

Independent Property Impact Assessment Panel for WestConnex M4-M5 Link, M4 East and New M5 projects, Warringah Freeway Upgrade Early Works and the interface between Sydney Metro West and Westconnex M4-M5 Link project

Terms of Reference

TfNSW | May 2021

Revision Table

Date	Document Version	Document Revision History	Document Author/Reviser
18/3/2019	0.1	Draft for review by RMS	
09/04/2019	0.2	Draft for issue to Panel for review	
19/4/2019	0.3	Draft comments and suggestions by the Panel	
10/5/2019	0.4	Final Draft for Panel review	
14/5/2019	0.5	Final comments and suggestions by the Panel	
17/5/2019	1.0	Acceptance of final Panel comments	
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	
21/05/2021	3.0	Update to reflect interpretation of clauses by WCX 3A and 3B contractors, change of staff, removal of references to RMS, inclusion of new projects and deletion of Appendix A – background information on projects	

Approvals

Date	Document Version	Approver Name and Title	Approver Signature
24/05/2019	1.0		
22/08/2019	2.0		
21/05/2021	3.0		

Table of Contents

1	Background	1
2	Roles and responsibilities	1
2.1	Role of the Independent Property Impact Assessment Panel	1
2.2	Summary of the IPIAP's role	4
2.3	Disputes	6
2.4	Responsibilities of IPIAP Chair	6
2.5	Responsibilities of IPIAP members	6
2.6	IPIAP Coordinator	7
2.7	Technical Advisor	7
2.8	Functional Relationship Chart	7
3	Panel operation	8
3.1	Membership	8
3.2	TfNSW Personnel	8
3.3	Frequency of Meetings	8
3.4	Agenda, Minutes and Supporting Materials	8
3.5	Reporting	8
3.6	Review	9
3.7	Invitees	9
	Appendix A	1
	Not Used	1
	Appendix B	1
	IPIAP Activities	1
1	IPIAP establishment and activities	2
1.1	Establishment	2
1.2	M4-M5 Link, WFU EW and SMW Project specific activities	3
1.3	M4 East and New M5 Project specific activities	5

Figures

Figure A1:	Overview of WestConnex	2
------------	------------------------	---

Tables

Table 1:	IPIAP Activities by Project	5
Table 2:	IPIAP Membership	8

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
KGRU	King Georges Road Interchange Upgrade
NVMP	Noise and Vibration Management Plans
RMS	Roads and Maritime (now TfNSW)
SMC	Sydney Motorway Corporation, now known as WestConnex Transurban
SMW	Sydney Metro West
SPIR	Submissions and Preferred Infrastructure Report
SWTC	Scope of Work and Technical Criteria
TfNSW	Transport for New South Wales
WCX	WestConnex
WFU EW	Warrigah Freeway Upgrade Early Works
WHTBL	Western Harbour Tunnel Beaches Link

1 Background

Transport for New South Wales (TfNSW), formerly known as Roads and Maritime (RMS) has established an Independent Property Impact Assessment Panel (IPIAP) in accordance with the Condition of Approval (CoA) for a number of major projects, including M4-M5 Link (WCX Stages 3A and 3B), WFU EW and SMW. The IPIAP will generally be responsible for independently reviewing Condition Survey Reports, the resolution of property damage disputes and the establishment of ongoing settlement and vibration monitoring requirements (refer to specific project CoA for actual responsibilities)

In addition to TfNSW establishing the IPIAP project specific CoA requirements, the role of the IPIAP has been extended under this Terms of Reference, to include the following additional WestConnex Projects:

- M4 East - twin tunnels connecting the widened M4 from Homebush to Haberfield
- New M5 - twin tunnels from Kingsgrove to St Peters Interchange including the King Georges Road Interchange Upgrade (KGRIU)

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 projects listed in the section above. As required of the applicable CoA the IPIAP is independent of the design and construction teams for each project. In addition, the IPIAP is independent of TfNSW and any delivery organisation (for example, WestConnex Transurban (Sydney Motorway Corporation, SMC). The role of the IPIAP varies for each 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 (Stages 3A and 3B) Contractors' pre and post-dilapidation survey report templates or samples, to ensure compliance with this project's CoA E105 and E106, where requested by TfNSW.
2. Independently review the M4-M5 Link (Stages 3A and 3B) Contractors' pre and post dilapidation 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.
 - "At-risk" properties are defined by the Contractor as part of their design development.
3. Independently review the M4-M5 Link (Stages 3A and 3B) Contractors' settlement and vibration monitoring programs for properties identified as being at risk of impact from settlement or vibration, and includes:
- Where requested by TfNSW under the Project Deeds, 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.
 - Where requested by TfNSW under the Project Deeds, 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. Providing TfNSW with requests for information to obtain information from the contractor under the requirements of the Project Deeds, to enable the IPIAP to resolve property damage claims referred to the IPIAP.
6. Where required, provide TfNSW with recommendations for additional investigations, monitoring data or reporting in order to resolve property damage claims referred to the IPIAP.
7. At the referral of TfNSW, , review and provide a resolution on unresolved disputes arising from property impacts. The unresolved disputes are restricted to those between private property owners and Contractors for M4-M5 Link (Stages 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 is required to assist with the resolution.

2.1.2 M4 East and New M5 Projects

1. At the referral of TfNSW, review unresolved property impact disputes between property owners and the Project's contractor.
2. At the request of TfNSW, 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 is required to assist with the resolution.

2.1.3 M4-M5 Link Project (WCX Stage 3B) interface with SMW – **TO BE AGREED WITH SMW**

1. Review and assess documentation required by each project's CoA and the assessment provided by each project's Contractor.
2. At the referral of TfNSW, review unresolved property impact disputes between property owners and Contractor's working in the interface area between M4-M5 Link Project and SMW. Any other claims in the vicinity of these projects, but not in the interface are to be considered by applicable IPIAP.
3. Assess which, if any, of the projects has caused the claimed property impact.
4. 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 M4-M5 Link Project only;
 - Property damage is wholly or partly due to the SMW Project only;
 - Property damage is wholly or partly due to both the M4-M5 Link Project; and the SMW Project;
 - Property damage is not due to either Project; or
 - Further information and monitoring is required to assist with the resolution
5. Any recommendations for the resolution of any property damage claim must be consistent with the CoA relevant for that project or projects that the IPIAP have determined caused the property damage.

2.1.4 WFU EW Project

1. Independently review the WFU EW Contractors' pre and post-construction survey report templates to ensure compliance with CoA E107 and E109 and E111 of this project's CoA.
2. Independently review the WFU EW Contractors' geotechnical model described in Condition E102 and the CNVIS required by Condition E75, and assess whether or not "at risk" properties have been adequately assessed and where TfNSW consider "at risk" properties to be:
 - 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.
 - Where 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.
 - are defined by the Contractor as part of their design development.

Note also that “at-risk” properties may change during the construction as the geotechnical models are further refined and developed.

3. Direct TfNSW to undertake additional Pre-construction Condition Survey reports as required under E107 of this projects’ CoA.
4. Independently review the WFU EW Contractors’ settlement and vibration monitoring programs for properties identified as being at risk of impact from settlement or vibration, and includes:
 - Where requested by TfNSW under the Project Deeds, 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 applicable CoA.
 - Where requested by TfNSW under the Project Deeds, 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 applicable CoA.
5. Accessing (where required to assist in determination of unresolved disputes) the WFU EW Contractors' web based monitoring and protection system, weekly monitoring reports and monthly geotechnical records.
6. Providing TfNSW with requests for information to obtain information from the contractor under the requirements of the Project Deeds, to enable the IPIAP to resolve property damage claims referred to the IPIAP.
7. Where required, provide TfNSW with recommendations for additional investigations, monitoring data or reporting in order to resolve property damage claims referred to the IPIAP.
8. At the referral of TfNSW, review and provide a resolution on unresolved disputes arising from property impacts. The unresolved disputes are restricted to those between private property owners and Contractors for WFU EW in accordance with CoA E111. 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 is 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	WFU EW	SMW	M4-M5 link (3A and 3B)	M4 East	New M5
IPIAP Establishment, project familiarisation ¹ , review and acceptance of Terms of Reference	✓	✓	✓	✓	✓
Review Contractors' Condition Survey Reports, including 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, where requested by TfNSW	✓	✓	✓	✗	✗
Review Contractors' pre-dilapidation reports for at risk properties (as defined in Section 2.1.1), where provided by TfNSW	✓	✓	✓	✗	✗
Receive Contractor's weekly and monthly monitoring reports for information / understanding (no reporting or review required) when required to resolve a property dispute and provide requests for information for TfNSW, the Contractor and property owner, where required	✓	✓	✓	✓	✓
Review Contractors' post-dilapidation surveys for at risk properties (as defined in Section 2.1.1), where provided by TfNSW	✓	✓	✓	✗	✗
Review claim information 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.	✓	✓	✓	✓	✓
Resolve property damage disputes between property owners and Contractors for M4-M5 Link, SMW and WFU EW Projects and, where requested, make recommendations to resolve claims for the M4 East and New M5 Projects	✓	✓	✓	✓	✓

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 various project, when either Party refer the disputes to the IPIAP, via TfNSW, as required by the project's CoA.
- 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 TfNSW IPIAP Coordinator, at the request of the property owner.
- c) If an agreement is reached, the dispute is considered to have been resolved.
- 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 TfNSW, who will then issue to both parties for consideration and after receiving comments from the parties, issue the Panel's final determination to TfNSW for distribution to both 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, WFU, EW and SMW projects, when a dispute is referred to the Panel, convene meetings with the property owner, Contractor(s), TfNSW, 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 TfNSW agreement, convene meetings with the property owner, Contractor, TfNSW, the Asset Trustee and any other relevant parties as required.
- Delegate tasks to other Panel members as appropriate.
- Liaise and interface with the TfNSW IPIAP coordinator and the TfNSW 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.

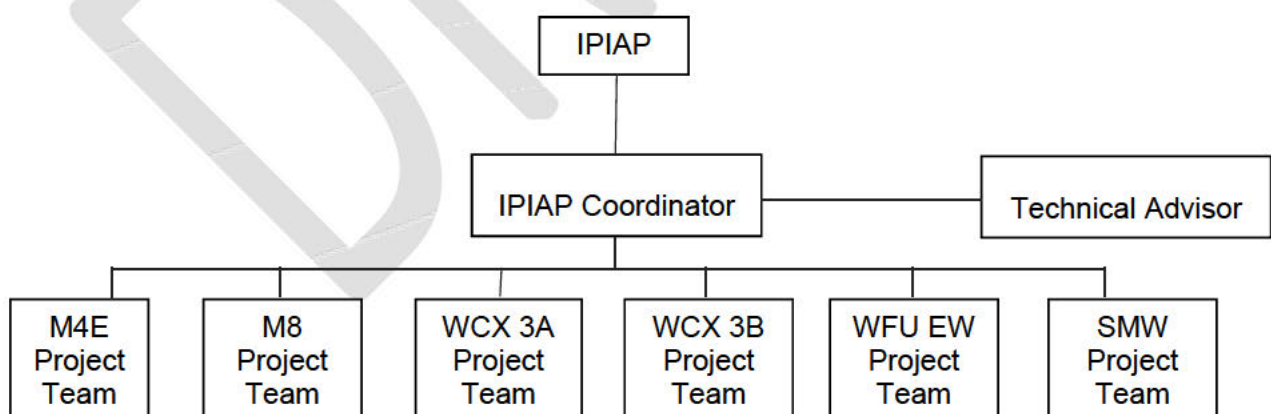
2.6 IPIAP Coordinator

The IPIAP Coordinator is a TfNSW 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 TfNSW project team representatives and specialists, the Panel, property owners and Contractors, as required.

2.7 Technical Advisor

The Technical Advisor is a TfNSW resource that acts as an advisory role and will be carried out by a suitably qualified and experienced geotechnical engineer. The Technical Advisor will assist the IPIAP Coordinator in collecting the required technical information from the Project Teams. The Technical Advisor will also assess technical information provided by all parties and advise the IPIAP Coordinator and project teams on the likelihood of ground movement or vibrations occurring at the property that could result in property damage. The Technical Advisor may delegate some tasks to other subject matter experts within TfNSW.

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 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.

3.3 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
- list of documents or information to be considered at the meeting.

3.4 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 for projects other than SMW, the findings of the report will include one of the following resolutions. SMW resolutions are provided in Section 2.1.3:

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

The Panel must provide a draft resolution report for consideration and comment by the property owner and contractor. This report is issued to TfNSW who will then distribute it to both parties. Once comments have been received, the Panel is required to consider and address comments where applicable in a final version of the report.

If the finding of the report is property damage is wholly or partly due to the Project, the Panel must provide a scope of works report for the repair of damage attributed to the Project that can be used by a building contractor or quantity surveyor to assess the works required to repair any damage to acceptable standards.

3.5 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 TfNSW annually or as required.

3.6 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 Not Used

DRAFT

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

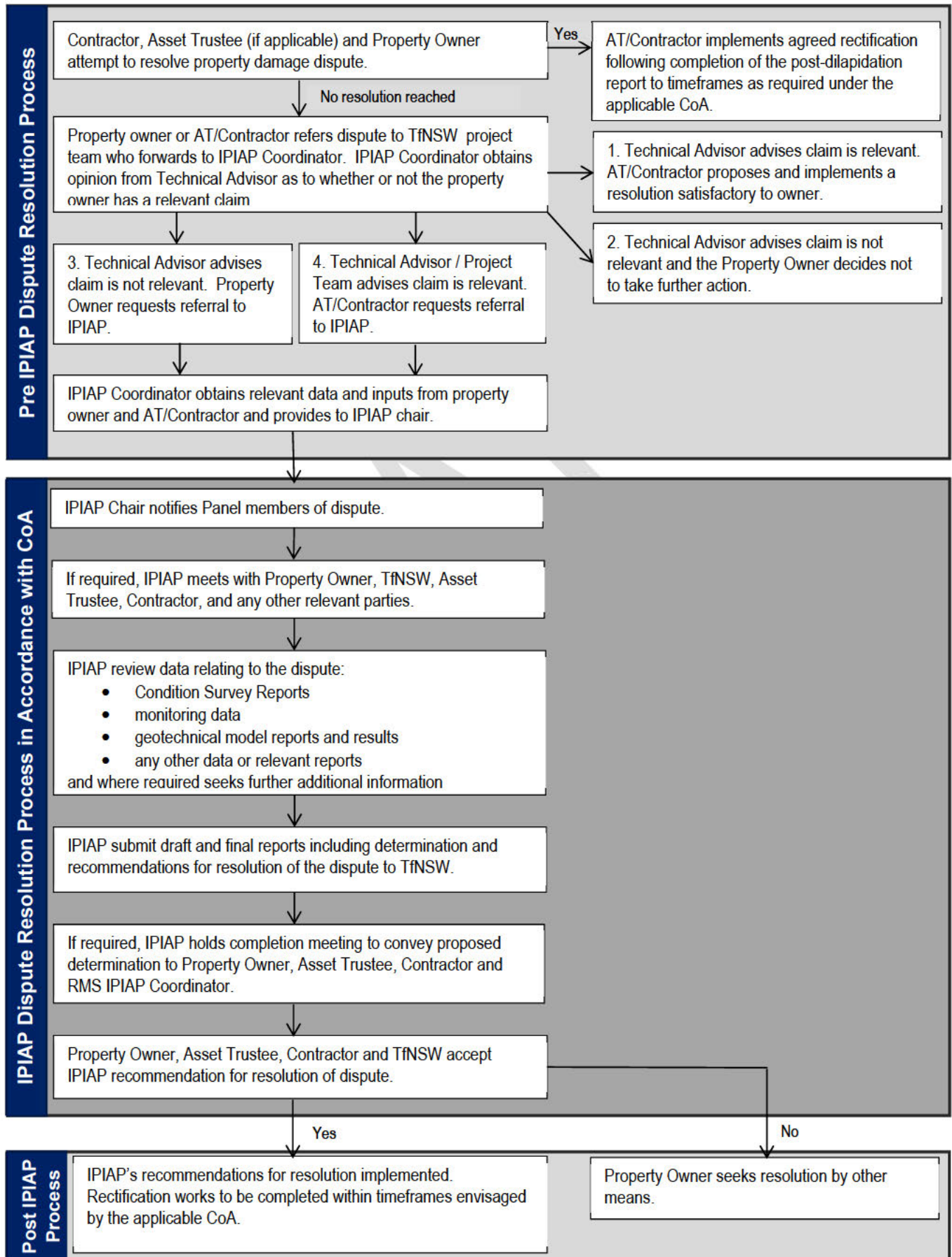
1.	Attend project briefing and inception meeting to discuss purpose, methodology and program
2.	Review, agree and finalise the Terms of Reference for the operation of the Panel.
3.	Identify structure, burden of proof and standard required for reporting e.g. level of evidence such as clear and convincing,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

1.2 M4-M5 Link, WFU EW and SMW Project specific activities

1.2.1 Activities

1.	<p>Familiarisation with the relevant aspects of the projects covered by this ToR 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 survey reports or templates, as required by CoAs.</p>
2.	<p>Prepare template report/s for the Panel's reviews and dispute resolution for review/approval by TfNSW.</p>
3.	<p>Where requested by TfNSW, or required by a CoA review and provide comment¹ on the Contractors':</p> <ul style="list-style-type: none"> pre and post-dilapidation survey report templates proposed scope of the M4-M5 Link Contractors' Condition Survey Reports
4.	<p>Where requested by TfNSW, review and provide comments on project reports by the various project Contractors':</p> <ul style="list-style-type: none"> draft Ground Movement and Settlement Impact Reports the related Settlement and Monitoring Programs the relevant aspects of the M4-M5 Link Contractors' NVMPs and Monitoring Plans prepared in accordance with applicable CoAs .
5.	<p>Review M4-M5 Link Contractors' pre-dilapidation and post-dilapidation survey reports and templates for properties where required under the projects' CoA, At risk properties are defined in Section 2.1 of the Terms of Reference.</p>
6.	<p>Review available information related to a property dispute and where required, provide Requests for information to obtain any information from TfNSW, the Contractor and property owner where required to resolve a property dispute.)</p>
7.	<p>Resolve property impact disputes and provide a determination as required by the applicable CoA and if need be, establish ongoing settlement and vibration monitoring requirements and where required, provide a scope of works for the repair of any damage.</p>

1.2.2 Dispute resolution process flow chart - M4-M5 Link, WFU EW, SMW 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 TfNSW to meet with the property owner to discuss the property owner's concerns.
5.	As needed, seek agreement from TfNSW to meet with the Contractor, the Asset Trustee, TfNSW IPIAP Coordinator, the independent Environmental Representative (ER) and the independent Acoustic Adviser (AA) (as appropriate) to discuss the property owner's damage claims.
6.	<p>Prepare a written report to TfNSW to document the Panel's findings in a format suitable to be provided to property owners and Contractor that must include:</p> <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, TfNSW IPIAP Coordinator, the Asset Trustee, the ER and the AA and any other relevant parties (as required).
7.	As needed, seek agreement from TfNSW to meet with the property owner and the Contractor to communicate the findings and recommendations of the Panel's review.
8.	<p>Prepare a written report for TfNSW (in a format suitable for provision to the property owner and Contractor), providing:</p> <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.	Relevant TfNSW project team forwards the summary of the resolution to DPIE.

PAGE LEFT INTENTIONALLY BLANK

DRAFT



Transport
for NSW