

Independent Property Impact Assessment Panel for WestConnex M4-M5 Link, M4 East and New M5 projects

Terms of Reference

Roads and Maritime Services | August 22 2019

Revision Table

Date	Document Version	Document Revision History	Document Author/Reviser
18/3/2019	0.1	Draft for review by RMS	Alison Tourle
09/04/2019	0.2	Draft for issue to Panel for review	Alison Tourle
19/4/2019	0.3	Draft comments and suggestions by the Panel	James Barbato
10/5/2019	0.4	Final Draft for Panel review	Phil Clark
14/5/2019	0.5	Final comments and suggestions by the Panel	James Barbato
17/5/2019	1.0	Acceptance of final Panel comments	Phil Clark
21/08/2019	2.0	Update to address M4M5 link Asset Trustee comments and WCX 3B Project Team comments and acceptance of Panel comments to changes	Phil Clark

Approvals

Date	Document Version	Approver Name and Title	Approver Signature
24/05/2019	1.0	Andrew McKindlay Project Director, WestConnex	
22/08/2019	2.0	Andrew McKindlay Project Director, WestConnex	

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Abbreviations

AA	Acoustic Adviser
AT	Asset Trustee
CoA	Condition of Approval
DPIE	NSW Department of Planning, Industry and Environment
EIS	Environmental Impact Statement
EPL	Environment Protection Licence
ER	Environmental Representative
IPIAP	Independent Property Impact Assessment Panel
NVMP	Noise and Vibration Management Plans
RMS	Roads and Maritime
SMC	Sydney Motorway Corporation, now known as WestConnex Transurban
SPIR	Submissions and Preferred Infrastructure Report
SWTC	Scope of Work and Technical Criteria
WCX	WestConnex
WHTBL	Western Harbour Tunnel Beaches Link

1 Background

Roads and Maritime (RMS) has established an Independent Property Impact Assessment Panel (IPIAP) in accordance with the Condition of Approval (CoA) E109 for M4-M5 Link (Stage 3A and 3B). The IPIAP will be responsible for independently reviewing Condition Survey Reports, the resolution of property damage disputes and the establishment of ongoing settlement and vibration monitoring requirements relating to potential and/or actual property impacts to surface or sub-surface features on private properties.

Whilst Roads and Maritime is required to establish the IPIAP under CoA E109, the role of the IPIAP has been extended beyond the requirements of CoA E109 under this Terms of Reference, as described in Section 2, and includes the following WestConnex Projects:

- M4 East - twin tunnels connecting the widened M4 from Homebush to Haberfield
- New M5 - twin tunnels from Kingsgrove to St Peters Interchange
- M4-M5 link (Stage 3A) - twin tunnels connecting M4 East at Haberfield to New M5 at St Peters
- M4-M5 link (Stage 3B) - Rozelle Interchange.

Further information on each project is provided in Appendix A.

2 Roles and responsibilities

2.1 Role of the Independent Property Impact Assessment Panel

The role of the IPIAP is to independently resolve private property damage disputes relating to damage to surface or sub-surface structures that may be caused by construction of the WestConnex Projects listed in the section above. As required of CoA E109, the IPIAP is independent of the design and construction teams for each project. In addition, the IPIAP is independent of Roads and Maritime and WestConnex Transurban (Sydney Motorway Corporation, SMC). The role of the IPIAP varies for each WestConnex Project and the main requirements are listed below. Further information of the IPIAP's role is provided in Appendix B.

2.1.1 M4-M5 Link (Stages 3A and 3B)

1. Independently review the M4-M5 Link (Stage 3A and 3B) Contractors' pre and post-dilapidation condition survey report templates or samples, to ensure compliance with CoA E105 and E106.
2. Independently review the M4-M5 Link (Stage 3A and 3B) Contractors' pre and post dilapidation condition survey reports for surface and sub-surface structures identified as being at risk of impact from settlement or vibration to ensure compliance with CoA E105 and E106. At risk properties are considered to be properties where:
 - The Contractors' geotechnical models identifies that the criteria in the Scope of Work and Technical Criteria (SWTC), CoA E103 or other criteria provided in accordance with CoA E102 could be exceeded.

- Vibration predictions either exceed the criteria for property damage or are outside of safe working distances or limits provided in the Contractors' Noise and Vibration Management Plans and Monitoring Programs.
 - "At-risk" properties may change during the construction as the geotechnical models are further refined and developed.
3. Independently review the M4-M5 Link (Stage 3A and 3B) Contractors' settlement and vibration monitoring programs for properties identified as being at risk of impact from settlement or vibration, and includes:
- Review and provide comments and recommendations on the M4-M5 Link Contractors' draft Ground Movement and Settlement Impact Reports and the related Settlement and Monitoring Programs prepared in accordance with CoA E104.
 - Review and provide comments and recommendations on the relevant aspects of the M4-M5 Link Contractors' Noise and Vibration Management Plans and Monitoring Plans prepared in accordance CoAs C4, C5, C10 and C11-C18.
4. Accessing (where required to assist in determination of unresolved disputes) the M4-M5 Link Contractors' web based monitoring and protection system, weekly monitoring reports and monthly geotechnical records.
5. At the request of Roads and Maritime, provide recommendations for additional investigations, monitoring data or reporting in order to resolve property damage claims referred to the IPIAP.
6. At the referral of Roads and Maritime or the property owner, review and provide a resolution on unresolved disputes arising from potential and/or actual property impacts. The unresolved disputes are restricted to those between private property owners and Contractors for M4-M5 Link (Stage 3A and 3B) in accordance with CoA E109. The findings by the Panel will include one of the following resolutions:
- Property damage is wholly or partly due to the Project;
 - Property damage is not due to the Project; or
 - Further information and monitoring as required to assist with the resolution.

2.1.2 M4 East and New M5 Projects

1. At the referral of Roads and Maritime, review unresolved property impact disputes between property owners and the Project's contractor.
2. At the request of Roads and Maritime, provide recommendations for the resolution of claims or provide recommendations for additional investigations required to resolve property damage claims referred to the IPIAP. The findings by the Panel will include one of the following resolutions:
 - Property damage is wholly or partly due to the Project;
 - Property damage is not due to the Project; or
 - Further information and monitoring as required to assist with the resolution.

2.2 Summary of the IPIAP's role

A summary of the activities provided in Section 2.1 above and the applicability to each project is provided in Table 1.

Table 1: IPIAP Activities by Project

Activity	Indicative Time frame	M4-M5 link (3A and 3B)	M4 East	New M5
IPIAP Establishment, project familiarisation ¹ , review and acceptance of Terms of Reference	Q2-Q3 2019	✓	✓	✓
Review Contractors' Condition Report Survey templates or samples (comprising the pre and post-dilapidation reports and surveys)		✓	✗	✗
Review Contractors' settlement and impact reports, monitoring program, Noise & Vibration Management Plan and other relevant documentation	Q2-Q4 2019	✓	✗	✗
Review Contractors' pre-dilapidation reports for at risk properties (as defined in Section 2.1.1)		✓	✗	✗
Receive Contractors' weekly and monthly monitoring reports for information / understanding (no reporting or review required)	Q2 2019 - 2023	✓	✗	✗
Review Contractors' post-dilapidation surveys for at risk properties (as defined in Section 2.1.1)	Q2 2019 - 2024	✓	✗	✗
Review and provide recommendations for resolution of claims between Contractors and property owners) and/or make recommendations for further investigations and monitoring required to resolve property damage claims referred to the IPIAP.	Q2 2019 - 2024	✓	✓	✓
Resolve property damage disputes between property owners and Contractors for M4-M5 Link Projects (Stage 3A and 3B) and, where requested, make recommendations to resolve claims for the M4 East and New M5 Projects	Q2 2019 - 2024	✓	✓	✓

¹ Project familiarisation includes providing the panel with all relevant background project contractual, design and construction documentation for information and understanding. Documentation will include, but is not limited to, the Project Scopes of Work and Technical Criteria, geotechnical and hydrogeological information reports, Settlement and property impact assessment reports, vibration and noise reports and plans, construction program and construction specifications.

2.3 Disputes

- a) The IPIAP will resolve disputes between private property owners and the Contractors for the M4-M5 Link Project, when either Party refer the disputes to the IPIAP, as required by CoA E109.
- b) The IPIAP will make recommendations for the resolution of unresolved property damage dispute claims for the M4 East Project and the New M5 Project referred to the Panel by Roads and Maritime IPIAP Coordinator, at the request of the property owner.
- c) If an agreement is reached, any party may at any time withdraw the dispute.
- d) Property dispute meetings are to be non-adversarial and conducted without being bound by the rules of evidence.
- e) The Panel shall issue an interim report to both parties for consideration and after receiving comments from the parties, issue the Panel's final determination to the parties. Any determination would not be legally binding on the property owner.
- f) The Panel can request and review any building surveys, settlement and vibration monitoring records, and any other reports or data relevant to the unresolved property damage dispute. This may include data and reports from adjacent or nearby properties.

2.4 Responsibilities of IPIAP Chair

The Panel chair will:

- Provide leadership of the Panel.
- Convene and chair the meetings of the Panel.
- Ensure that the Panel functions properly, that there is full participation during meetings, that all relevant matters are discussed and that effective decisions are made and carried out.
- For the M4-M5 Link Projects (Stages 3A and 3B), when a dispute is referred to the Panel, convene meetings with the property owner, Contractor, Roads and Maritime, the Asset Trustee (where applicable) and any other relevant parties as required.
- For the M4 East and New M5 Projects, when a dispute is referred to the Panel, with Roads and Maritime agreement, convene meetings with the property owner, Contractor, Roads and Maritime, the Asset Trustee and any other relevant parties as required.
- Delegate tasks to other Panel members as appropriate.
- Liaise and interface with the Roads and Maritime IPIAP coordinator and the Road and Maritime Project Teams.
- Coordinate the preparation of document reviews and written reports that summarise the findings of any dispute.

2.5 Responsibilities of IPIAP members

Panel members will:

- Provide objective, independent, arm’s length, defensible, non-biased evidence based advice and recommendations for the resolution of property disputes, uninfluenced by the various parties.
- Work as a team, reach consensus decisions and negotiate agreed outcomes to resolve disputes.
- Constructively challenge/question approaches and information.
- Assist the chair with the preparation of document reviews and written reports that summarise the findings of any dispute.

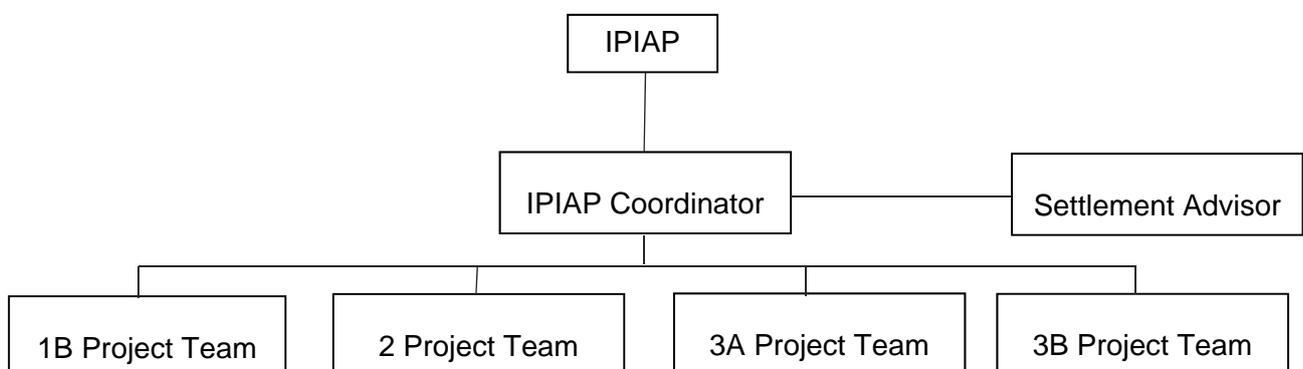
2.6 IPIAP Coordinator

The IPIAP Coordinator is a Roads and Maritime resource. The Coordinator will provide administrative and clerical support, manage the governance, budget and operation of the Panel, and coordinate the matters between the projects and the Panel. The Coordinator is responsible for referring unresolved property damage dispute claims to the Panel for determination. The Coordinator will liaise between the Roads and Maritime project team representatives and specialists, the Panel, property owners and Contractors as required.

2.7 Settlement Advisor

The Settlement Advisor is a Roads and Maritime resource that acts as an advisory role and will be carried out by a suitably qualified and experienced geotechnical engineer. The Settlement Advisor will assist the IPIAP Coordinator in collecting the required technical information from the Project Teams. The Settlement Advisor will also assess technical information provided by all parties and advise the IPIAP Coordinator and project teams on the likelihood of ground movement occurring at the property that could result in property damage.

2.8 Functional Relationship Chart



3 Panel operation

3.1 Membership

Table 2 lists the IPIAP members.

Table 2: IPIAP Membership

Title	Organisation	Name
Chair	Mine Subsidence Engineering Consultants	James Barbato
Geotechnical expert	JK Geotechnics	Paul Roberts
Structural expert	M+G Consulting	Philip Butcher
Alternate geotechnical expert	JK Geotechnics	Woodie Theunissen
Alternate structural expert	Mine Subsidence Engineering Consultants	Daryl Kay

Alternate panel members will be kept informed of IPIAP activities via receiving copies of meeting minutes. Alternate members will also be available if the panel member is on leave. They will receive a briefing from the relevant member before going on leave. Should the Chair not be available, they will nominate another panel member to act as the Chair.

3.2 Roads and Maritime Personnel

The IPIAP Coordinator is Phil Clark (acting).

The Settlement Advisor is John McDermott.

3.3 Frequency of Meetings

The IPIAP will meet no more than quarterly (if required) to review progress and status of the projects and to report on the activities of the Panel. If required, the IPIAP Coordinator will attend these meetings.

In addition, the IPIAP will meet on an as needs basis for property disputes, review of documentation and review of report templates or samples to meet deadlines provided by the IPIAP Coordinator. If requested by the IPIAP Chair, the IPIAP Coordinator will also attend these meetings.

3.4 Agenda, Minutes and Supporting Materials

The Chair will send the IPIAP members and the IPIAP Coordinator the following documentation prior to a Panel meeting:

- agenda for upcoming meeting
- minutes of previous meeting
- a progress report for the panel activities
- documents / information to be considered at the meeting.

3.5 Reporting

The Panel's technical review of documentation must provide constructive comments on the Contractor's documentation that is intended to assist in the resolution of potential property disputes.

The Panel's reports are to deal with property damage only and not issues of property valuation, property remediation, injurious affection, compulsory acquisition or similar matters.

With respect to property disputes, the findings of the report will include one of the following resolutions:

- Property damage is wholly or partly due to the Project;
- Property damage is not due to the Project; or
- Further information and monitoring as required to assist with the resolution.

3.6 Review

These Terms of Reference will be reviewed and finalised by the Panel at the establishment of the IPIAP. Thereafter, the Terms of Reference will be reviewed by the Panel and Roads and Maritime annually or as required.

3.7 Invitees

Representatives from other agencies and organisations may be invited by the Chair to attend on an as needs basis depending on specific issues requiring discussion.



Appendix A

IPIAP WestConnex Projects Background Information

1 Overview

An overview of the WestConnex Projects is provided in Figure A1.

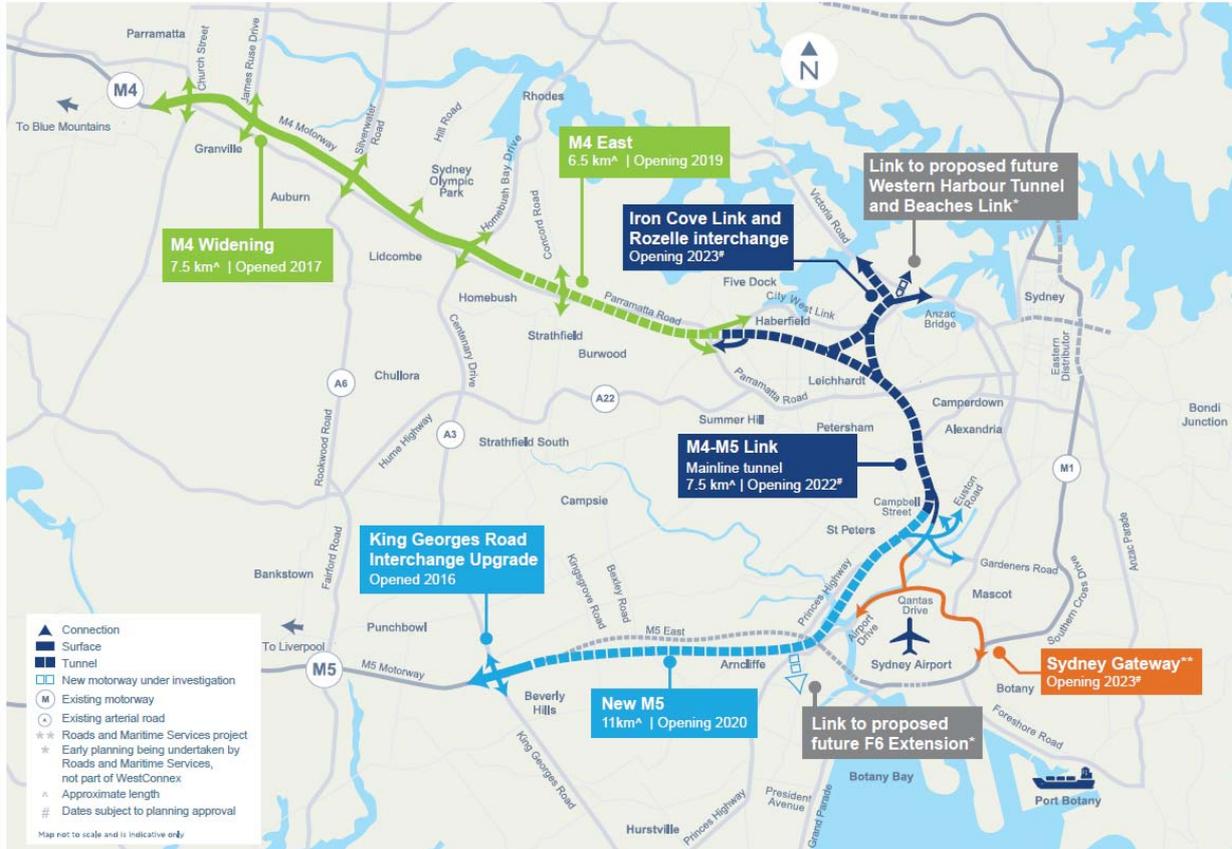


Figure A1: Overview of WestConnex

The Panel’s activities will apply to the following WestConnex Projects:

- M4 East - twin tunnels connecting the widened M4 from Homebush to Haberfield
- New M5 - twin tunnels from Kingsgrove to St Peters Interchange
- M4-M5 link (Stage 3A) - twin tunnels connecting M4 East at Haberfield to New M5 at St Peters
- M4-M5 link (Stage 3B) - Rozelle Interchange.

Summaries of each of these Projects and their associated excavation timeframes is provided in the sections below.

1.1 The M4 East Project (WCX Stage 1B)

The M4 East Project connects the widened M4 Homebush to Haberfield via twin motorway tunnels. The Project received planning approval in February 2016 and is expected to be open to traffic in 2019. Project environmental and approval documentation can be downloaded from:

http://majorprojects.planning.nsw.gov.au/index.pl?action=search&page_id=&search=m4+east&authority_id=&search_site_type_id=&reference_table=&status_id=&decider=&from_date=&to_date=&x=0&y=0

1.2 The New M5 Project (WCX Stage 2)

The New M5 provides twin underground motorway tunnels, nine km long, from Kingsgrove to a new St Peters Interchange at the site of the old Alexandria landfill facility. It also includes connections to the future Sydney Gateway and M4-M5 Link. The New M5 received NSW planning approval in April 2016 and is expected to be open to traffic in early 2020. At end of 2018 most of the tunnel excavation was complete. Project environmental and approval documentation can be downloaded from:

http://majorprojects.planning.nsw.gov.au/index.pl?action=search&page_id=&search=new+m5&authority_id=&search_site_type_id=&reference_table=&status_id=&decider=&from_date=&to_date=&x=0&y=0

1.3 M4-M5 Link Project (WCX Stage 3)

The M4-M5 Link project is a new multi-lane road link between the M4 East Motorway at Haberfield and the New M5 Motorway at St Peters and a major interchange at Rozelle that provide links to Anzac Bridge, Victoria Road and a proposed future Western Harbour Tunnel. The M4-M5 link Project comprises:

- Stage 3A – A mainline tunnel connection between the M4 East Motorway at Haberfield and the New M5 Motorway at St Peters.
- Stage 3A - Connections to the proposed Sydney Gateway Project at St Peters Interchange and Rozelle Interchange (Stage 3B).
- Stage 3B - A mainline tunnel connection between Anzac Bridge and Victoria Road, east of Iron Cove Bridge (Iron Cove Link).
- Stage 3B - An interchange at Lilyfield and Rozelle (the Rozelle Interchange) that connects to Stage 3A and includes ramps and tunnels for connections to the proposed future Western Harbour Tunnel and Beaches Link (WHTBL) project.

The environmental assessment for the project, including background information on the impacts of ground movement, is provided in:

- the *M4-M5 Link Environmental Impact Statement (EIS)* (Roads and Maritime, 2017)
- the *Submissions and Preferred Infrastructure Report (SPIR)* (Roads and Maritime, 2018) and
- the *Mainline Tunnel Modification Report* (Roads and Maritime, 2018) and *Response to Submissions* (Roads and Maritime, 2018).

The environmental assessment documentation can be downloaded from:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7485 and
http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9612.

The Project was approved on 17 April 2018 by the Minister for Planning under the *Environmental Planning & Assessment Act 1979* and Modification 1 was approved on 25 February 2019. The consolidated Instrument of Approval can be downloaded from:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7485.

Conditions of Approval (CoA) E109 of the Infrastructure Approval identifies the requirements for the establishment of the IPIAP:

The Proponent must establish an Independent Property Impact Assessment Panel before works that have the potential to result in property impacts commence. The

Panel must comprise geotechnical and engineering experts independent of the design and construction team. The Panel will be responsible for independently reviewing Condition Survey Reports undertaken under Conditions E105 and E106, the resolution of property damage disputes, and the establishment of ongoing settlement and vibration monitoring requirements. The Secretary must be informed of the Panel Members prior to property impact.

Either the affected owner or the Proponent may refer unresolved disputes arising from potential and/or actual property impacts to the Panel for resolution. All costs incurred in establishing and implementing the Panel must be borne by the Proponent regardless of which party makes a referral to the Panel.

Other relevant CoA clauses include E101 to E104, which relate to geotechnical modelling and settlement criteria and E105 to E108 that relate to requirements for building condition surveys, and which comprises the pre and post-dilapidation surveys and reports, for properties at risk of impact from settlement or vibration.

1.4 Indicative project timeframes

- M4 East – excavation and ground support completed; expected to open to traffic in Q3 2019.
- New M5 – excavation and ground support largely completed December 2018; expected to open to traffic in 2020.
- M4-M5 Link Stage 3A: - Excavation that impacts properties expected between Q2 2019 to Q2 2021; expected to open to traffic in 2023.
- M4-M5 Link Stage 3B: - Excavation that impacts properties expected between Q1 2020 to Q2 2022; expected to open to traffic in 2023.

Appendix B

IPIAP Activities

1 IPIAP establishment and activities

An outline of foreseeable activities of the IPIAP are described below. The list is not exhaustive and the Panel may or may not conduct the activities listed below in the performance of its role and responsibilities under the Terms of Reference, as described in Section 2.

1.1 Establishment

1.	Attend project briefing and inception meeting to discuss purpose, methodology and program
2.	Review, agree and finalise the Terms of Reference for the operation of the Panel.
3.	Identify structure, burden of proof and standard required for reporting e.g. level of evidence such as clear and convincing, or balance of probabilities using the available evidence.
4.	Provide Roads and Maritime with template reports / proposed outline structure or Table of Contents for Panel reporting.

1.2 M4-M5 Link Project specific activities

1.2.1 Activities

1.	<p>Familiarisation with the relevant aspects of the M4-M5 Link projects including:</p> <ul style="list-style-type: none"> ▪ the applicable CoA ▪ the applicable EPL conditions ▪ the relevant sections of the environmental assessment documentation (EIS, SPIR, Modification Report), ▪ the relevant sections of the Scope of Work and Technical Criteria (SWTC) and ▪ the relevant sections of the Contractors' Noise and Vibration Management Plans (NVMP) and Monitoring Programs, <p>to assist in identifying the minimum requirements for the Contractors' pre and post-dilapidation building condition templates surveys and reports.</p>
2.	Prepare template report/s for the Panel's reviews and dispute resolution for review/approval by Roads and Maritime.
3.	<p>Review and provide comment¹ on the M4-M5 Link Contractors':</p> <ul style="list-style-type: none"> ▪ pre and post-dilapidation survey and report templates ▪ proposed scope of the M4-M5 Link Contractors' Condition Survey Reports'
4.	<p>Review and provide comments on the M4-M5 Link Contractors':</p> <ul style="list-style-type: none"> ▪ draft Ground Movement and Settlement Impact Reports ▪ the related Settlement and Monitoring Programs prepared in accordance with CoA E104 ▪ the relevant aspects of the M4-M5 Link Contractors' NVMPs and Monitoring Plans prepared in accordance CoAs C4, C5, C10 and C11-C18.
5.	Review M4-M5 Link Contractors' pre-dilapidation building condition survey reports for all "at-risk" properties. ¹ At risk properties are defined in Section 2.1 of the Terms of Reference.
6.	Receive the M4-M5 Link Contractors' monitoring reports for information / understanding (no reporting or review required, unless requested by Roads and Maritime)
7.	Review and provide comment ¹ on the M4-M5 Link Contractors' Condition Survey Reports for "at-risk" properties. Identify potential settlement and vibration issues and impacts from these reports and information provided from Item 6 above.
8.	Resolve property impact disputes and provide a determination suitable for the purposes for E108 and if need be, establish ongoing settlement and vibration monitoring requirements.

Note:

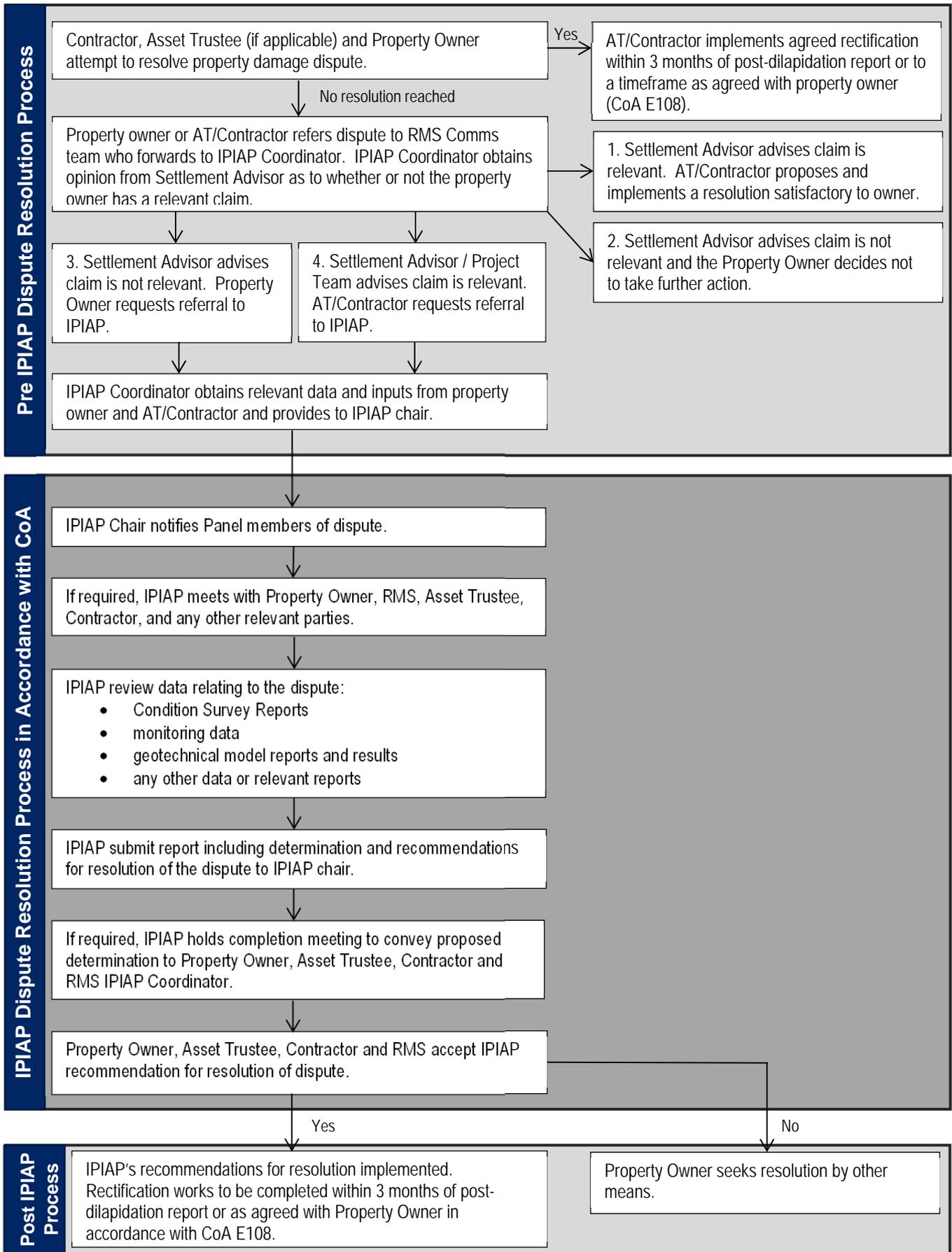
¹ 'Review and provide comment' on the Contractor's Condition Survey Report templates and reports comprises:

- checking compliance with CoAs E105 and E106
- providing comment and recommendations on content
- recommending additional information requirements for the pre and post-dilapidation reports to assist potential disputes caused by settlement and vibration impacts between the Contractor and the property owner
- confirming that the condition building survey report adequately compares the pre and post-dilapidation condition of the properties and reports on all of the differences that have occurred.

1.2.2 IPIAP Activities for the M4-M5 Link Projects (Stages 3A and 3B)

Q1 – Q3 2019	IPIAP inception meeting
	Review, agree and finalise draft Terms of Reference
	Project familiarisation
	Review Contractors' pre-dilapidation report, post-dilapidation report and Condition Survey Report templates for the M4-M5 Link Projects (Stages 3A and 3B)
	Review Contractors' draft Ground Movement and Settlement Impact Reports, Settlement and Monitoring Program and NVMP and Monitoring Program
	Review Contractors' pre and post-dilapidation survey reports for "at-risk" properties (as defined in Section 2.1.1)
2019 - 2023	Regular liaison / updates /reporting to RMS IPIAP Coordinator
	Review Contractors' monitoring reports for the M4-M5 Link Projects (Stages 3A and 3B)
	Review all Contractors' Condition Survey Reports for "at-risk" properties for the M4-M5 Link Projects (Stages 3A and 3B)
	Resolve property damage disputes for the M4-M5 Link Projects (Stages 3A and 3B).

1.2.3 Dispute resolution process flow chart - M4-M5 Link Projects



1.3 M4 East and New M5 Project specific activities

For property damage claims referred to by the IPIAP for the M4 East Project and the New M5 Project, the IPIAP activities are detailed in the table below. The steps leading up to a referral of a property damage claim to the IPIAP are presented on the WestConnex M4 East Project website at:

<https://www.westconnex.com.au/sites/default/files/Property%20Damage%20Claim%20Process%20infographic.pdf>.

1.	Review the Contractor's pre and post dilapidation building condition survey report for the affected property (if available).
2.	Review the Contractor's geotechnical and/or vibration information for the affected property (if required by the Panel).
3.	Review the Contractor's settlement and/or vibration monitoring data for the affected property.
4.	As needed, seek agreement from Roads and Maritime to meet with the property owner to discuss the property owner's concerns.
5.	As needed, seek agreement from Roads and Maritime to meet with the Contractor, the Asset Trustee, Roads and Maritime IPIAP Coordinator, the independent Environmental Representative (ER) and the independent Acoustic Adviser (AA) (as appropriate) to discuss the property owner's damage claims.
6.	Prepare a written report to Roads and Maritime to document the Panel's findings in a format suitable to be provided to property owners that must include: <ul style="list-style-type: none"> ▪ Where possible, a clear statement on whether project activities have caused damage to the subject property. ▪ Recommendations for the resolution of the claim. ▪ Recommendations for any further investigating survey or study required to assist or support the Panel's assessment (if required). ▪ Recommendations for any further actions to assist in the resolution of the claim, such as additional property inspections or meetings with the property owner, Contractor, Roads and Maritime IPIAP Coordinator, the Asset Trustee, the ER and the AA and any other relevant parties (as required).
7.	As needed, seek agreement from Roads and Maritime to meet with the property owner and the Contractor to communicate the findings and recommendations of the Panel's review.
8.	Prepare a written report for Roads and Maritime (in a format suitable for provision to the property owner and DPIE), providing: <ul style="list-style-type: none"> ▪ Where possible, a clear resolution on whether project activities have caused damage to the subject property. ▪ A summary of the proposed actions for resolution of the property damage claim.
9.	IPIAP Coordinator forwards the summary of the resolution to DPIE.



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Transport
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