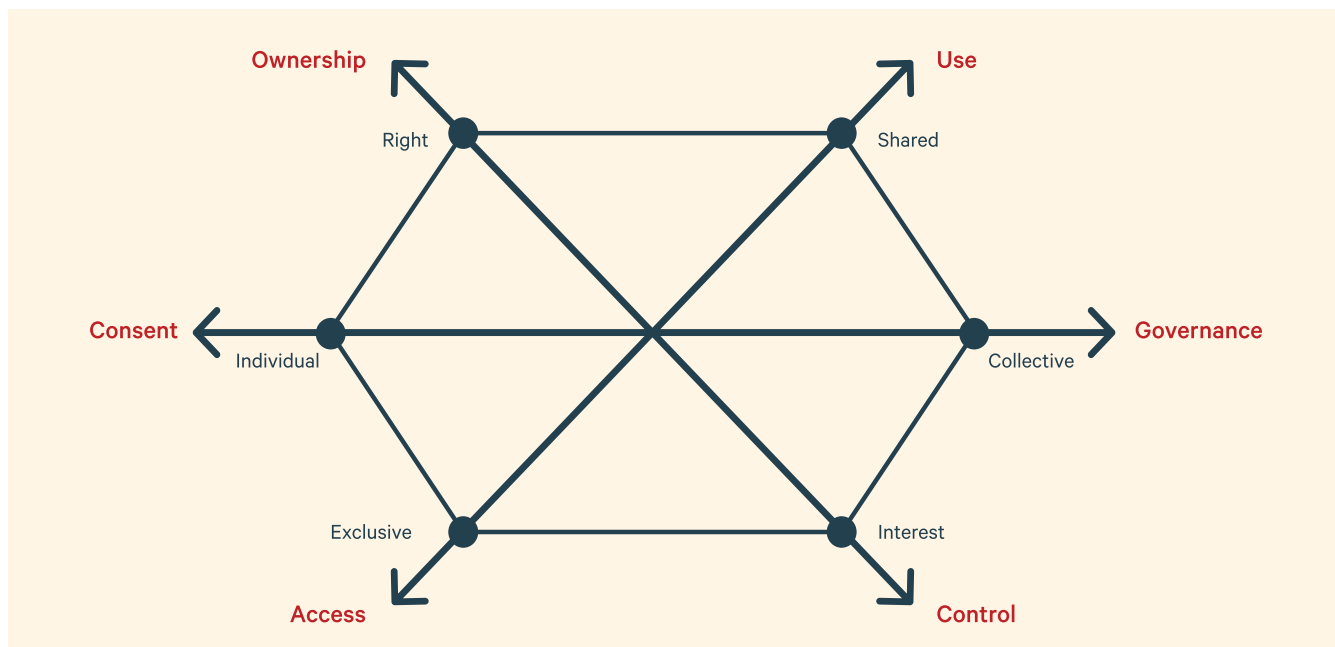


Figure 2: Cultural IP Rights (CIPR) relationality

One key challenge is the need to balance the rights of Māori individuals with the interests of Māori collectives reflecting a shared or exclusive application of the ICIP.³ Figure 2 reflects this relationality within CIPR, in which considerations of ownership and control, governance, and consent, as well as access and use, must be balanced in the context of the relative rights and interests of individuals and the collective, and whether these are shared or exclusive. While tikanga Māori (protocols) informs CIPR and addresses relationship issues, these concepts in Figure 2 should be considered, when engaging in research and commercialisation that utilises ICIP, and they should inform any legal agreements that get developed.

Differentiating between Cultural IP Rights and IP Rights

IP is a legal recognition and protection for intangible property such as products, designs, publications, and creative works to allow the creator a fixed period to benefit from their work. A bundle of legal mechanisms have been developed to protect IP including copyright, patenting, trade-secrets, and trademarks, all are

based in Western law and colonial notions of what it is to own property. The timeless, and collectively held, nature of most mātauranga Māori and taonga Māori means that these mechanisms cannot be applied and as such there are no legal protections against the misappropriation of mātauranga Māori. CIPR tends to fall into a legal grey area that is not legally enforceable on its own, ensuring its protection requires creative problem-solving on a case-by-case basis. While CIPR or ICIP policies are being used to inform appropriate behaviours in relation to mātauranga Māori, some protections can be created through specific agreements that make use of contract law, and/or extra-legal mechanisms such as Local Contexts’ Traditional Knowledge (TK) and Biocultural (BC) (<https://localcontexts.org/>) that act as transparent rights claims.

In research not all information will be protected by IP. Partners may bring pre-existing IP into a collaboration and new IP can be developed. The project could be utilising existing data as well as generating new data. Increasingly mātauranga Māori also needs to be considered in the decisions that develop IP plans and Data Management Plans for the project.

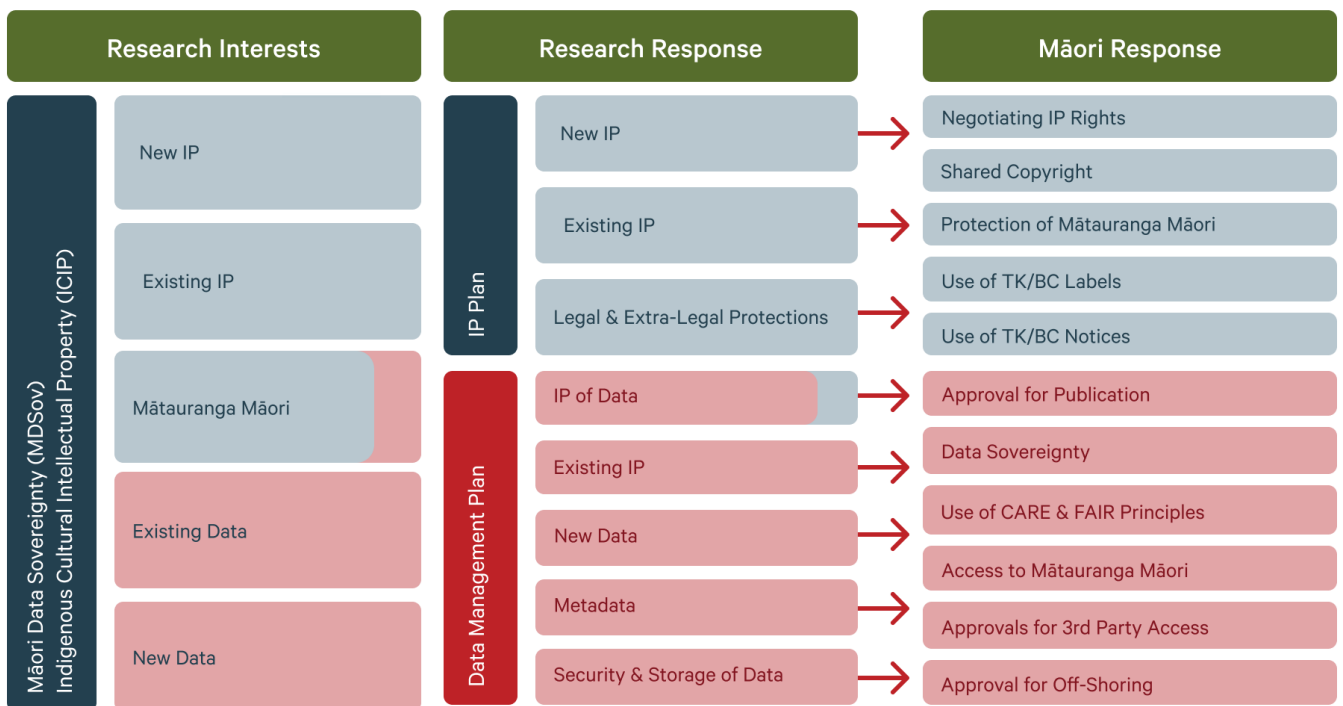


Figure 3: Some topics covered in IP and Data Management Plans

Figure 3 illustrates the relationship between issues addressed in IP Plans and Data Management Plans, through traditional research policies, and potential approaches to Māori aspirations for greater control.

Local Protocols for Cultural Intellectual Property

Tikanga Māori should guide the development of relationships and agreements. Researchers should prioritise local protocols when collaborating with Māori. Local protocols offer a foundation for trust and relationship-building by defining what engagement and consultation means for Māori communities and their aspirations. While common tikanga exist among Māori communities, each community's manifestation can differ. The incorporation of local protocols in agreements demonstrates respect for community authority, reinforces trust, and ensures informed decision-making. It also lays the groundwork for future agreements. Equitable partnerships are best formed when discussions prioritise mutual respect and understanding.

Example: Variant Bio ⁵

We recognize the importance of understanding and adhering to both national and local regulations for genomics research, particularly as many communities or tribal nations function as sovereign or semi-sovereign entities. These regulations will guide us in developing a specific framework for each partnering community for sample collection, biospecimen handling, and issues surrounding ownership of biological samples and data, data storage, and sample storage, return, or destruction.



Pirongia Moss
By. N Kusabs
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Guidelines Structure

The guidelines are structured to navigate a research or innovation project from its initiation to completion. Figure 4 reflects key stages that occur throughout this process. While the outcomes of research may not be known in advance it is important to consider potential pathways and

agree on how certain elements will be dealt with. These guidelines act as a starting point for conversations and indicate what kinds of agreements may be useful to develop productive research and innovation partnerships and protect ICIP.



Figure 4: Research Project Pathway

1. Creating a Relationship

Creating a relationship is the first step of the journey together.

Engagement should involve community representatives and be held in culturally safe spaces, meeting in an open dialogue that fosters fair relationships. The conversations should be accessible and ensure that all parties are able to give their free, prior, and informed consent for the project to take place. This may take multiple hui to achieve, and should be done at a suitable pace for the community. Projects should be guided by local tikanga and values balanced with legal frameworks and institutional policies. Cultural competency should be shown by the research team when engaging with communities.

Projects should reflect the aspirations of the community.

Whakawhanaungatanga (establishing relationships) creates a sense of mutual understanding and trust allowing all parties to get on the same page and understand the context of the project. This provides space to consider values alignment and gauge whether the project team and the project itself are a right fit. Successful engagement based on consultation, consent, and support leads to long-term partnerships. With a strong foundation of trust, the project will be more effective and mutually beneficial.

Example: Aboriginal Affairs NSW; Aboriginal Cultural and Intellectual Property Protocol ⁹

Free prior informed consent for use of ICIP should be sought from Aboriginal peoples. This involves collaboration and co-design, negotiation and informing owners and custodians about the implications of consent. Consultation should aim to seek a mutual and ongoing understanding.

Example: Variant Bio ⁵

We will co-design all our research proposals with local partners and, wherever possible, with local communities. Co-designed research is the process whereby the communities and individuals who share their genetic data with us are actively involved in the creation of a research proposal to the extent that they want to be. This involves including community voices at every step of the process, and consulting with them as true research partners as opposed to “subjects.” Borrowing from the North America First Nations communities framework ... key themes of co-design include dissemination, cultural competency, transparency, capacity building, community engagement, sovereignty, and research regulation.

Firstly, we will work together with community representatives to understand their goals and concerns with regards to genomics and health, and incorporate those as best we can into the research project. The co-design process does not end after the project has been created. Throughout the project’s lifespan, we will continuously engage with participants and communities, to inform them of the project’s progress, seek advice, and be available to answer any questions or concerns. At the conclusion of the project, it is also important to include diverse community voices and narratives in the dissemination of the results, both within the partnering communities and to the greater public. This could take many forms, including co-authorship between Variant Bio and our partners on scientific papers, co-creation of educational materials, or joint media releases.

Challenge: Multiple Communities

Topics or resources may span multiple communities, requiring consultation and consent from multiple kaitiaki or communities as a whole. However, the involvement of multiple Māori communities in a project, or having them join later, can create complexity with consultation and consent processes. A clear process for responding to this situation should be established in advance.

2. Creating a Contract

A. Mutual Understanding

Creating research agreements requires everybody to be on the same page, especially when formalising a relationship through signed agreements of any kind. The community should be represented by a legal entity, such as a trust or company, when available. While not all agreements are legally enforceable, legal contracts can be an effective legal tool to protect what may not be within the scope of New Zealand IP law. Legal advice should be sought by all parties before signing.¹⁰ Communities should decide on provisions to ensure mutual benefit and address power imbalances. Agreements should outline expectations, project goals, and address various considerations like IP rights and dispute resolution. While agreements can't cover every outcome, they provide a framework for smooth project operation and allow for relationships to change and grow over time. Finalised agreements should accurately reflect the discussions held, and be aligned with community values.

Example: Karuk Tribe; Protocol with Agreement for Intellectual Property Rights of the Karuk Tribe ¹¹

Tribal Consent: The proposal should address a mechanism used to obtain permission to use the Karuk people and their traditional knowledge, cultural heritage and cultural property as research subject matter. A mechanism for informed consent should be outlined in detail: an example approved by the Karuk Tribe is found in *Practicing Pikyav: A Guiding Document for Collaborative Projects and Research Initiatives with the Karuk Tribe*. Informed consent may be required from an individual, a family, a village or the Karuk Tribal Government.

B. Access and Protection of Mātauranga Māori

Entrusting researchers with access to mātauranga Māori should be viewed as a privilege, and it is important that it will be treated with respect. Research agreements should specify how mātauranga Māori will be recognised as pre-existing IP and how this relates to new IP generated through the project. This may include legal or non-legal elements or a combination of both¹² and deal with issues such as confidentiality, secondary use, third party access, accreditation, consent, secondary consent requirements, duration requirements, or other matters relevant to the overall IP plan.

Example: Victoria University of Wellington ¹³

5.1.8 Ownership of Mātauranga Māori

(a) Any intellectual property based wholly or partly on existing mātauranga and taonga Māori, should first be assessed by Toihuarewa which will advise the University on the extent of Māori ownership that is justified.

(b) Toihuarewa's assessment of Māori ownership entitlement will be based on the degree to which existing mātauranga and taonga Māori contributed to the development of the IP. Mātauranga and taonga Māori inputs will have been identified as part of the ethics approvals process when the research project leading to the IP was established.

(c) For an understanding of mātauranga and taonga Māori the University's management of this policy will be informed by the various deliberations (including published papers) of such organisations as Archives New Zealand.

(d) Toihuarewa's assessment of IP ownership will include advice on any subsequent benefit sharing agreements.

Example: Science for Technological Innovation National Science Challenge ¹⁴

Clause 5(iii- iv) When the Project involves any Mātauranga Māori or Taonga Species, the Parties (or the Managing Party) will: (iii) consider whether protection options other than the statutory Intellectual Property options would better protect the Mātauranga Māori Project IP; (iv) consider what steps can be taken to stop misuse and misappropriation of Mātauranga Māori, Taonga Species and the Mātauranga Māori Project IP.

Example; Karuk Tribe Protocol with Agreement for Intellectual Property Rights of the Karuk Tribe ¹¹

The Karuk Tribe may share the right to enjoy or use certain elements of its cultural heritage, under its own laws and procedures, but always reserves a right to determine how traditional knowledge, cultural heritage, cultural property and intellectual property will be used. The Karuk Tribe asserts a collective right to manage the above.

C. Confidentiality

Some mātauranga Māori is likely to be considered confidential or sensitive for a variety of reasons. Mātauranga Māori that requires protection should only be accessed as necessary, and careful consideration around who may have access to it should be considered. Preventing disclosure of mātauranga Māori to the public may also be important to the community. For these reasons, it is possible the mātauranga may need to be protected or restricted to maintain its privacy.¹⁵ Regardless of how the parties decide to maintain this confidentiality, there should be a written agreement to provide accountabilities for all parties.

Some institutions have standard clauses within their internal IP policies that requires their researchers to be aware of any actual or potential confidentiality issues that may relate to the IP of the project. This means that should any party wish to keep any mātauranga Māori confidential, they must disclose this requirement as part of their initial discussions before the project commences. This also creates a duty of care for the institution to respect that confidentiality and be able to maintain transparency over the course of the project.

A confidentiality agreement can be created to identify which information needs to be protected, and should be in place before any information that a community may want to protect is shared.^{16,17} Confidentiality can also be maintained through a trade secret. This is not protected by domestic law, but rather relies on the ability for all entrusted with information to stay confidential and maintain secrecy. This is only effective when the information is limited only to those who directly need to know, rather than to large groups.¹⁷

Example: Aboriginal Affairs NSW; Aboriginal Cultural and Intellectual Property Protocol⁹

Aboriginal peoples have the right to maintain their cultural practices relating to secret and sacred information and knowledge. The privacy and confidentiality concerning aspects of Aboriginal people's personal and cultural affairs must also be respected.

Example: Karuk Tribe; Protocol with Agreement for Intellectual Property Rights of the Karuk Tribe¹¹

Confidentiality: Signing the Tribe's Project Collaborator Confidentiality Agreement may be required to assure confidentiality. With this, the applicant shall provide assurance of confidentiality for the life of the project, indicating how confidentiality will be protected, indicating where raw data or materials will be deposited and stored at the completion of the project, and indicating the circumstances in which the contractual or legal obligations of the applicants will constitute a breach of confidentiality.

D. Public Domain

By default, shared information may become public, posing a risk to mātauranga Māori, which is often already in the public domain. The public domain consists of any information or creative works that are unable to be granted IP rights, usually because the rights have expired or been waived. This outcome undermines Māori sovereignty, a treaty right affirmed to exercise control over our knowledge, as once in the public domain, the material is unable to be effectively protected. To prevent this, research agreements should specify measures to safeguard mātauranga Māori from entering the public domain if desired by the community. Discussing protection measures fosters trust and encourages open information sharing.

Example: Science for Technological Innovation National Science Challenge¹⁴

Clause 5(ii) When the Project involves any Mātauranga Māori or Taonga Species, the Parties (or the Managing Party) will, unless agreed otherwise, keep the Mātauranga Māori, Taonga Species and the Mātauranga Māori Project IP out of the Public Domain.

E. Disclosure

It should be explicitly clear that a research project is intended to rely on or make use of mātauranga Māori, Māori data, and taonga species during project initiation, funding acquisition, and commercialisation processes. Early discussions during funding and commercialisation stages can aid in identifying when mātauranga Māori is being used, and what this means for all parties involved. Increased Māori engagement in research can facilitate easier identification and disclosure of mātauranga Māori, requiring training within institutions and encouraging collaborators to identify Māori knowledge in proposed projects, and when identified, how to use it in an equitable and respectful manner.

Practical Application: Invention Disclosure Form

Invention disclosure forms are commonplace in many research institutions across Aotearoa. A simple solution to ensure disclosure is a section on the form describing the inclusion or contribution of any mātauranga Māori or potential Māori interest that arises from the research and subsequent potential commercialisation.

Practical Application: Ethics Application

Ethics applications are required to be made before publicly funded research begins. This form should provide another opportunity to disclose any Māori interest that may arise from the research, and what kinds of consultation have taken place, or are intended. The problem with this approach, used as a sole disclosure method, is that the onus to report non-compliance is upon the aggrieved party. Thus, this approach should be used in conjunction with other disclosure checks.

F. Changes and Alterations

During the project, changes within the research and outputs are common, ranging from findings that prompt further examination to shifts in priorities or personnel. Research partnerships should have pre-established communication expectations, from staying informed to requiring consultation or approval. Having a decision-making process in place enables guidance for navigating unforeseen circumstances.

G. Ownership

Ownership is a means of control over research, which involves navigating IP mechanisms like copyright and licensing and should be detailed in

Example: Aboriginal Affairs NSW; Aboriginal Cultural and Intellectual Property Protocol ⁹

If there are changes to the project that take it outside of the initial consent given by Aboriginal people, groups, or organisation, AANSW will re-consult and seek consent.

the research agreement. There may be differing views between various parties surrounding what ownership means, the responsibilities that come with ownership, and what ownership means in relation to kaitiakitanga (guardianship). Open discussions around what each party expects in relation to ownership of project materials and outputs can assist in ensuring that Māori are able to assert ownership rights where necessary or desired and protect the ability of kaitiakitanga to continue unencumbered.

H. Benefit Sharing

Benefit sharing agreements are vital in formal research relationships, ensuring the fair distribution of benefits, especially in research commercialisation contexts. Māori communities should be able to clearly understand how the research will benefit their communities, not just through the research itself, but also through benefit sharing. Clear institutional policies are needed to protect Māori interests, establish reciprocal benefits, and manage expectations. Negotiated agreements that are legally binding and equitable, are essential, and should be guided by frameworks such as the Nagoya Protocol. Community aspirations should be at the heart of benefit sharing arrangements. Benefit sharing can often extend beyond financial benefits to include community development and education through capacity building. However, challenges such as power imbalances and community conflicts must also be addressed to ensure meaningful outcomes are able to occur. It is important that Māori communities are able to have enhanced self-determination in benefit

sharing endeavours. The most effective benefit sharing arrangements are those that are built upon a foundation of understanding Māori rights, community dynamics, and equitable resource distribution.

Example: Variant Bio ⁵

We want to ensure that the communities and individuals we partner with benefit in ways that are relevant to them. To that end, we will establish an incentive plan in consultation with each community depending on their specific needs and priorities. We have developed a set of potential benefits (both short-term and long-term) that encourage engagement with our research partners. Short-term benefits will be funded immediately after the sample collection is completed. These funds will go into initiatives that support local capacity building, education, healthcare, and sustainable development, and will be decided together in consultation with the community. Our long-term benefits are tied to Variant Bio's future revenue and will support similar initiatives, yearly, starting when we first generate revenue from the therapeutics or diagnostics discovered in the database that all our partners contribute to. Long-term benefits will be managed and distributed with community input.

Example: Aboriginal Affairs NSW; Aboriginal Cultural and Intellectual Property Protocol ⁹

- AANSW will ensure that Aboriginal people benefit from the use of their ICIP. This is especially important if the ICIP is to be used for commercial purposes.
- Aboriginal people, groups or communities will be consulted as to what benefits (monetary or non-monetary) they would prefer to receive to ensure the benefits are relevant and useful for the owners of the ICIP.
- Benefit sharing will be discussed upfront and agreed upon as part of the consultation and consent process. Where consent to use ICIP is obtained in writing, the document will clearly identify the benefits that the ICIP custodians will receive.
- For new or additional uses of ICIP, AANSW will share additional benefits with the owners, custodians or source community.

Example: Karuk Tribe; Protocol with Agreement for Intellectual Property Rights of the Karuk Tribe ¹¹

Fair and Appropriate Return: The proposal shall demonstrate how Karuk Tribal Members and Descendants as “informants” or “subjects” of the project or activity will be justly compensated. Just compensation or fair return includes, but is not limited to, obtaining a copy of the research findings, acknowledgement as author, coauthor or contributor, royalties, copyright, patent, trademark, or other formats of compensation. The researcher and/or funding institution shall promptly notify the Tribe of any copyrightable material generated under this project or activity. Posting of a bond may be necessary to ensure compliance with terms of a project or activity which requires a formal contract. This bond will be returned upon satisfactory completion, as determined by the KRAB, of the project.

I. Capacity Building and Knowledge Transfer

Capacity building in Māori communities fosters positive relationships and benefits both parties by enhancing community skills and understanding. Training community-based researchers and involving Māori community members enriches research outcomes, promotes transparency, and creates more inclusive projects. Strengthening capacity involves improving leadership, financial management, and other organisational skills in alignment with community priorities. Regional Māori organisations can also play a crucial role in this process. Strategies for capacity building can include facilitating community planning, providing skills training, and forming alliances for shared expertise. Capacity building extends to power-sharing dynamics, reflecting Māori aspirations for self-determination. Addressing skill gaps and ensuring cultural values in project management are vital steps.

Ultimately, capacity building emerges as a cornerstone for empowering Māori communities and fostering genuine partnerships in research and development endeavours.

Example: Victorian Traditional Owner Native Food and Botanicals Protocol ¹⁸

Employment

- Provide opportunities for employment of Traditional Owners in relation to use of their Biological Resources and Indigenous Knowledge.
- Ensure Traditional Owner involvement in the supply chain and entering into supply chain agreements.
- Support development and strengthening of Traditional Owner businesses in the Victorian native food and botanicals industry.

J. Research Dissemination

Research findings are often inaccessible to Māori communities when confined to academic journals, limiting their impact and ability to be understood outside of academic circles. By involving communities in dissemination planning, this trend can be reversed. Creative solutions, such as presenting findings in community-friendly formats, increase access to research materials and foster meaningful engagement. Hosting dissemination events, like hui (gatherings), facilitates dialogue and clarifications. Online methods complement face-to-face interactions, catering to diverse and geographically dispersed communities. Developing a research communication plan during partnership building is crucial. It helps define objectives, target audiences, and logistical details. Prioritising pre-existing communication preferences and using plain language summaries enhances accessibility and relevance.

Example: Fungi Foundation ¹⁹

To work with ethnomycologists to make results of their research available to the Indigenous Peoples, traditional societies, and local communities with whom they have worked, and whenever possible include dissemination in the native language.

K. Publication

When publishing material as a part of a project output, it may be important to Māori communities to read materials before they are published. This allows the community to ensure that the information being presented is accurate, does not infringe upon any prior made agreements, and that adequate feedback is able to be given before circulation.²⁰ Accuracy and transparency are two key components of publishing equitably, and publications can be an important beneficial outcome from the project for all parties involved. It may also be important to discuss whether any shared mātauranga Māori is able to be contained within publications, as publication of mātauranga Māori may lead to its eventual placement in the public domain once copyright expires.

Example: Victorian Traditional Owner Native Food and Botanicals Protocol ¹⁸

Publication of research or product information incorporating Biological Resources, Indigenous Knowledge or ICIP should be discussed during the consultation and consent process, and throughout the life of the project.

If information is going to be published or used outside of the relevant community, approval must first be sought from the Traditional Owners. The Traditional Owners may identify limitations on the suitability for dissemination and publication of the information, particularly if culturally sensitive information is incorporated in the research or materials.

You must provide the Traditional Owners with enough time to consider the publication proposal and either consent or deny the publication, or request changes. If the Traditional Owners consent to publication, then co-authorship and appropriate acknowledgement should be incorporated. You must be guided by the appropriate acknowledgement and attribution determined by the Traditional Owners.

Example: Science for Technological Innovation National Science Challenge ¹⁴

Clause 6 The publication of results and data from Projects is encouraged, subject to the confidentiality requirements of the Parties (including any requirements necessary to protect students' work) or any Industry Parties and subject to protection of any potentially commercialisable Project IP or Mātauranga Māori Project IP where appropriate. For the avoidance of doubt, it is expected that consideration of Project IP or Mātauranga Māori Project IP protection will be undertaken before any scientific publication of results of research funded by the Challenge. Publications should acknowledge any funding contribution from the Challenge and the Ministry and be reported to the Director as requested to enable timely reporting to the Ministry.

Example: Aboriginal Affairs NSW; Aboriginal Cultural and Intellectual Property Protocol ⁹

- AANSW will attribute Aboriginal custodians, knowledge holders or source communities of ICIP as the owners of their ICIP. This could include individual, community and/or family acknowledgments.
- Aboriginal people or communities must be consulted about how they wish to be attributed, including the correct spelling and reference.
- Where Aboriginal people who participate in a project or share their ICIP with AANSW choose not to be publicly attributed or acknowledged, AANSW will respect this.
- Researchers engaged by AANSW should attribute Aboriginal source communities and custodians who share ICIP in research projects. This should be in a prominent place in all publications of the research.

L. Recognition and Attribution

It is vital to credit Māori communities for their collaboration and knowledge sharing in project outputs. Recognition can take various forms such as co-authorship, accreditation, or acknowledgment within publications. This acknowledgment should honour diverse knowledge systems and contributions. Similarly, crediting Māori interests in IP and data aligns with acknowledging project collaborators and funders.

Example; Fungi Foundation ¹⁹

All the research conducted and included in the program must be given due credit and be referenced in accordance with the preference of the Indigenous Peoples, traditional societies and local communities, researchers, and authors. Acknowledgement and due credit extend equally to secondary or downstream uses and applications.

Example: Victorian Traditional Owner Native Food and Botanicals Protocol ¹⁸

Traditional Owners and Indigenous Knowledge holders must be acknowledged and attributed in any use of Biological Resources, Indigenous Knowledge, ICIP, Country and provenance in the project or activity. This includes in relation to product labelling, marketing, promotion and online. It is important to consult with Traditional Owners to address the form of attribution that is appropriate. Notwithstanding the above, the Traditional Owners and community may not wish to be acknowledged and have the right to have their names removed or amended as appropriate.

M. Dispute Resolution

Research agreements should include a dispute resolution process that acknowledges tikanga-based options. While many institutions have existing dispute resolution methods, they may not align with tikanga principles, and thus be ineffective for bicultural relationships. Parties should explore and adopt processes that prioritise equity and early resolution. Addressing pre-existing conflicts before project initiation fosters smoother collaboration. Clearly articulating management structures and communication expectations can help prevent future conflicts.

Example: Fungi Foundation ¹⁹

In the situation where research has been done without proper prior consent, has caused harm and/or adversely impacted a community's rights, and if the community requests, we require members to remove the project work with which the information has been related, and to commit to working in genuine partnership and collaboration with these communities to avoid perpetuating past injustices and build towards developing positive, beneficial and harmonious relationships in the ethnomycology field.

Example: Science for Technological Innovation National Science Challenge ¹⁴

Clause 8: If the Parties are unable to agree on any matter relating to any Project IP or Mātauranga Māori Project IP, these policies and principles or the IP Management Plan, the Parties will refer the matter to the applicable dispute resolution process.



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3. Developing an IP Plan

Developing an IP plan is crucial for managing research relationships, involving collaboration among all parties. This process varies and may require communication with iwi entities, hapū, or community representatives. The plan should address new and existing IP rights, legal compliance, and extra-legal protections. Awareness of institutional IP policies is essential, with legal advice recommended before signing contracts. Understanding collaborators' flexibility on institutional policies informs partnership expectations. Utilising multiple IP protections can safeguard various community interests, codified within agreements with research partners. Recognition of mātauranga Māori contributions is essential in IP and data management plans. Community inclusion in developed IP, like patents, ensures recognition of Māori involvement. However, many IP rights have expiry dates, prompting consideration of alternative protections, like trade secrets. Costs associated with filing and maintaining mechanisms such as patents must be considered, and the enforcement and monitoring of IP rights is most commonly the responsibility of the IP rights holder.¹⁰ Community involvement in IP ownership requires assignment to a legal entity, like an individual, company, or trust. Joint ownership of IP can be challenging due to institutional policies favouring sole ownership; however, this can be a useful tool to safeguard potential revenue for both Māori and research institutions, either through their utilisation, or through their ability to be sold, bought, and licenced.¹⁰

Example: Science for Technological Innovation National Science Challenge ¹⁴

Clause 4(ii-iii) The Parties must, in accordance with these policies and principles and the IP Management Plan; (ii) determine the ownership of Project IP, and require employees, contractors, grant holders and any other personnel to acknowledge the relevant ownership and rights associated with Project IP; (iii) when determining ownership of Project IP, give explicit consideration to the contribution of Mātauranga Māori and Taonga Species.

Clause 5(i) When the Project involves any Mātauranga Māori or Taonga Species, the Parties (or the Managing Party) will; require employees, contractors, grant holders and any other personnel to acknowledge the relevant ownership and rights associated with Mātauranga Māori Project IP.

A. New IP

New IP encompasses research-generated datasets and resulting outputs, which are most commonly copyrighted or patented. When working in and conducting research, the community and research team should consider whether new IP is expected to be created or developed, if so, who may be an interested party within it, and specifically whether mātauranga Māori contributed to its creation. New IP can in some cases also be new

mātauranga Māori for your community. If this is the case, considering how this should be reflected within IP rights may be useful. Copyright, while useful, can be limited in its scope of protection, as it “can be used to protect the specific physical expression of some forms of mātauranga Māori, but the underlying ideas, content, and style cannot.”¹⁰ When new copyright IP is generated, Māori communities may wish to claim all or part of the resulting rights. This can occur through explicit naming on subsequent outputs. Similarly for patents, ensuring that the community is named on the patent ensures the enshrinement of this interest. For a patent, it is key that any information on which the patent is based must be kept confidential until successfully filed and granted.¹⁰ It should be noted that IP laws are fixed term in nature. Patents in New Zealand only last 20 years, and copyright protections only last for the creator’s lifetime plus 50 years depending on the kind of material being copyrighted. Once these times have lapsed, the protected information sits within the public domain. If there is mātauranga Māori that should not end up in the public domain, keeping this information out of the patent and copyrighted material will be necessary.

Example: Science for Technological Innovation National Science Challenge ¹⁴

Clause 4(i) The Parties must, in accordance with these policies and principles and the IP Management Plan: ensure that researchers continually consider whether Project IP is being created or developed.

Example: Karuk Tribe; Protocol with Agreement for Intellectual Property Rights of the Karuk Tribe ¹¹

Intellectual Property Products includes all original materials produced in the course of a research project including but not limited to written materials, transcriptions, translations, photographs, recordings collected or produced by the researcher and/or funding institution pursuant to this Protocol with Agreement. These are considered to have been produced through consultation and engagement with the Karuk Tribe as the primary legal and cultural owners and custodians. Therefore they shall remain the sole property of Tribe unless otherwise specified in the proposal agreement (see Procedure 1.a.). In many instances, the Karuk Tribal Council will grant co-ownership and/or appropriate licenses to the researcher and/or funding institution for future use including research, education and publication.

B. Existing IP

Existing IP refers to pre-existing formal rights brought into a project, excluding them from new IP claims. This could include mātauranga Māori, which should be carefully considered in IP and data management plans. Community-held IP rights must be checked for potential conflicts with new projects, especially regarding previous exclusivity agreements with other external parties.

Example: Science for Technological Innovation National Science Challenge ¹⁴

Clause 4(viii) The Parties must, in accordance with these policies and principles and the IP Management Plan: have a process to identify protectable and potentially valuable Project IP and associated commercial activities and to prevent the infringement of existing protected Intellectual Property and associated commercial activities.

C. Licences

Licences are an IP mechanism which can take many forms and are a useful tool to navigate rights and interests of IP in projects. Be it for existing or new data and IP, the cascade of control which is required for data and IP plans can be navigated using licences.

i. Creative Commons Licence

The creative commons are a system of licences which can be used by legal persons such as creators and corporations to grant copyright permissions to others in relation to their creative works.²¹ They can be combined and customised to the copyright owners wishes, so long as the customisations fit within the bounds of copyright law.²¹

D. Shared Copyright

Shared copyright occurs when parties agree to jointly own the copyright interest in new IP or data resulting from collaboration. This agreement must be formally documented to be legally enforceable, often within the research agreement. Copyright is automatically created upon publication of material and does not require registration. By being named as co-authors or including a disclaimer on published works, Māori communities can assert their IP rights effectively.

E. Extra-Legal Protection

It is important to consider alternative protection options that lie outside of IP Law to protect mātauranga Māori. This may be through contract law, using the specific needs of the parties, utilising the methodology of other successful outcomes as starting points, and considering what other tools can be used to protect mātauranga Māori.

i. Traditional Knowledge and Biocultural Labels and Notices

Traditional Knowledge and Biocultural Labels and Notices are tools to assert Māori sovereignty over data and mātauranga Māori. They serve as physical markers indicating Indigenous origin, protocols, and permissions for engagement. Customisable labels communicate community-specific tikanga and can be applied to various materials, maintaining community ties even when they are outside of community control. Non-customisable notices applied by researchers and material holders signify Indigenous interests and may prompt partnerships for sovereignty restoration. Awareness and willingness to use these labels indicate a partner's commitment to tino rangatiratanga (self-determination) and Māori data sovereignty.

A list of the Traditional Knowledge and Biocultural Labels are contained within Appendices 2 and 3. For more information about the Traditional Knowledge and Biocultural Notices and Labels, Local Contexts (<https://localcontexts.org/>), the online hub used to generate them, is a key source of information. They also regularly hold community trainings in which Indigenous communities can actively learn more about the system and decide whether it is a useful tool for them to use.



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4. Creating a Data Management Plan

A data plan is crucial for safeguarding mātauranga Māori and associated data throughout a project. Like an IP plan, it outlines procedures for defining, attributing, storing, governing, accessing, and reusing data. This plan, embedded in agreements like Data Sharing or Materials Transfer Agreements, ensures transparency and flexibility in navigating unexpected events.

Māori communities often prioritise control and ownership of data as it is considered taonga, and essential for decision-making and sovereignty. Participating in data analysis enhances equity and inclusion, requiring funding and commitment from all parties. Open-data policies may impact partnerships if they contradict Māori values, necessitating discussions with potential partners. For sensitive data, controlled-access databases with tailored governance frameworks enable exercising of data sovereignty.

Guidelines such as the FAIR and CARE principles (<https://www.gida-global.org/care>) can be a useful tool to consider the projects approach to data. These principles cover the ethical handling of data in an open data environment to align with Indigenous peoples rights and interests. For Māori communities, careful consideration should be given to how they expect their data to be treated from initial creation to storage and future use, ensuring that an enforceable written agreement covers each aspect clearly.

Example: Victorian Traditional Owner Native Food and Botanicals Protocol ¹⁸

Indigenous Data Sovereignty and Governance when data collected as part of a project includes information pertaining to Indigenous people, their cultural heritage or Indigenous Knowledge, then principles of Indigenous Data Sovereignty and data governance are raised – see Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples. This includes collection of Personal Information of interviewees or collaborators, stories told about Biological Resources and their capabilities and uses, and language or cultural practices associated with the Biological Resource and Indigenous Knowledge.

You must adhere to principles of Indigenous Data Sovereignty and governance. Indigenous Data Sovereignty both recognises the rights of Traditional Owners to control the use of their Data, wherever it is held (governance of data), and the importance of access to Data for Traditional Owner decision making and self-determination (data for governance).

Traditional Owners have the right to manage the collection, interpretation, use and storage of their Indigenous Knowledge and ICIP. Ownership management and communication of project Data and results should be negotiated between the Traditional Owners and project partners based on the principles of Indigenous Data Sovereignty and governance. Written agreements can provide clarity around the negotiated rights in access, use and storage of Data.

A. New Data

New data encompasses datasets and information generated during research. It is essential to acknowledge any involvement of mātauranga Māori in the data and include it in the data management plan. Collaboratively developing a plan for hosting, controlling, and accessing the new data is crucial for good practice.

B. Existing Data

Existing data is any pre-existing data bought in by any of the parties which is not generated through the process of the research or project. Whomever has the rights to such data should be clarified as part of the discussions around the project. The data management plan should account for this also. Ensuring that the original holders of the data have given their free, prior, and informed consent for its use is important to not infringe upon the rights of others.

C. IP of Data

The IP plan should navigate which party holds specific IP rights to any new data created through the project such as copyright. What should be taken into consideration for this, aside from the regular aspects, is the contribution of mātauranga Māori to the data which has been generated, and thus, the interest that the Māori community, iwi, or kaitiaki may have in the IP which sits atop the data.

D. Security and Storage of Data

The CARE principles outline ethical considerations for working with indigenous data, including collection, storage, and treatment. These principles can be integrated into information sharing or confidentiality agreements. Similar to caring for physical taonga, data requires proper maintenance, including format conversion and recordkeeping. Ideally, Māori would manage their own data, but capacity issues may arise. Communities should assess their capacity and interest in data management, considering benefits and capacity

building. Collaborating with research partners to find suitable data storage options aligning with community priorities is essential for data sovereignty.

Example: Variant Bio ⁵

The methods and geographical locations for storing, analyzing, and sharing of biological samples and data collected during the study will be detailed in the informed consent, and developed in collaboration with the local communities, and in accordance with local rules and regulations. Similarly, the stewardship of the biological samples during the study period will be agreed upon with the community by the joint creation of a standard operating procedure. This will include what to do with samples and data at the end of the project.

E. Cultural metadata

Databases holding Māori data should acknowledge Māori interests and their origins, which can be done through Traditional Knowledge and Biocultural Labels. Metadata, containing information about data collection and permissions, is crucial for data longevity and accessibility. Aligning metadata with CARE and FAIR principles ensures responsible data-handling while centring Māori values. Historically, Māori data has been categorised without alignment to Māori views and values, hindering access and use. It is essential to categorise and store data in line with community values, enhancing metadata with Māori provenance to strengthen data sovereignty and prevent future misappropriation.

F. Off-shoring

When sending data overseas, there is a risk of losing control and the assertion of any rights can be more difficult. This can strain relationships

and trust. Agreements should specify who can access the data and discuss the risks of overseas use. Communities should decide if they are comfortable with foreign access before storing data.

G. Third Party Access

Within some circumstances, shared mātauranga Māori may be considered sacred or private, necessitating clear negotiations around confidentiality. This includes outlining third-party access to information or data, duration of access, and permitted usage, typically addressed in the data sharing and IP rights agreements. Provisions for third-party access consent should be discussed and included in the research agreement.

H. Secondary Use

Clear statements should outline permissible actions, with formal agreements, if necessary, for secondary data use. The fact that the data is sitting in a database or repository does not immediately grant the right to the holding institution to determine what else the data may be used for without the free, prior, informed consent of the Māori community. Agreements should ensure future data use aligns with community consent, with collaborative navigation for access protocols. Potential collaborators may act as safe keepers if necessary, directing secondary use requests to the community as they appear.

5. Next Steps

A. Project Extension and Development.

When considering project extensions, or new developments, involving Māori communities is crucial for shaping decisions and ensuring mutual benefit. Discussions should mirror those held at the project's inception, though they may be less extensive due to established relationships. Collaborative dialogues should ensure Māori communities understand potential outcomes and consent requirements.

B. Commercialisation

Commercialisation often becomes a possible pathway for exploration as a research project nears completion and can be a natural next step for a successful research relationship which has commercially viable aspects to it. This presents occasional challenges regarding the appropriation of mātauranga Māori, as alongside commercialisation pathways can come the need to seek additional IP protections. The Western IP system primarily grants private property rights to individual creators through statute law, and many institutional IP policies are not set up to navigate the commercialisation of mātauranga Māori.

When institutions recognise the significance of mātauranga Māori within institutional IP policy, it alerts commercialisation teams to the need for protecting Māori interests. This recognition should extend into commercialisation agreements between parties, where clear expectations must be set to ensure respectful and equitable treatment of all parties and shared mātauranga Māori.

While pressure to commercialise research often stems from governments and funding agencies seeking returns on investment, the focus on IP rights should not overshadow the importance of building partnerships based on mutual benefit.² Research agreements should include provisions outlining decision-making processes regarding joint commercialisation, IP ownership, and benefit distribution.² Protecting mātauranga Māori does not preclude its commercial use, provided that Māori communities can control its utilisation.²² Māori businesses, with their unique emphasis on community goals, land ties, and alignment with cultural values, require policies and partnerships tailored to their characteristics and recognition of Māori rights to land, resources, and self-determination.²³ Successful collaboration, benefit sharing, and protection of mātauranga Māori are essential for overcoming differences and fostering successful enterprises grounded in respect for Māori knowledge and values.¹²

Example: Science for Technological Innovation National Science Challenge ¹⁴

Clause 4(iv) The Parties must, in accordance with these policies and principles and the IP Management Plan: ensure that researchers are advised of the potential value of Project IP and of the options available to them to protect and add value to those rights.

Clause 5(v) When the Project involves any Mātauranga Māori or Taonga Species, the Parties (or the Managing Party) will; work with Māori to enable Māori to exploit or commercialise any Mātauranga Māori, Taonga Species or Mātauranga Māori Project IP.

C. Documenting Experiences

Documenting the engagement process, research agreements, IP arrangements, and benefit sharing agreements provides valuable insights for parties and Māori communities navigating similar partnerships in the future. It can also be used as evidence to support IP right applications, and ensures legal enforceability further down the track if necessary.¹⁰ Case studies on effective partnerships serve as guides for policy and future engagements, empowering Māori communities in their research partnerships. Additionally, sharing experiences, including successes, improvements, and lessons for the future, contributes to collective knowledge and empowerment.

Conclusion

When researchers are working with Māori communities, it is important to focus on equity and remain open to sharing responsibility for IP and data. Long-lasting relationships for research are built through strong and equal partnerships, and “have the potential to greatly benefit future research endeavours.”²⁰ Clear communication, consultation, and expectation setting between the parties will assist in relationship building and ensuring that all parties are able to have their needs met to the best degree possible. Mātauranga Māori is not just valuable, it is a taonga which is not shared lightly, and the privilege of its utilisation calls for proper treatment and bespoke policies and agreements.



*Te Pahu Stream
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Appendix 1: Useful Questions to Ask

Appendix 1: Useful Questions to Ask General Project Questions

Relationships	
Who are the funders and the research team?	
Why should our community work with these potential research partners?	
Cultural Competency	
What experience does the research team have working with Māori?	
How will the research team ensure that our tikanga and kawa (customs) are being safely and appropriately followed throughout the project?	
Community Considerations	
How will the research benefit our community and aspirations?	
How will the research team follow our tikanga when sampling on our lands and waters?	
How will the project allow kaitiakitanga to be practiced effectively and unencumbered?	
Multiple Communities	
Are other stakeholders involved in this project, and if so, how?	
How will private landowners be involved?	
Mātauranga Māori	
How exactly will our mātauranga Māori be collected and used, and for what purpose?	
How will the research team navigate protecting any secret or sacred mātauranga Māori?	
Confidentiality	
How will the privacy and confidentiality of our community be protected?	
Developing an IP Plan	
How does the research team expect to navigate IP matters over the course of the project?	

Existing IP	
How will our Cultural IP be respected?	
Are there any existing IP rights held by any party that may be of interest to the project?	
Data	
Could the data generated be considered a taonga or new mātauranga Māori in any way?	
If so, what does this mean for building the tikanga of data collection and use?	
Ownership	
Who owns of the mātauranga Māori or resources shared within the project?	
Benefit Sharing	
What benefit sharing arrangements have been successful for the collaborators previously?	
How will the research team optimise funding for achieving our community aspirations?	
What mechanisms are in place for directing funds into our community?	
Capacity building	
How can this project be used to help build the capacity of our community and its future?	
How will our community be empowered to understand the outcomes of the project?	
Recognition and Accreditation	
How can the community publicise and who will speak publicly about this project?	
How will our community be recognised as contributors to this project?	
Public Domain	
If our mātauranga Māori already sits in the public domain, what does this mean for the way it is used and handled throughout the project?	
How will the parties ensure that our mātauranga Māori stays out of the public domain?	
Commercialisation	
What kind of engagement and resourcing is needed to commercialise successfully?	
How can the research team support our community to make effective use of any commercial outcomes from this project?	
Changes and Alterations	
What level of involvement will our community have with decision making around changes and alterations over the course of the project?	
Dispute Resolution	
Will the research team be open to utilising tikanga-based dispute resolution processes as part of this project?	

Specific Agreement-Making Questions

Multiple Communities	
What happens when there are multiple kaitiaki involved with any taonga species or mātauranga Māori used throughout the project?	
What mechanisms will be in place to allow for open communication with all parties?	
What happens if some communities opt out of the project or withdraw their consent?	
What happens if mātauranga Māori from different communities' does not align?	
What level of unanimity will be required between communities for sufficient consent?	
Mutual Understanding	
What is the tikanga that should be followed over the course of the project?	
What is the expected timeline, scale, and pacing of the project?	
How will the resourcing and costs be handled throughout the project?	
What are the expectations around communication before, during, and after this project is complete?	
How will the consent of our community be given, and what if we do not give it, or opt out?	
How will cultural sensitivities be navigated?	
How can the agreement be terminated, if necessary, by any party?	
Who will have access to the research findings?	
Who gets a say in where the research outputs go?	
How are original agreements maintained during personnel changes?	
Mātauranga Māori	
Does any of the shared mātauranga Māori require additional measures of protection?	
Who has ownership rights over newly generated information that may enhance mātauranga Māori?	

If our community wishes to withdraw their participation or consent during this project, what happens to any shared mātauranga Māori?	
What remedies will be in place if our mātauranga Māori is misused?	
What implications would the agreement have on future use and sharing of mātauranga Māori?	
Confidentiality	
How will the privacy and confidentiality of our community be protected?	
What happens in terms of confidentiality if the project results in commercialisation?	
Can any party generate IP rights over the mātauranga Māori or any information that is generated from it?	
What will happen if the confidentiality is broken?	
Developing an IP Plan	
What kind of IP arrangements would be best suited to protect the interests of all parties?	
What material within the project would our community hold IP rights in?	
New IP	
Can our community hold IP rights in any resulting new IP generated through the project?	
How will our cultural IP be protected when new IP is created?	
What kind of control can our community expect in relation to any new IP?	
What kind of consultation and permissions are required to authorise future use of new IP?	
Existing IP	
Where existing material is not protected already by IP, who will own IP of it in the future?	
How will all parties act to ensure existing IP rights held by any party are not infringed?	

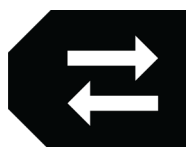
Data	
What provisions need to be in place around sample collection?	
How and when will results be reported back?	
How will we be contacted regarding incidental or actionable findings?	
How will decisions be made around future access and use of the data?	
Security and Storage of Data	
Where will the data to be stored during and after the project?	
What level of security will there be around the storage of this data?	
How will the origin of the data be recorded and displayed?	
Can data be returned to our community?	
Are there existing repositories or databases that the proposed collaborators prefer to use?	
How will the digital collection adapt as new technologies arise in the future?	
How will the research team manage requests for access and use in the future?	
Ownership	
What are all parties' expectations around ownership in relation to IP, data, and project outputs?	
Will it be possible for our community to hold joint or sole ownership over certain materials within the project?	
Benefit Sharing	
What benefits will come from participating in the research?	
If there are multiple communities involved, how will each guarantee fair benefits are shared equitably?	
Capacity Building	
Are there any kinds of training, education, or employment opportunities that could be created for our community through this project?	
Research Dissemination	
Will we have the right to check all materials before they are shared publicly or published?	
Where will project outputs be stored for the future?	
Who is the intended audience for any potential outputs?	

Publication	
What happens if our community disagrees with any findings within work for publication?	
What process needs to be followed to enable our community to give feedback?	
Recognition and Accreditation	
How will our community be publicly recognised for our contribution to the project?	
How will consent be obtained from our community for future publications?	
Public Domain	
What steps will be taken to safeguard mātauranga Māori from ending up in the public domain?	
Commercialisation	
If there are commercial outcomes for this project, how will any potential revenue be split?	
How does the IP rights and interests of all parties effect the ability to commercialise?	
What kind of protections are required for mātauranga Māori during commercialisation?	
What does fair and equitable benefit sharing from commercialisation look like?	
Changes and Alterations	
What level of consent and consultation is required for changes and alterations?	
For new uses of mātauranga Māori that is beyond the original scope of the project, what is the procedure for obtaining consent?	
Dispute Resolution	
How will any conflicts or complaints, real or potential, be navigated?	
Are there any tikanga-based conflict resolution processes that would be appropriate?	
What happens if any party breaks any part of the agreement before, during, and/or after project completion?	
What are potential next steps if dispute resolution fails or conflicts cannot be resolved?	

Appendix 2: Local Contexts' Traditional Knowledge Labels

Provenance Labels

Provenance Labels identify the group or sub-group which is the primary cultural authority for the material, and/or recognizes other interest in the materials.



TK Attribution
(TK A)



TK Clan
(TK CL)



TK Family
(TK F)



TK Multiple
Communities
(TK A)



TK Community
Voice
(TK CV)



TK Creative
(TK CR)

Protocol Labels

Protocol Labels outline traditional protocols associated with access to this material and invite viewers to respect community protocols.



TK Verified
(TK V)



TK Non-Verified
(TK NV)



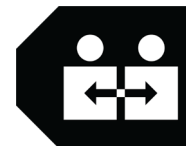
TK Seasonal
(TK S)



TK Woman
General
(TK WG)



TK Men General
(TK MG)



TK Men
Restricted
(TK MR)



TK Woman
Restricted
(TK WR)



TK Culturally
Sensitive
(TK CS)



TK Secret /
Sacred
(TK SS)

Permission Labels

Permission Labels indicate what activities the community has approved as generally acceptable. Other uses require direct engagement with primary cultural authorities.



TK Open to
Commercialization
(TK OC)



TK Non -
Commercial
(TK NC)



TK Community
Use Only
(TK CO)



TK Outreach
(TK O)

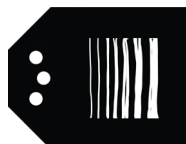


TK Open to
Collaboration
(TK CB)

Appendix 3: Local Contexts' Biocultural Labels

Provenance Labels

Provenance Labels identify the group or sub-group which is the primary cultural authority for the material, and/or recognizes other interest in the materials.



BC Provenance
(BC P)



BC Multiple
Communities
(BC MC)



BC Clan
(BC CL)

Protocol Labels

Protocol Labels outline traditional protocols associated with access to this material and invite viewers to respect community protocols.



BC Consent
Verified
(BC CV)



BC Consent Non-
Verified
(BC CNV)

Permission Labels

Permission Labels indicate what activities the community has approved as generally acceptable. Other uses require direct engagement with primary cultural authorities.



BC Research Use
(BC R)



BC Open to
Collaboration
(BC CB)



BC Open to
Commercialization
(BC OC)



BC Outreach
(BC O)



BC Non-
Commercial
(BC NC)

Appendix 4: Intellectual Property Laws in New Zealand

Act	Applications	Māori Provisions	Suggested Changes or Changes in the Pipeline
Copyright Act 1994	Protects artistic and literary work from unauthorised copying, as owner enjoys its full rights and privileges.	No provision for Māori interests or the Treaty of Waitangi.	Currently under review. Should incorporate Wai 262 recommendations.
Patents Act 2013	Grants exclusive rights to exploit the invention and authorise others to use it.	Provides for a Māori Advisory Committee (MAC) to consider patents, decisions; not binding.	Reform to account for Māori concerns, and ensure the MAC is made of experts and their decisions are binding.
Trade Marks Act 2002 and The Designs Act 1953	Protects brand names and logos used on goods and services.	Provides for a MAC to consider trademarks, and consider whether they are likely to be offensive to Māori. Decisions not binding.	Definition of offensive to Māori should be provided, MAC needs broader mandate and binding decisions.
Toi Iho	Trademark for Māori artworks, wide scope for qualification.	Does not protect the kaitiaki interest in taonga works.	Artists' personal brands should be utilised, and remove need to submit for appraisal.
Geographic Indicators	Geographic Indicators (GI) are signs used on products that originate from a particular location. This is usually for the qualities and reputation the location's products have. At present these only apply to wines and spirits.	Provides for a MAC to consider use of GI, and consider whether they are likely to be offensive to Māori. Decisions not binding.	Definition of offensive to Māori should be provided, MAC needs broader mandate and binding decisions. More heed given to kaitiaki relationships needed. GIS need to expand to cover a broader range and also cover mātauranga Māori.

Act	Applications	Māori Provisions	Suggested Changes or Changes in the Pipeline
Plant Variety Rights Act (PVR)	Grants the exclusive right to produce for sale and to sell propagating material of the variety.	Provides for a Māori Plant Varieties Committee (MPVC) to support early engagement between plant breeders and kaitiaki, and assess any impact a PVR may have on kaitiaki relationships. Disclosure requirement for breeders when working with taonga species and mātauranga Māori. Ability to refuse PVR if kaitiaki interests are affected.	Definition of offensive to Māori should be provided.
Trade Secret	Protection of proprietary information against unauthorized commercial use by others. Found in contract law and enforced by the Crimes Act 1961.	No provision for Māori interests or the Treaty of Waitangi.	Legislation governing trade secrets should be formed with specific provision for Māori.

Appendix 5: Recommendations from the Wai 262 Report

Kaitiaki Relationships	<p>Entitled to reasonable degree of protection; In exceptional cases, may claim interest in living specimens of taonga species; Interest does not amount to ownership of resources; Valid rights for mātauranga Māori (MM) associated with taonga species (TS), but not exclusive; Commercial exploitation of MM must give proper recognition and reasonable degree of control; Consent, disclosure, or consultation required on case-by-case basis; Should enshrine relationship protection in law; Must balance relationship with other interest holders; and Amend s5 HSNO Act to require recognition and provision for kaitiaki and TS relationship.</p>
Bioprospecting	<p>The Department of Conservation (DOC) should develop bioprospecting regime in line with existing barriers; Joint decision-making between DOC and the pātaka komiti, with the latter's role expanded to participate in decision making; and No compulsory requirement for access and benefit sharing.</p>
Genetic Modification	<p>Methodology order to be bought in line with HSNO Act 1996. No automatic privilege to physical risks; Ngā Kaihautū Tikanga Taiao maintain advisory role, but also appoint at least two members to the Authority itself; and Ngā Kaihautū to give advice when it considers an application to be relevant to Māori interests.</p>
Intellectual Property	<p>Measures enacted to protect kaitiaki relationship with TS and MM. MM to be a key consideration for patent applications; Establish a Patents Māori Advisory Committee to advise on presence of MM or TS and consistency with tikanga Māori and kaitiaki relationships; Kaitiaki ability to formally notify interest in species or MM through registration; Kaitiaki right to object to patent application even if interest not registered; and Patent application public disclosure requirement for MM or taonga species contribution. Failure to disclose has range of outcomes on case-by-case basis.</p>

Plant Varieties Rights (PVR)	Cultural relationship between kaitiaki and taonga species is entitled to reasonable protection; New PVR legislation also include a power to refuse a PVR if it would affect kaitiaki relationships with taonga species; and Establish PVR MAC to assist commissioner.
Overall	Enable MACs to assist in the preparation of adequate ethical guidelines and codes of conduct relevant to their field for use by those in research and development; Broad advisory function including regarding tikanga Māori and location and engagement with kaitiaki; and Educational facilities to assist in preparation of guidelines and codes.

Appendix 6: Key Sources for Further Reading

New Zealand Guidelines

A Wai262 Best Practice Guide for Science Partnerships with Kaitiaki for Research Involving Taonga; Lessons from Māori Voices in the New Zealand Science Sector

- <https://www.rauikamangai.co.nz/wp-content/uploads/2022/06/Wai262-Report-Rauika-Māngai.pdf>

Ko te ara, kia tika; a Guiding Document for the Consideration of Mātauranga Māori in Contracts

- <https://www.rauikamangai.co.nz/document/ko-te-ara-kia-tika/>

New Zealand Intellectual Property Office; Protecting intellectual property with a Māori cultural element User Guide

- <https://www.iponz.govt.nz/assets/pdf/maori-ip/protecting-ip-with-a-maori-cultural-element.pdf>

Taonga Species and Intellectual Property; Some Thoughts About Negotiating Intellectual Property Agreements with Māori Communities

- <https://www.hikurangibioactives.co.nz/kanuka-handbook/>

Te Mata Ira; Guidelines for Genomic Research with Māori

- <https://www.genomics-aotearoa.org.nz/sites/default/files/2019-03/Te-Mata-Ira-Genome-Research-Guidelines.pdf>

Te Nohonga Kaitiaki; Guidelines for Genomic Research on Taonga Species

- <https://www.genomics-aotearoa.org.nz/our-work/completed-projects/te-nohonga-kaitiaki>

When The Crown Controls Mātauranga; A Report on a Survey of Crown Policies, Programmes, Legislation, Funding, and Impact Assessment Relating to Mātauranga Māori

- https://bioheritage.nz/wp-content/uploads/2019/04/When-the-Crown-controls-matauranga_Full.pdf

International Guidelines

Aboriginal Affairs NSW Aboriginal Cultural and Intellectual Property Protocol

- <https://www.nsw.gov.au/departments-and-agencies/aboriginal-affairs-nsw/intellectual-property>

Documenting Traditional Cultural Expressions; Building a Model for Legal Protection Against Misappropriation and Misuse with the Oma Ethnic Group of Laos

- <https://www.taec Laos.org/wp-content/uploads/2021/05/TAEC-White-Paper-Securing-Cultural-Intellectual-Property-Rights-Oma-Laos.pdf>

Fungi Foundation Ethnomycology Ethical Guidelines

- <https://www.ffungi.org/campaign/ethnomycology-ethical-guidelines>

Guidance on Engagement with Indigenous Peoples, Local Communities and Affected Stakeholders

- <https://tnfd.global/publication/guidance-on-engagement-with-indigenous-peoples-local-communities-and-affected-stakeholders/#publication-content>

Karuk Tribe Protocol with Agreement for Intellectual Property Rights of the Karuk Tribe Research, Publication and Recordings

- https://sipnuuk.karuk.us/system/files/atoms/file/ATALM17_KTRResearchProtocol.pdf

Newcastle Indigenous Cultural and Intellectual Property Community Guide

- https://www.newcastle.edu.au/_data/assets/pdf_file/0008/907874/2023-ICIP-community-guideFINAL.pdf

Newcastle Indigenous Cultural and Intellectual Property Protocol

- https://www.newcastle.edu.au/_data/assets/pdf_file/0006/907881/2022-0066-ICIP-protocolFINAL.pdf

Sweetgrass Cultural Protocol; Advice for Good Relations with a Culturally Significant Relative

Victorian Traditional Owner Native Food and Botanicals Protocol

- <https://gunaikurnai.org/wp-content/uploads/2021/07/Victorian-Traditional-Owner-Native-Foods-and-Botanicals-Strategy-ONLINE.pdf>

WIPO Draft Steps When Considering the Use of Elements of Indigenous Peoples' Traditional Cultural Expressions in Fashion

- <https://www.wipo.int/tk/en/fashion.html>

Extra Resources

Bay Of Plenty Aquaculture – International Overview of Intellectual Property

- https://smartmaoriaquaculture.co.nz/wp-content/uploads/2021/04/BoP-aquaculture-Stage-2-IP-Report_slides-for-aquaculture-hui-16.04.21.pdf

Benefit Sharing; Why Inclusive Provenance Metadata Matter

- <https://www.frontiersin.org/journals/genetics/articles/10.3389/fgene.2022.1014044/full>

CARE Principles

- <https://www.gida-global.org/care>

FAIR Principles

- <https://www.go-fair.org/fair-principles/>

IDIA Cultural Integrity Scorecard

- <https://www.idia.nz/toolkit/cultural-integrity-scorecard>

Intellectual Property, Mātauranga Māori, and Māori Data: Report prepared for Science for Technological Innovation National Science Challenge & Genomics Aotearoa.

- <https://www.sftichallenge.govt.nz/about-us/documents-and-reports/>

Understanding Māori Rights and Interests in Intellectual Property arising from Research and Innovation.

- https://www.sftichallenge.govt.nz/assets/Uploads/Download-PDFs/Understanding-Maori-Rights-and-Interests-in-IP-arising-from-Research-and-Innovation_May-2021-Final.pdf

ISBN: 978-0-9951290-7-8



Kia kotahi mai –
Te Ao Pūtaiao me
Te Ao Hangarau

