



WALK TOGETHER:
DESIGN GUIDED BY COUNTRY

Guidance Note

Protecting Cultural Knowledge
and Intellectual Property
in Built Environments

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 Furthermore, it is protected by Indigenous Cultural
 Intellectual Property (ICIP) rights in which ICIP refers to
 Indigenous Peoples' heritage and culture (where heritage
 includes all aspects of cultural practices, traditional
 knowledge, and resources and knowledge systems
 developed by Indigenous People as part of their Indigenous
 identity) and is collective in that ICIP originates from a clan
 group and is passed on from generation to generation. As
 such it is not ownable by anyone other than the Indigenous
 Peoples and communities from which it originates. All
 questions about appropriate use of ICIP are to be directed
 to the author for instructions.

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Indigenous Cultural and Intellectual Property (ICIP) embodies all aspects of Indigenous Knowledges as well as the rights Indigenous Peoples hold to protect their knowledge and cultural heritage. As built projects include more Indigenous Peoples as participants, co-designers, informants or clients, it is critical ICIP is correctly protected and managed by architects, clients and other built environment professionals.

Guruwaal (Whale), UNSW. Interpretive narratives guided by Uncle Greg Simms, Aunty Marie Dixon, Uncle China Timbery.



Indigenous Peoples¹ have the right to maintain, control, protect and develop their cultural heritage, Traditional Knowledge, Traditional Cultural Expressions,² as well as the manifestations of their Knowledge, whether traditional or contemporary. Heritage comprises all objects, sites and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation, and which is regarded as pertaining to a particular Indigenous group or its territory. This heritage is living and includes objects, knowledge, data, literature and art, as well as elements that may be created in the future. This heritage can be comprised of: song, music, dance, story, ceremony, symbol, language, design; of science, agriculture, technology, ecology, cultigens, medicines and phenotypes; of flora and fauna; of items of movable cultural property; of human remains and tissues; of immovable cultural property, sacred and historically significant sites, burial grounds; of documentation of heritage in archives, films, photographs, videotapes, audiotape and all forms of media.^{3 4 5}

1—In this text the word Indigenous has been used as it is part of a specific term in which it references global Indigenous Peoples. This does not exclude First Nations Peoples (Aboriginal and Torres Strait Islander Peoples), rather connects them with the global experience.

2—Some words or phrases have capitals in this text. This is to reference the Indigenous understandings of these words rather than the Western.

3—United Nations Declaration on the Rights of Indigenous Peoples.

4—Arts Law Centre of Australia.

5—Terri Janke.

Indigenous Cultural Intellectual Property

Indigenous Cultural and Intellectual Property (ICIP) is comprised of the tangible and intangible shared Indigenous Cultural Heritage. ICIP has been or continues to be transmitted intergenerationally and is specific to a particular group or area.

Indigenous Cultural Intellectual Property Rights

ICIP Rights are the rights Indigenous Peoples hold in order to have, protect, maintain and develop their Cultural Heritage. These rights are noted in the *United Nations Declaration on the Rights of Indigenous Peoples*:⁶

ARTICLE 31

- 1. *Indigenous Peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.*
- 2. *In conjunction with Indigenous Peoples, States shall take effective measures to recognize and protect the exercise of these rights.*

ICIP protections are starting to appear in state and federal protocols and guides. Many local government institutions also have requirements for protecting Indigenous Knowledge.

6— United Nations Declaration on the Rights of Indigenous Peoples.



Indigenous Cultural
Intellectual Property
Rights

Registered architects hold responsibilities towards Indigenous Peoples' Knowledges as part of maintaining their registration as noted in the Performance Criteria of the Architects Accreditation Council of *Australia's National Standards of Competency for Architects*:⁷

At the point of registration—a candidate will AND Post registration—an architect will:
Comply with legal and ethical obligations relating to legislated requirements in relation to copyright, moral rights, authorship of cultural knowledge and intellectual property requirements across architectural services.

ICIP and IP

ICIP and IP are different and interconnected. Intellectual Property is a creation of the mind, for instance a design, brand, logo, invention, artistic work or new plant variety. The owner of the IP is not always the person who created it. IP can be protected by Australian laws via registering a trademark, patent, design rights or plant breeder's rights. Copyright is free and automatic. IP protections last between 5 to 70 years⁸ depending on the type of IP.⁹ Conversely, ICIP is shared by a group and across generations. Indigenous Knowledge cannot be owned by non-Indigenous people. ICIP is currently unprotected by Australian laws without a contract or agreement, however ICIP rights inherently belong to the Indigenous Peoples to whom they belong. As ICIP is shared intergenerationally, unlike IP, it does not expire.

7—INational Standard of Competency for Architects

8—Trade secrets can last forever so long as the owner can keep it a secret.

9—IP Australia.

Design workshop with Elders for Guruwaal with Djinjama (2021).



Indigenous Knowledges are not the same as Western knowledge. Indigenous Knowledges originate from an Indigenous worldview and inherently hold different behaviours around how knowledge is held and shared.

Implied in Western knowledge is the right to have knowledge broadly shared and known – often via formal institutions such as schools and higher education. It can be protected through copyright and intellectual property rights, however once it is shared it becomes public knowledge.

Indigenous Knowledges are different. Knowledge Holders hold Knowledge about particular topics and it is their role, responsibility and right to safeguard that Knowledge, and to choose wisely with whom it is shared. Oral ways of sharing (such as storytelling, yarning and participatory learning) safeguard Indigenous Knowledges and ensure it is shared with the right people at the right time so that the right understandings of that shared Knowledge are obtained.

In the Indigenous Knowledges tradition, different Knowledge Holders hold different parts of Knowledge. This, along with oral and intergenerational methods of sharing, means that Indigenous Knowledges are not holistically protected by non-Indigenous laws through copyright and intellectual property rights.

ICIP interacts with IP. For instance, if a designer or creative person shares ICIP to develop a new methodology for practicing, or a prototype for a design, this becomes IP resultant from ICIP. In this instance, both IP and ICIP need protections as they are intertwined.

*Dr Danièle Hromek weaving,
photo by Chelsea Abbott (2018).*



Misappropriation

Since colonisation, many aspects of Indigenous Knowledges have been appropriated by non-Indigenous people. As a result, non-Indigenous people have benefitted, with some claiming to now own the Indigenous Knowledge themselves.

Due to changes in Acts (legislation), new government frameworks, and architectural registration performance criteria, Indigenous Knowledges are now being shared into built environment projects. There is a risk for Indigenous Peoples who are sharing their Knowledges into built environment projects; their Knowledges could be inappropriately used, misinterpreted, misrepresented, misappropriated and/or stolen.

As such, ICIP and Indigenous IP need proper protection via contracts, agreements and ICIP plans. This includes where Indigenous designers are employees of a design practice in which ICIP rights and Indigenous IP need protection via employment contracts.

It is the responsibility of all working on built environment projects that include Indigenous Peoples to protect Indigenous Knowledges. This should occur via:

1. Head and subconsultant agreements that protect ICIP and IP.
2. Community agreements in plain language with ICIP and IP noted, including Cultural Mourning Protocols.¹⁰
3. Any ICIP or IP that is shared must be appropriately managed on separate computers, secured storage devices or segmented servers.
4. ICIP Plans for the management of ICIP for the entirety of the project.
5. Regular and repeating check-ins to ensure ICIP and Indigenous IP are appropriately integrated.

10—As ICIP is intergenerational, it is important that details are recorded by project teams via an agreement relating to who would manage the ICIP should the current holder pass. For instance, when ICIP or Indigenous IP is shared into a project and the current Knowledge Holder of the ICIP or Cultural Knowledge passes away, the project team needs to be aware of who is responsible for the Indigenous Knowledge and ICIP going forward; it may not be their children or direct descendants. Therefore, it is critical the project team plans how to manage this event should it occur. This may involve:

- recording the name and contact details of the next ICIP Holder;
- what ICIP or Cultural Knowledge has been shared into the project;
- ensuring they are informed about the project and requests made through by the prior ICIP Holder;
- ensuring they are recognised appropriately and invited to celebrations and other events.

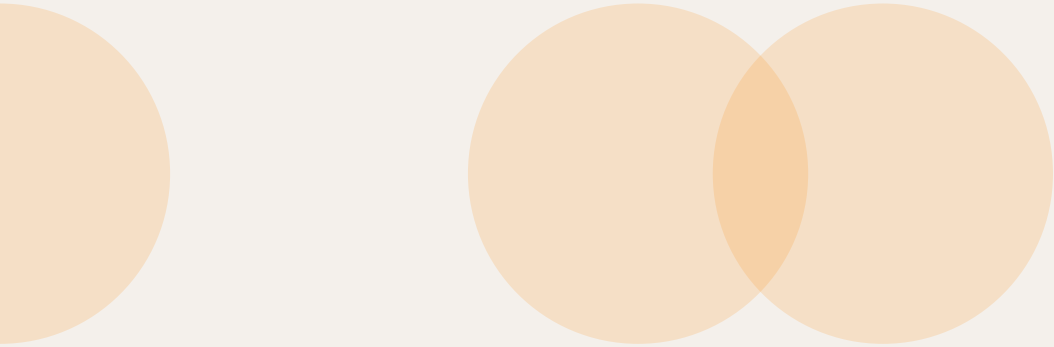
Being aware of the ICIP Holder’s beliefs around images or names not being used after death is also important to avoid breaching cultural protocols.

Place or Context Specific

It is also important to note that Indigenous Knowledges are often specific to a project, place and/or context. When shared into built projects, it is critical those hearing or learning the Knowledge act as respectful guardians for the Knowledge and do not share it outside of the project. Knowledge shared is specific to each project and must never be passed on or used in other contexts or projects without specific permission from the Knowledge Holder.

Non-Indigenous architects and designers sometimes think that because Knowledge has been shared with them on a project that they can then share it with others. This is not the case. Any Knowledge shared with participants as part of a project should remain confidential to the participants.





If working on a project in which Indigenous Peoples are involved, be they communities or individuals, Elders or practitioners, it is safest to assume Indigenous Knowledges may be shared. There are some practical steps that can be taken to respect and protect the Knowledge of the Indigenous People involved.

BEFORE PROJECT COMMENCEMENT

- Appoint a person/s to manage ICIP for the entirety of the project.
- Ensure all working on the project are aware of ICIP and how it must be protected.
- Work with the Principal to prepare head agreement or subconsultant agreement that includes ICIP protections.
- Prepare Participation Agreements for Indigenous project participants with ICIP protections.
- Prepare ICIP Plan to be filled out as project proceeds.
- Establish secure spaces on servers for Indigenous Knowledge to be stored.

DURING PROJECTS

- Ask Knowledge Holders to advise regarding their cultural safety while sharing their Knowledge. This may result in:
 - Separate engagements.
 - Requirements for one-on-one yarns.
 - Engagements being held by different team members (for instance, different genders).
- Ensure Indigenous project participants have alerted the design team of any shared Indigenous Knowledge.
- Regularly remind project teams and clients of their obligations relating to protecting Indigenous Knowledge.
- Add any Indigenous Knowledge shared to the ICIP Plan including protocols for sharing.
- Ensure Indigenous Knowledge is acted upon in project outcomes rather than the Knowledge being directly shared.

- Author reports in accordance with protocols for sharing Indigenous Knowledge. This may require:
 - Two reports being authored – one with redacted elements, the other with restricted readership.
 - Reports are issued as passworded, unprintable documents with instructions for use.
- Printing Indigenous Knowledge makes it extremely difficult to protect it, therefore ensure documents are not printed without explicit written permission from Knowledge Holders.
- Knowledge Holders have the final say in relation to how their Knowledge is shared and represented in the project.
- Knowledge Holders have a say in how or if they are to be identified in the project.
- If a project is put on hold or stopped midway, ICIP cannot be transferred to another project by the Principal.

AFTER PROJECT COMPLETION

- Knowledge Holders have the final say in relation to how their Knowledge is stored and whether it can be shared beyond the project.
- Without explicit written permission Knowledge shared during a project must not be referenced elsewhere, in particular, Knowledge must not be shared into future built projects.
- Indigenous Knowledge stored on computers, storage devices or servers is secured or deleted as guided by Knowledge Holders.

An ICIP Plan helps project participants remain vigilant regarding protecting and managing ICIP that may be encountered during a project. It should be established by whoever is responsible in the project for managing ICIP on behalf of the project team.

The sorts of things that may be included in an ICIP Plan include:

- Key project details including dates.
- Details of Indigenous Knowledge Holders who have contributed to the project including their cultural identity/ies (groups, clans, tribes, language groups, nations, etc).
- Overview of ICIP shared.
- Allowed uses within the project.
- Allowed uses beyond the project.
- Cultural Mourning Protocols or other special protocols requested by Knowledge Holders should this be relevant.
- Post-project care of the ICIP.

Plain English Participant Agreements will help to manage the ICIP Plan. These should be filled out at the point of engagement and identify any ICIP shared, how it can be used and stored, any Cultural Mourning Protocols relating to who will next be responsible for the ICIP, fees paid, etc.

Community artwork for Rossmore Grange, facilitated by Djinjama (2022).



Dharug Language words provided by
Uncle Greg Simms for Gunyama Park (2020).

APPENDICES



FURTHER RESOURCES

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