

NSW Biodiversity Offsets Scheme and Land Management Framework

Biodiversity Assessment and Approval Pathways for Local Government

Does the proposal involve vegetation clearing or other biodiversity impacts (s6.3 BC Act)?

If yes, start at Part 4 Local Development Pathway and work through the flowchart from left to right.

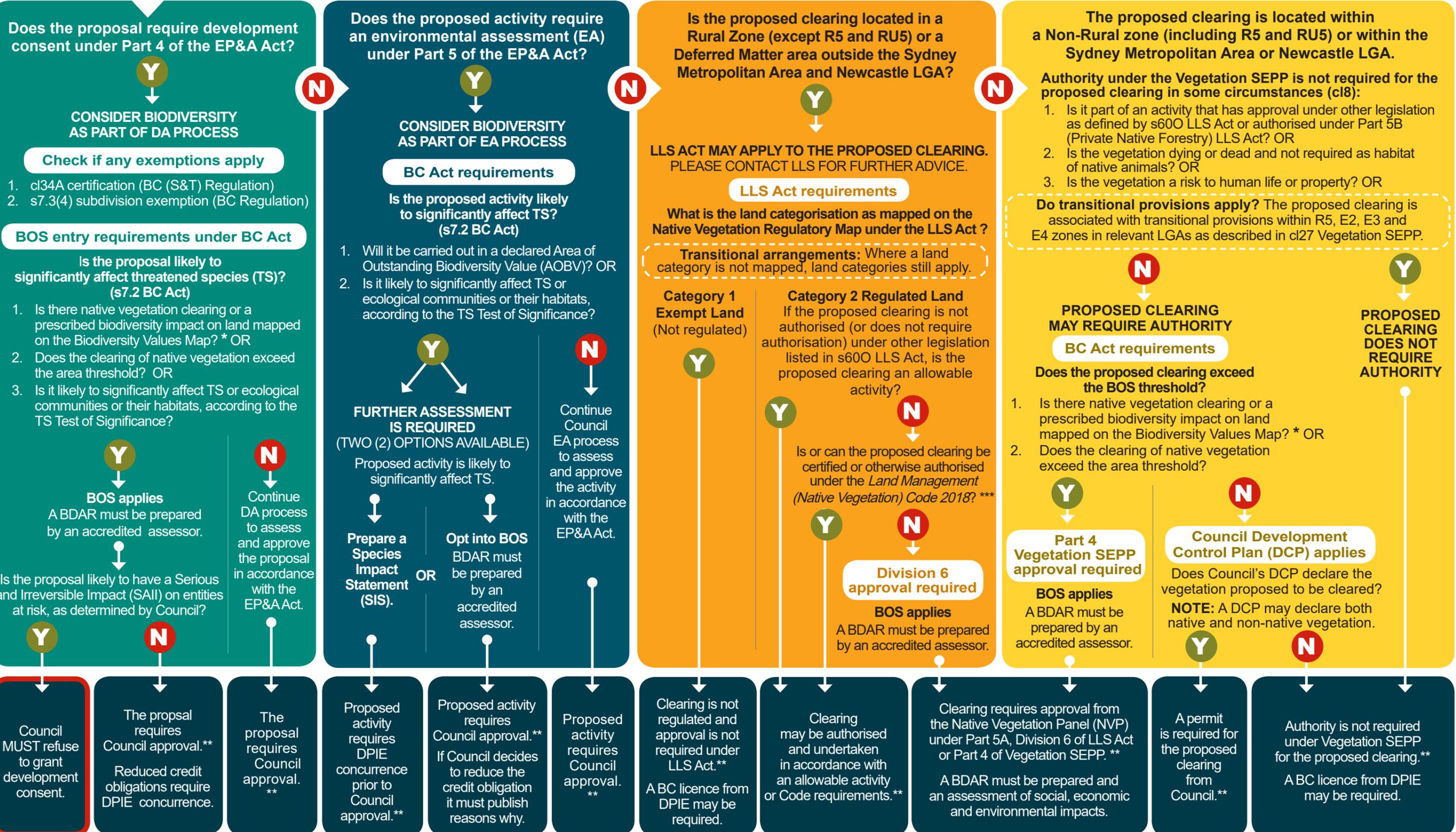
If no, this flowchart does not apply.**

PART 4 LOCAL DEVELOPMENT PATHWAY

PART 5 ACTIVITY PATHWAY

LLS ACT PATHWAY (NON-DA)

VEGETATION SEPP PATHWAY (NON-DA)



* Note: Prescribed Impacts are defined under cl6.1 BC Regulation. ** Note: Other legislative requirements must be considered. *** Note: Clearing of dead and non-native vegetation on Category 2 Vulnerable Lands is also regulated.

Biodiversity Assessment and Approval Pathways for Local Government

Key Acronyms, Legislation and Definitions

30 June 2021

This publication has been designed for printing at A3 size.

The NSW BOS and Land Management Biodiversity Assessment and Approval Pathways for Local Government seek to provide general guidance on application of the BOS and land management framework. The Pathways do not provide guidance on planning approval pathways such as biodiversity certification, planning proposals and major projects.

Acronym	Definition
AOBV	Area of Outstanding Biodiversity Value
BAM	Biodiversity Assessment Method
BAM-C	Biodiversity Assessment Method Calculator
BC	Biodiversity Conservation
BDAR	Biodiversity Development Assessment Report
BMAT	Biodiversity Values Map and Threshold tool
BOPC	Biodiversity Offset Payment Calculator
BOS	Biodiversity Offsets Scheme
DA	Development Application
DCP	Development Control Plan
DPIE	Department of Planning Industry and Environment
EA	Environmental Assessment
EPI	Environmental Planning Instrument
LG	Local Government
LGA	Local Government Area
LLS	Local Land Services
NVP	Native Vegetation Panel
SAIL	Serious and Irreversible Impact
SIS	Species Impact Statement
SEPP	State Environmental Planning Policy
TEC	Threatened Ecological Community
TS	Threatened Species

The NSW BOS and Land Management Pathways for Local Government were originally developed in collaboration with Hunter Joint Organisation as part of the NSW Government's LG Capacity Building Program.



LEGISLATION

<u>Biodiversity Conservation Act 2016</u>	(BC Act)
<u>Biodiversity Conservation Regulation 2017</u>	(BC Regulation)
<u>Biodiversity Conservation (Savings and Transitional) Regulation 2017</u>	(BC (S&T) Regulation)
<u>Environmental Planning and Assessment Act 1979</u>	(EP&A Act)
<u>Environmental Planning and Assessment Regulation 2000</u>	(EP&A Regulation)
<u>Local Land Services Act 2013</u>	(LLS Act)
<u>Local Land Services Regulation 2014</u>	(LLS Regulation)
<u>Land Management (Native Vegetation) Code 2018</u>	(LMC)
<u>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</u>	(Vegetation SEPP)

DEFINITIONS

NATIVE VEGETATION - [Section 60B LLS Act](#)

APPLIES TO ALL BIODIVERSITY ASSESSMENT AND APPROVAL PATHWAYS

Native vegetation is defined as any of the following types of plants native to NSW (established in NSW prior to European settlement): trees (including any sapling or shrub or any scrub), understorey plants, groundcover (being any type of herbaceous vegetation), plants occurring in a wetland.

The definition of native vegetation extends to a plant that is dead or that is not native to NSW on Category 2 – Vulnerable Regulated Land.

The definition of native vegetation does not extend to marine vegetation (such as mangroves, seagrasses or any other species of plant that at any time in its life cycle must inhabit water other than fresh water) ([s14.7 BC Act](#)).

NATIVE VEGETATION CLEARING - [Section 60C LLS Act](#)

APPLIES TO LOCAL DEVELOPMENT, PART 5 ACTIVITY AND LLS ACT BIODIVERSITY ASSESSMENT AND APPROVAL PATHWAYS

Native vegetation clearing is defined as cutting down, felling, uprooting, thinning or otherwise removing native vegetation; killing, destroying, poisoning, ringbarking or burning native vegetation.

VEGETATION CLEARING - [Clause 4 Vegetation SEPP](#)

APPLIES TO VEGETATION SEPP BIODIVERSITY ASSESSMENT AND APPROVAL PATHWAY

Vegetation clearing is defined by the SEPP as to cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy the vegetation, or lop or otherwise remove a substantial part of the vegetation.

THREATENED SPECIES - [Section 1.6 BC Act](#)

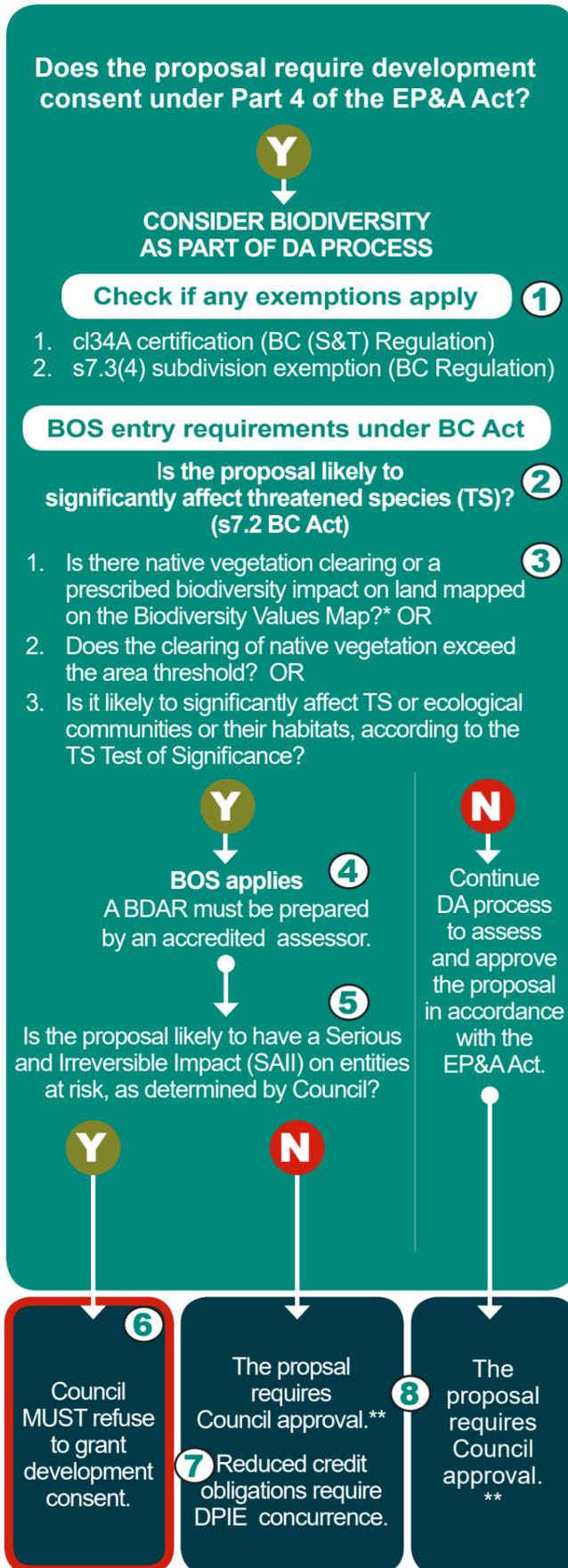
Threatened species means a critically endangered species, an endangered species or a vulnerable species listed in Schedule 1 BC Act.

THREATENED ECOLOGICAL COMMUNITY - [Section 1.6 BC Act](#)

Threatened ecological community means a critically endangered ecological community, an endangered ecological community or a vulnerable ecological community listed in Schedule 2.

Vulnerable ecological communities are not included in the definition of a TEC under s7.1 BC Act for planning approvals under the EP&A Act except the part of the vulnerable ecological community that includes a threatened species.

PART 4 LOCAL DEVELOPMENT PATHWAY



DETAILED PATHWAY GUIDANCE

EXEMPTIONS MAY APPLY TO THE PROPOSAL

- ① **cl34A CERTIFICATION** - Special rules may apply if there is a previous offset arrangement recognised under the BC Act transitional provisions. DPIE can advise if [cl34A](#) BC (S&T) Regulation of the transitional provisions applies.
 - **s7.3(4) SUBDIVISION EXEMPTION (to the Biodiversity Values Map only)** - Special rules may apply if the land was subdivided before 25 August 2017 and hasn't yet been built on. Council can advise if [s7.3\(4\)](#) BC Regulation subdivision exemption applies.

THREATENED SPECIES AND BIODIVERSITY IMPACTS

- ② TS and TECs are defined under [s1.6](#) BC Act. Refer to Definitions (p2).
 - Biodiversity impacts are defined under [s6.3](#) BC Act.
 - Prescribed impacts are defined under [cl6.1](#) BC Regulation.

TO DETERMINE IF PROPOSAL IS LIKELY TO SIGNIFICANTLY AFFECT TS

- ③ [s7.2](#) BC Act defines the criteria for Part 4 local development to assess whether a proposal is likely to significantly affect TS or TECs or their habitats.
 - The BOS threshold is established under [s7.2\(1\)\(b\)](#) BC Act and [cl7.1\(1\)](#) BC Regulation and the Test of Significance is defined in [s7.3](#) BC Act.
 1. Biodiversity Values Map is defined under [cl7.1\(1\)\(b\)](#) and [cl7.3](#) BC Regulation.

**NOTE:* Prescribed impacts are defined in [cl6.1](#) BC Regulation. Prescribed impacts that are direct impacts (which includes clearing of non-native vegetation that is habitat for TS) and occur on land mapped on the Biodiversity Values Map will exceed the BOS threshold.

#NOTE: [cl7.3\(3\)](#) BC Regulation describes 11 types of land that may be included on the Biodiversity Values Map (which includes AOBVs).

 2. Area threshold (refer to [cl7.1\(1\)\(a\)](#) and [cl7.2](#) BC Regulation).
 3. The *Threatened Species Test of Significance Guidelines* have been developed in accordance with [s7.3\(2\)](#) BC Act and must be taken into account when preparing a Test of Significance in accordance with BC Act.

THE BOS APPLIES

- ④ The BOS applies to new DAs and modification of consents under Part 4 EP&A Act that are likely to significantly affect TS.
 - The [BAM](#) established in the *Biodiversity Assessment Method Order 2020* under [s6.7](#) BC Act must be applied and a BDAR prepared in accordance with [s7.7](#) BC Act for new DAs and [s7.17](#) BC Act for modification of consents.
 - The BDAR must be prepared by an accredited assessor under [s6.10](#) BC Act and meet the minimum requirements of the BAM.
- ⑤ The BDAR must consider SAIL. SAIL are defined by [s6.5](#) BC Act.
 - Council is responsible for determining if the proposal is likely to have an SAIL on entities at risk in accordance with the *Guidance to assist a decision-maker to determine a serious and irreversible impact*.
- ⑥ Council **MUST refuse** to grant development consent or an application for modification of consent if it is of the opinion the proposal is likely to have an SAIL under [s7.16\(2\)](#) BC Act and [s7.17\(2\)\(e\)](#) BC Act respectively.
- ⑦ A request for a reduced credit obligation requires DPIE concurrence in accordance with [cl59](#) EP&A Regulation.

DEVELOPMENT APPLICATION PROCESS

- ⑧ **** NOTE:** Council's decision to approve or refuse a development is still made in accordance with [s4.15](#) EP&A Act. Under this section, Council can consider any additional local biodiversity requirements adopted in their local EPIs and any other NSW and Commonwealth legislation. Efforts to avoid and minimise impacts may be considered in this context.

PATHWAY RESOURCES AND TOOLS

REFER TO KEY ACRONYMS, LEGISLATION AND DEFINITIONS [🔗](#)

DPIE RESOURCES

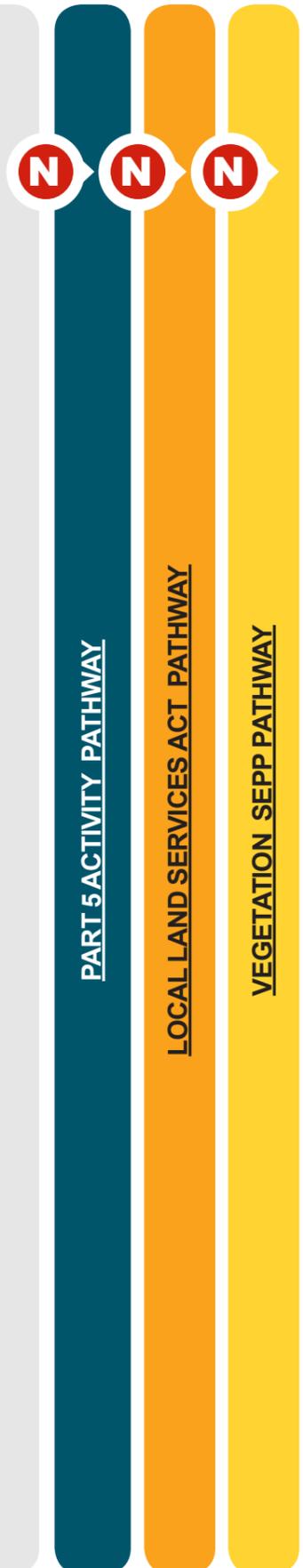
- [DPIE WEBSITE](#) - Local Development information page
- [DPIE WEBSITE](#) - cl34A certification information page
- [DPIE WEBSITE](#) - Local government and other decision-makers
- [DPIE WEBSITE](#) - When does the Biodiversity Offsets Scheme apply?
- [DPIE WEBSITE](#) - SAIL information page
- [DPIE WEBSITE](#) - Biodiversity Assessment Method 2020
- [BOS SUPPORT](#) - Online Form

DPIE ONLINE TOOLS

- [ONLINE MAP](#) - Biodiversity Values Map and Threshold (BMAT) Tool AND User Guide
- [ONLINE REGISTER](#) - Accredited Assessor Public Register
- [ONLINE CALCULATOR](#) - Biodiversity Assessment Method Calculator (BAM-C) AND User Guide
- [ONLINE CALCULATOR](#) - Biodiversity Offset Payment Calculator (BOPC) AND User Guide

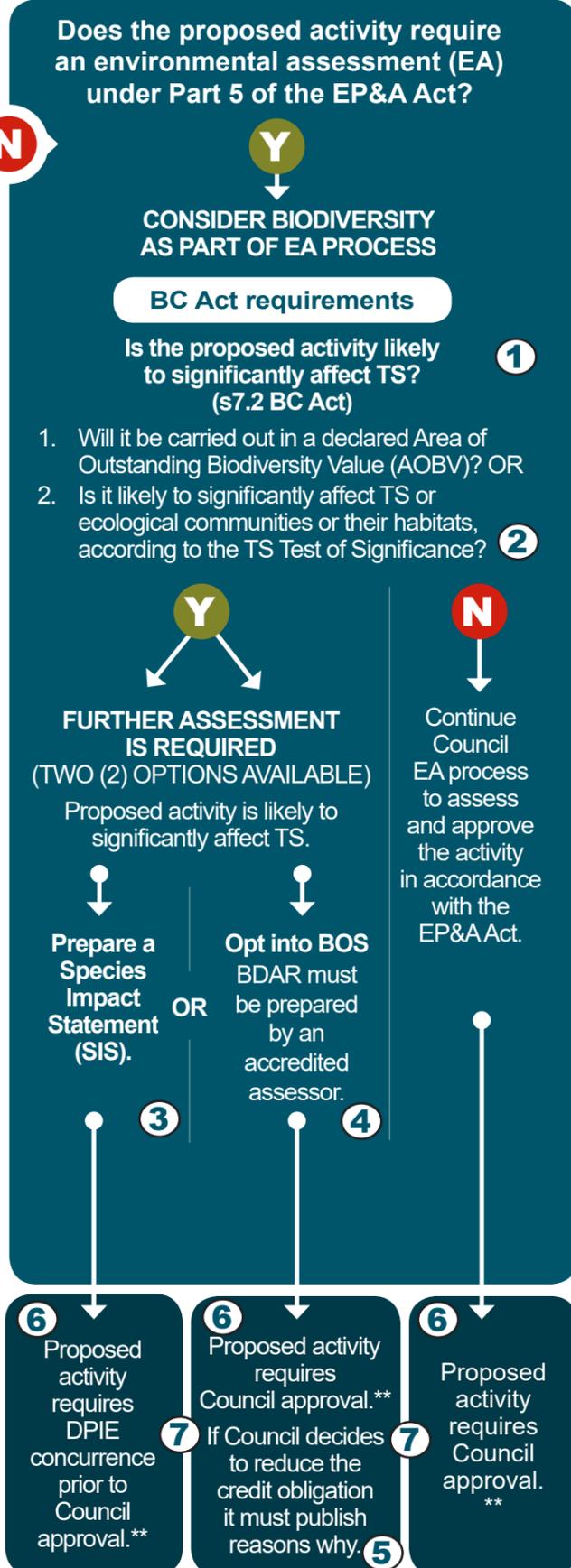
COMMONWEALTH LEGISLATION RESOURCES

- [COMMONWEALTH WEBSITE](#) - Environment assessment and approval process webpage



PART 5 ACTIVITY PATHWAY

PART 4 LOCAL DEVELOPMENT PATHWAY



DETAILED PATHWAY GUIDANCE

THREATENED SPECIES AND BIODIVERSITY IMPACTS

- TS and TECs are defined under [s1.6](#) BC Act. Refer to Definitions (p2).
 - Biodiversity impacts are defined under [s6.3](#) BC Act.
 - Prescribed impacts are defined under [cl6.1](#) BC Regulation.

TO DETERMINE IF ACTIVITY IS LIKELY TO SIGNIFICANTLY AFFECT TS

- [s7.2](#) BC Act defines the criteria for Part 5 activities to assess whether an activity is likely to significantly affect TS or TECs or their habitats.
 - AOBVs are declared under [s3.1](#) BC Act. The areas eligible to be declared are defined by [s3.2](#) BC Act and the criteria is specified under [cl3.1](#) BC Regulation.
 - The Test of Significance is defined in [s7.3](#) BC Act. The *Threatened Species Test of Significance Guidelines* have been developed in accordance with [s7.3\(2\)](#) BC Act and must be taken into account when preparing a Test of Significance in accordance with BC Act.

PROPOSED ACTIVITY IS LIKELY TO SIGNIFICANTLY AFFECT TS - FURTHER ASSESSMENT IS REQUIRED (Two (2) options available)

- [s7.8\(3\)](#) BC Act defines the two options available for further assessment of a Part 5 activity that is likely to significantly affect TS or TECs or their habitats.
- OPTION A - SPECIES IMPACT STATEMENT (SIS)**
 - Concurrence is required from DPIE prior to Council approval for the activity in accordance with [s7.12\(3\)](#) BC Act.
 - Council must request assessment requirements from DPIE and follow the requirements for a SIS set out in [Part 7 Div5](#) BC Act and [s7.6](#) BC Regulation.
 - OPTION B - OPT INTO THE BOS**
 - If Council opts into the BOS, the [BAM](#) established in the *Biodiversity Assessment Method Order 2020* under [s6.7](#) BC Act must be applied and a BDAR prepared in accordance with [s7.8](#) BC Act.
 - The BDAR must be prepared by an accredited assessor under [s6.10](#) BC Act and meet the minimum requirements of the BAM.
 - The BDAR must consider SAIL. SAIL are defined by [s6.5](#) BC Act.
 - Council is to consider if the proposed activity is likely to have an SAIL on entities at risk of an SAIL in accordance with the *Guidance to assist a decision-maker to determine a serious and irreversible impact*.
 - If Council decides to reduce the credit obligation, it must publish reasons why in accordance with [s7.15](#) BC Act.

ENVIRONMENTAL ASSESSMENT PROCESS

- In accordance with [s5.7\(1\)](#) EP&A Act, Council as a determining authority must assess whether a Part 5 activity is likely to significantly affect the environment.
 - Factors listed under [cl228\(2\)](#) EP&A Regulation are required to be considered to assess the likely impacts of the proposed activity on the environment.
- **NOTE:** This assessment should also include consideration of any other NSW and/or Commonwealth legislative requirements that may apply to the proposed activity.

PATHWAY RESOURCES AND TOOLS

REFER TO KEY ACRONYMS, LEGISLATION AND DEFINITIONS

DPIE RESOURCES

- [DPIE WEBSITE](#) - Development without Consent information page
- [DPIE WEBSITE](#) - Local government and other decision-makers
- [DPIE WEBSITE](#) - Areas of Outstanding Biodiversity Value information page
- [DPIE WEBSITE](#) - SAIL information page
- [DPIE WEBSITE](#) - Biodiversity Assessment Method 2020
- [BOS SUPPORT](#) - Online Form

DPIE ONLINE TOOLS

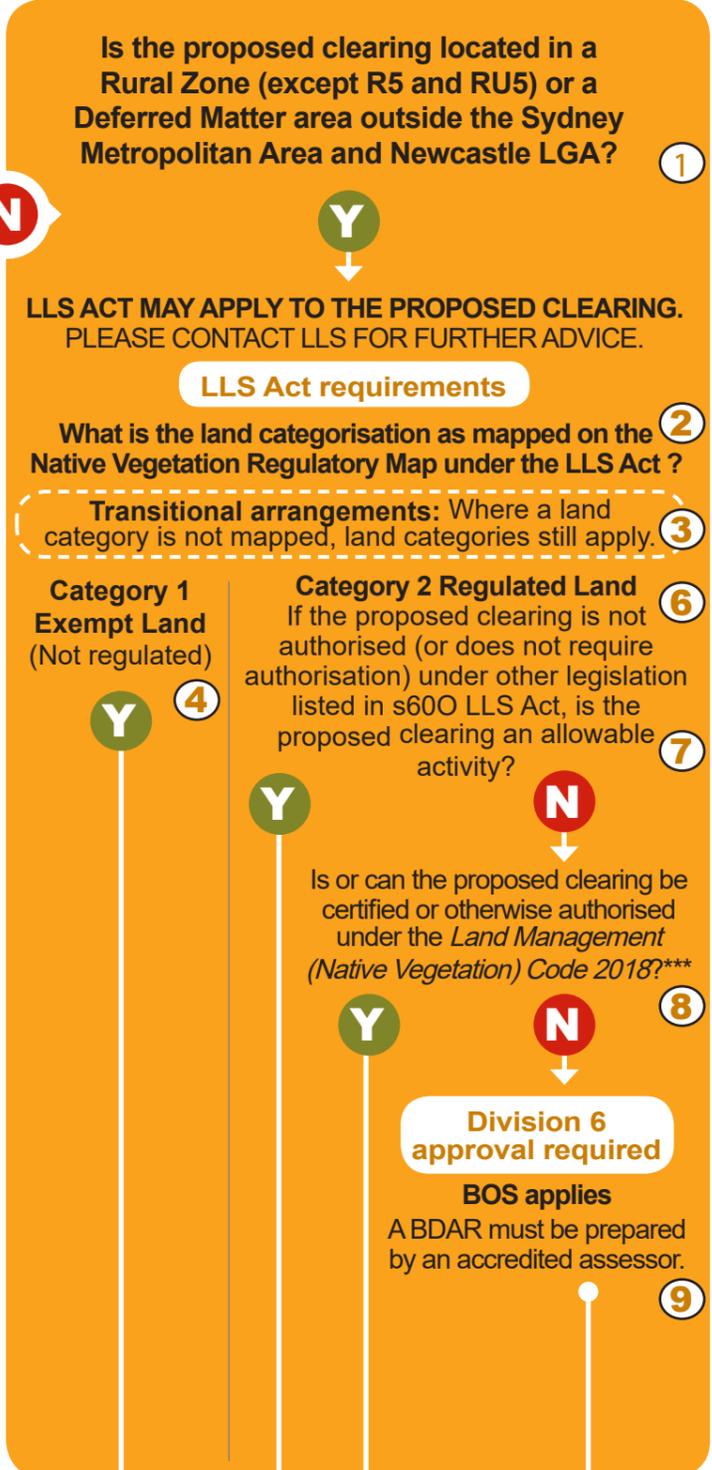
- [DPIE REGISTER](#) - Declared Areas of Outstanding Biodiversity Value
- [ONLINE REGISTER](#) - Accredited Assessor Public Register
- [ONLINE CALCULATOR](#) - Biodiversity Assessment Method Calculator (BAM-C) AND User Guide
- [ONLINE CALCULATOR](#) - Biodiversity Offset Payment Calculator (BOPC) AND User Guide

COMMONWEALTH LEGISLATION RESOURCES

- [COMMONWEALTH WEBSITE](#) - Environment assessment and approval process webpage

LOCAL LAND SERVICES ACT PATHWAY

VEGETATION SEPP PATHWAY



DETAILED PATHWAY GUIDANCE

THE LLS ACT APPLIES

- Part 5A Div1 s60A** LLS Act defines areas of the state to which Part 5A of the Act applies.
 - The proposed clearing must not be authorised under other legislation or require authorisation by development consent in accordance with **s600** LLS Act.
- Part 5A Div2** LLS Act (**s60H** & **s60I**) and **Part 14 Div2 s108** LLS Regulation defines each land category criteria.
- Refer to LLS Act Transitional Arrangements (below right).

CATEGORY 1 (EXEMPT) UNREGULATED LAND

- Category 1 - exempt land is defined under **s60H** LLS Act.
- While approval is not required under the LLS Act, under **s2.8(1)(b)** BC Act if the proposed clearing is likely to harm an animal or damage habitat of an animal that is a TS or forms part of a TEC, a BC Licence under **Part 2** BC Act may be required to authorise the proposed clearing. Advice should be sought from DPIE.

CATEGORY 2 REGULATED LAND

- Category 2 - regulated land is defined under **s60I** LLS Act and is divided into three (3) sub-categories (regulated, sensitive and vulnerable).
 - Authorisation is not required separately under **s2.8(b)** BC Act if clearing is undertaken in accordance with an allowable activity or under the Code.
 - Clearing authorised under other legislation listed in **s600** LLS Act does not require authorisation under the LLS Act through an allowable activity or under the Code.

ALLOWABLE ACTIVITIES

- The clearing for allowable activities is defined under **Part 5A Div4 s60Q** and **Schedule 5A** LLS Act.
 - Different allowable activities apply based on land category and zone, with limited allowable activities applying to vulnerable and sensitive regulated land as per **Schedule 5A, Part 4** LLS Act.

LAND MANAGEMENT (NATIVE VEGETATION) CODE

- The clearing of native vegetation in accordance with the Code is defined under **Part 5A Div5 s60S** LLS Act and within the **Land Management (Native Vegetation) Code 2018**.
 - Clearing is NOT permitted on sensitive regulated land under the Code.

**** NOTE:** Advice should be sought from LLS on whether notification, a Code compliant certificate or clearing approval is required under the LLS Act.

NVP APPROVAL

- The proposed clearing will require an approval from the NVP under **Part 5A Div6** LLS Act.
 - In accordance with **s60ZG** LLS Act, the NVP application must include a BDAR and apply the **BAM** established in the **Biodiversity Assessment Method Order 2020** under **s6.7** BC Act.
 - The application must also include an assessment of social, economic and environmental impacts in accordance with **s60ZF(5)** LLS Act.
 - The BDAR must be prepared by an accredited assessor under **s6.10** BC Act and meet the minimum requirements of the BAM.
 - The NVP must refuse to grant approval if it is of the opinion the proposed clearing is likely to have an SAII under **s60ZF(6)** LLS Act.

***** NOTE:** Other NSW and Commonwealth legislative approval requirements may also apply to any proposed clearing.

PATHWAY RESOURCES AND TOOLS

REFER TO KEY ACRONYMS, LEGISLATION AND DEFINITIONS

LLS CONTACT
Call LLS on 1300 795 299 for advice on the LLS Act from local staff; or email LLS at slm.info@lls.nsw.gov.au

LLS RESOURCES

- LLS WEBSITE** - Read more about land management in NSW
- LLS FACTSHEETS** - Land categories and the Land Management Framework, allowable activities and other information
- LLS NVP FACTSHEET** - Approval for clearing under Division 6 and the Native Vegetation Panel
- NVP WEBSITE** - Native Vegetation Panel information page
- LLS FACTSHEET** - Land Management Framework - What other approvals may be required?

DPIE RESOURCES

- DPIE WEBSITE** - Native Vegetation Regulatory Map information page
- DPIE WEBSITE** - Biodiversity Assessment Method 2020
- DPIE LICENCE** - Licence to harm a threatened species or ecological community under the BC Act
- BOS SUPPORT** - Online Form

DPIE ONLINE TOOLS

- ONLINE MAP** - Native Vegetation Regulatory Map
- ONLINE REGISTER** - Accredited Assessor Public Register
- ONLINE CALCULATOR** - Biodiversity Assessment Method Calculator (BAM-C) AND User Guide
- ONLINE CALCULATOR** - Biodiversity Offset Payment Calculator (BOPC) AND User Guide

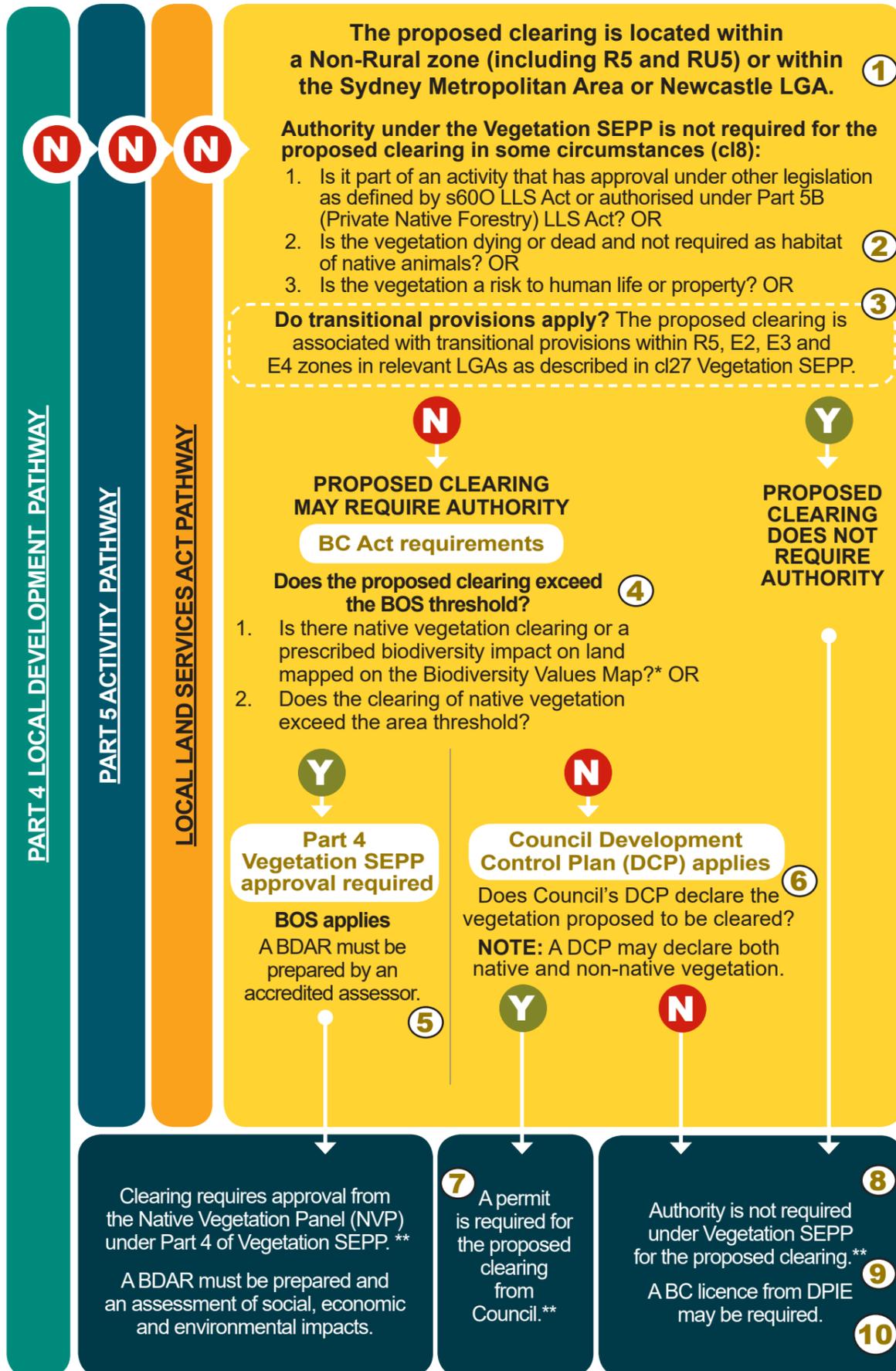
COMMONWEALTH LEGISLATION RESOURCES

- COMMONWEALTH WEBSITE** - Environment assessment and approval process webpage

LLS Act Transitional Arrangements

Land category is identified on the Native Vegetation Regulatory Map for those land categories where mapping is available (Excluded Land and Category 2 - sensitive and vulnerable regulated lands) and determined for other land categories by specific criteria (Category 1-exempt land and Category 2-regulated land).

VEGETATION SEPP PATHWAY



DETAILED PATHWAY GUIDANCE

THE VEGETATION SEPP APPLIES

- 1** [Part 1 cl5](#) Vegetation SEPP defines non-rural areas of the state to which the SEPP applies.
 - The proposed clearing must not be authorised or require authorisation by development consent in accordance with [cl8\(1\)](#) Vegetation SEPP.
 - [Part 2 cl7](#) identifies clearing of vegetation that requires authority under the Vegetation SEPP under [Part 3](#) (Council permit) or [Part 4](#) (NVP approval).

CLEARING THAT DOES NOT REQUIRE AUTHORITY

- 2** [Part 2 cl8](#) outlines circumstances where clearing does not require authority under Vegetation SEPP.
- 3** Refer to Vegetation SEPP Transitional Arrangements (below right).

BOS THRESHOLD

- 4** The BOS threshold is established under [s7.2\(1\)\(b\)](#) BC Act and [cl7.1\(1\)](#) BC Regulation.
 - Biodiversity Values Map is defined under [cl7.1\(1\)\(b\)](#) and [cl7.3](#) BC Regulation.

**NOTE:* Prescribed impacts are defined in [cl6.1](#) BC Regulation. Prescribed impacts that are direct impacts (which includes clearing of non-native vegetation that is habitat for TS) and occur on land mapped on the Biodiversity Values Map will exceed the BOS threshold.
 - Area threshold (refer to [cl7.1\(1\)\(a\)](#) and [cl7.2](#) BC Regulation).

NVP APPROVAL

- 5** If the proposed clearing exceeds the BOS threshold, an approval from the NVP under [Part 4](#) Vegetation SEPP will be required.
 - In accordance with [cl15](#) Vegetation SEPP, the NVP application must include a BDAR and apply the [BAM](#) established in the [Biodiversity Assessment Method Order 2020](#) under [s6.7](#) BC Act.
 - The application must also include an assessment of social, economic and environmental impacts in accordance with [cl14\(5\)](#) Vegetation SEPP.
 - The BDAR must be prepared by an accredited assessor under [s6.10](#) BC Act and meet the minimum requirements of the BAM.
 - The NVP must refuse to grant approval if it is of the opinion the proposed clearing is likely to have an SAI under [cl14\(6\)](#) Vegetation SEPP.

COUNCIL DCP AND PERMIT SYSTEM

- 6** Councils can use a DCP to manage vegetation clearing below the BOS threshold by establishing a vegetation clearing permit system and declaring vegetation within their DCP in accordance with [Part 3 cl9](#) Vegetation SEPP.
- 7** This will trigger the requirement for a Council permit for clearing of any declared vegetation under [Part 3 cl10](#) Vegetation SEPP.
- 8** Council's DCP can include how Council can be satisfied that the proposed clearing does not require authority under [cl8\(2\) and \(3\)](#) Vegetation SEPP.

OTHER LEGISLATIVE CONSIDERATIONS

- 9** *** NOTE:* Other NSW and Commonwealth legislative requirements may also apply to any proposed clearing.
- 10** While authority is not required under Vegetation SEPP, under [s2.8\(1\)](#) BC Act if the proposed clearing is likely to harm or damage habitat of a TS (plant or animal) or forms part of a TEC, a BC Licence under [Part 2](#) BC Act may be required. Advice should be sought from DPIE.

PATHWAY RESOURCES AND TOOLS

REFER TO KEY ACRONYMS, LEGISLATION AND DEFINITIONS

DPIE RESOURCES

- [DPIE WEBSITE](#) - Vegetation SEPP information page and FAQs
- [DPIE WEBSITE](#) - Local government and other decision-makers
- [DPIE WEBSITE](#) - When does the Biodiversity Offsets Scheme apply?
- [DPIE WEBSITE](#) - Biodiversity Assessment Method 2020
- [DPIE LICENCE](#) - Licence to harm a threatened species or ecological community under the BC Act
- [BOS SUPPORT](#) - Online Form

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- [ONLINE CALCULATOR](#) - Biodiversity Offset Payment Calculator (BOPC) AND User Guide

NVP RESOURCES

- [NVP WEBSITE](#) - Native Vegetation Panel information page
- [NVP FACTSHEET](#) - Approval for clearing under Division 6 and the Native Vegetation Panel

COMMONWEALTH LEGISLATION RESOURCES

- [COMMONWEALTH WEBSITE](#) - Environment assessment and approval process webpage

Vegetation SEPP Transitional Provisions

3 [Part 5 cl27](#) Vegetation SEPP defines the transitional provisions that may apply to proposed clearing within R5, E2, E3 and E4 zones in relevant LGAs.