



DEPARTMENT OF PLANNING, INDUSTRY & ENVIRONMENT

## BOS Support for Assessors & Local Government

# NSW Biodiversity Offsets Scheme and Land Management Framework Flowcharts



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Tuesday 25<sup>th</sup> August 2020, 2:00 PM – 3:00 PM

John Spencer/DPIE



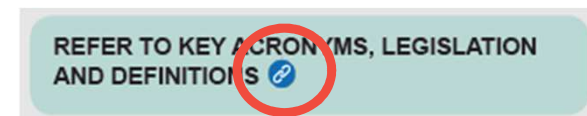
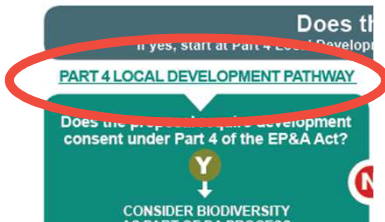
## NSW Biodiversity Offsets Scheme and Land Management Framework Flowcharts

- Provide clear guidance as to when the Biodiversity Offsets Scheme (BOS) applies to:
  - development that requires consent from council under Part 4 *Environmental Planning and Assessment Act 1979* (EP&A Act)
  - activities assessed by council under Part 5 EP&A Act
  - vegetation clearing regulated by the *Local Land Services Act 2013* (LLS Act) and *State Environmental Planning Policy (Vegetation in non-rural areas) 2017* (Vegetation SEPP).
- Local government audience.
- Indicates where other key legislative requirements relating to biodiversity may need to be considered.
- Reiterates circumstances where council is not the decision-maker in relation to vegetation clearing.
- Can be used in standalone hard-copy form and in digital form.
- Will complement a checklist being developed for council staff to gather the required information to address each step in the flowcharts.



## Functionality

- Packaged as an interactive PDF, with embedded links to navigate between the flowcharts and for quick access to legislation, webpages and online resources.
- Links are indicated by underlined text or the link symbol.



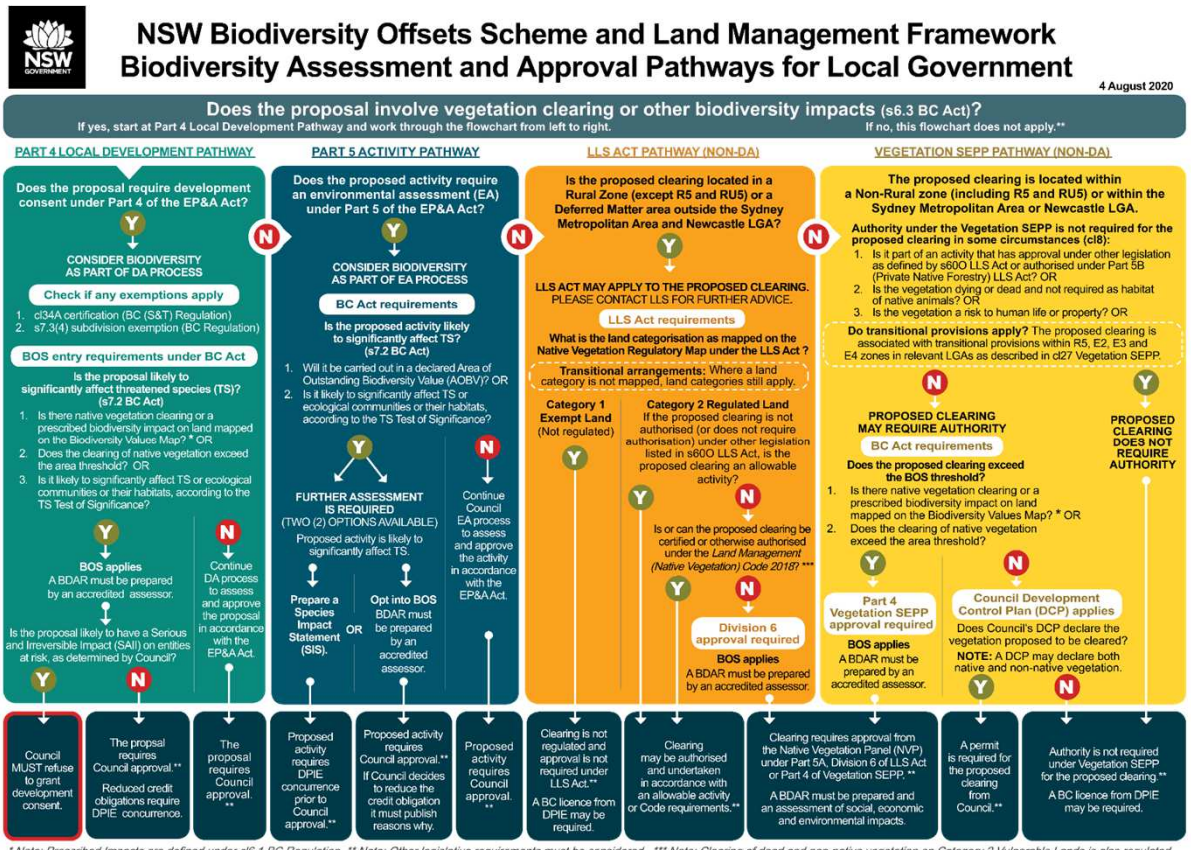
- Designed for printing in A3 size.
- Download and save from LG implementation support webpage.



The screenshot shows a webpage with the NSW Government logo in the top left. The main content area features a breadcrumb trail: Topics > Animals and plants > Biodiversity conservation > Local government resources > Implementation support. The primary heading is "Support for implementing biodiversity reforms", followed by the sub-heading "Local government is a key partner in implementing biodiversity reforms." Below this is a "Guidance" section with a paragraph and a link to "Biodiversity Offsets Scheme Support webinars". A vertical menu on the left lists: Biodiversity Offsets Scheme: Local Government updates, Biodiversity Offsets Scheme: Educational videos, Bulletins, Practice notes, Biodiversity Assessment and Approval Pathways, and NSW Biodiversity Offsets Scheme and Land Management Framework Biodiversity Assessment and Approval Pathways. The last item is circled in red. To the right, there is a "Contact us" section with phone, email, and online chat options, and an "Assessment and approvals navigator" section with a "SUBSCRIBE" button. A footer area at the bottom right says "Biodiversity Offsets Scheme support" and "Need help?".



# NSW Biodiversity Offsets Scheme and Land Management Framework Flowcharts



\* Note: Prescribed Impacts are defined under c6.1 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.



# NSW Biodiversity Offsets Scheme and Land Management Framework Flowcharts

- Four detailed pathways:
  - Part 4 local development
  - Part 5 activity
  - LLS Act
  - Vegetation SEPP
- Expand on each pathway with detailed guidance.
- Links to relevant resources and tools.

## Biodiversity Assessment and Approval Pathways for Local Government<sup>2</sup>

### PART 4 LOCAL DEVELOPMENT PATHWAY

4 August 2020

Does the proposal require development consent under Part 4 of the EP&A Act?

Y

CONSIDER BIODIVERSITY AS PART OF DA PROCESS

Check if any exemptions apply

1. c34A certification (BC (S&T) Regulation)
2. s7.3(4) subdivision exemption (BC Regulation)

BOS entry requirements under BC Act

Is the proposal likely to significantly affect threatened species (TS)?<sup>3</sup> (s7.2 BC Act)

1. Is there native vegetation clearing or a prescribed biodiversity interest on land mapped on the Biodiversity Values Map?<sup>4</sup> OR
2. Does the clearing of native vegetation exceed the area threshold?<sup>5</sup> OR
3. Is it likely to significantly affect TS or ecological communities or their habitats, according to the TS Test of Significance?<sup>6</sup>

BOS applies

A BDAR must be prepared by an accredited assessor

Continue DA process to assess and approve the proposal in accordance with the EP&A Act.

Is the proposal likely to have a serious and irreversible impact (S&I) on entities at risk, as determined by Council?<sup>7</sup>

Y

N

Council MUST refuse to grant development consent.

The proposal requires Council approval.<sup>8</sup>

The proposal requires Council approval.<sup>9</sup>

**DETAILED PATHWAY GUIDANCE**

**EXEMPTIONS MAY APPLY TO THE PROPOSAL**

1. **c34A CERTIFICATION** - Special rules may apply if there is a previous offset arrangement recognised under the BC Act transitional provisions. DPIE can advise if c34A 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 s6.1 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 s7.1(1) BC Regulation and the Test of Significance is defined in s7.3 BC Act.
- 1. Biodiversity Values Map is defined under s7.1(1)(b) and s7.3 BC Regulation.

\*NOTE: Prescribed impacts are defined in s6.1 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: s7.3(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 s7.1(1)(a) and s7.2 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 *S&I* established in the *Biodiversity Assessment Method Order 2017* 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 S&I. S&I are defined by s6.5 BC Act.

- Council is responsible for determining if the proposal is likely to have an S&I 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 S&I under s7.15(2) BC Act and s7.17(2)(a) BC Act respectively.

7. A request for a reduced credit obligation requires DPIE concurrence in accordance with s58 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 EP&As 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<sup>2</sup>

**DPIE RESOURCES**

- a. [DPIE WEBSITE - Local Development information page](#)
- b. [DPIE WEBSITE - c34A certification information page](#)
- c. [DPIE WEBSITE - Local government implementation support \(Bulletins, Practice Notes, LO updates\)](#)
- d. [DPIE WEBSITE - Local government O&As](#)
- e. [DPIE WEBSITE - Biodiversity Values Map information page](#)
- f. [DPIE WEBSITE - Threatened species Test of Significance information page](#)
- g. [DPIE WEBSITE - S&I information page](#)
- h. [DPIE GUIDE - Biodiversity Assessment Method, Operational Manual Stage 1 and Stage 2](#)
- i. [DPIE WEBSITE - Lodging an offset obligation](#)
- j. [BOS SUPPORT - Online Form](#)

**DPIE ONLINE TOOLS**

- a. [ONLINE MAP - Biodiversity Values Map and Threshold \(BAM\) Tool AND User Guide](#)
- b. [ONLINE REGISTER - Accredited Assessor Public Register](#)
- c. [ONLINE CALCULATOR - Biodiversity Assessment Method Calculator \(BAM-C\) AND User Guide](#)
- d. [ONLINE CALCULATOR - Biodiversity Offset Payment Calculator \(BOPEC\) AND User Guide](#)

**COMMONWEALTH LEGISLATION RESOURCES**

- a. [COMMONWEALTH WEBSITE - Environment Assessment and Approvals information page](#)

PART 4 LOCAL DEVELOPMENT PATHWAY

PART 5 ACTIVITY PATHWAY

LOCAL LAND SERVICES ACT PATHWAY

VEGETATION SEPP PATHWAY





# NSW Biodiversity Offsets Scheme and Land Management Framework Flowcharts



## Biodiversity Assessment and Approval Pathways for Local Government<sup>2</sup> Key Acronyms, Legislation and Definitions

4 August 2020

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
SAII	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

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







## Scope

- The flowcharts have been developed to provide general guidance on application of the BOS and land management framework to specific planning and approval pathways.
- Not in scope to provide guidance on:
  - other pathways such as biodiversity certification, planning proposals and major projects
  - the planning/approval pathways themselves
  - other environmental impact assessment requirements that may apply
  - the decision making process under the EP&A Act.



# Navigating the Flowcharts



Robert Cleary/DPIE



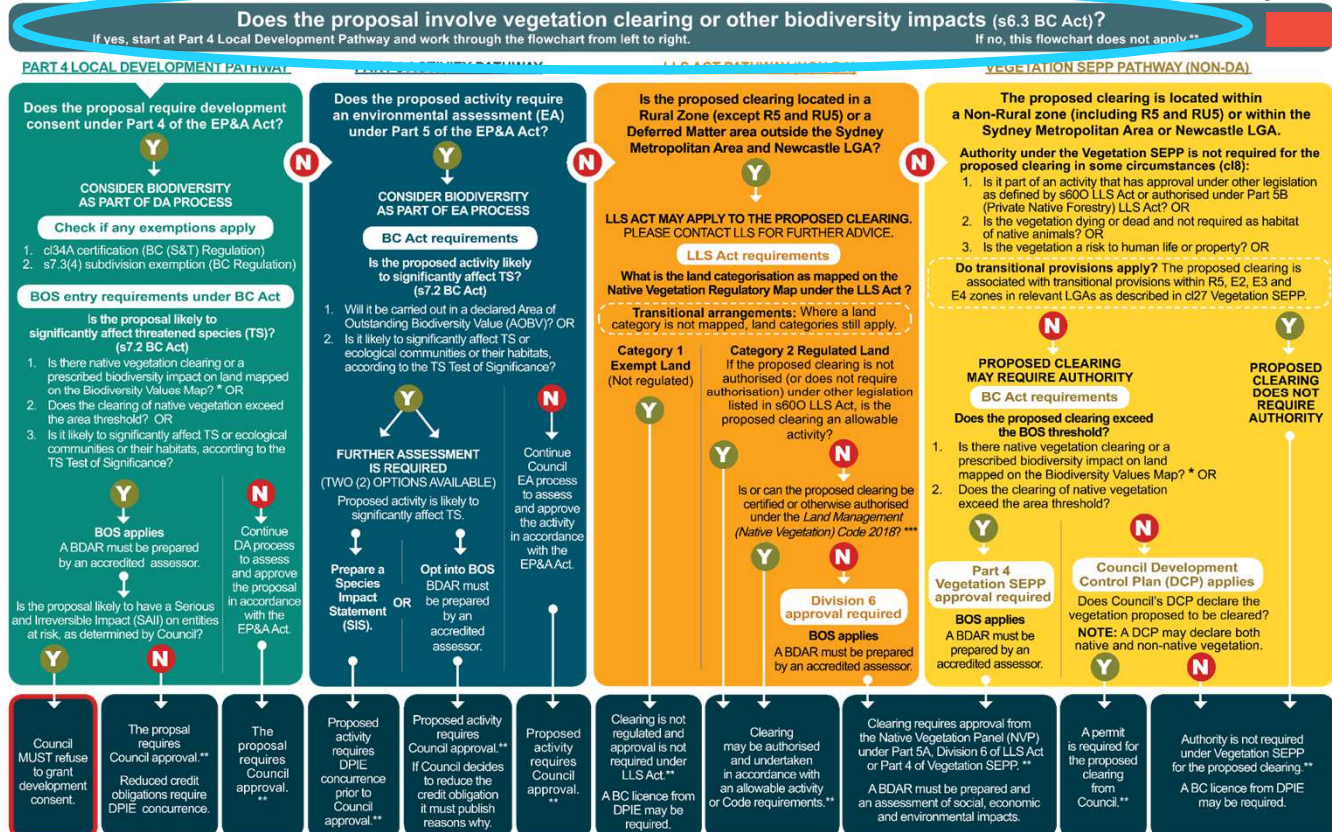


### Summary flowchart



## NSW Biodiversity Offsets Scheme and Land Management Framework Biodiversity Assessment and Approval Pathways for Local Government

4 August 2020



### Does the proposal involve vegetation clearing or other biodiversity impacts?

- Other biodiversity impacts are the loss of habitat and prescribed impacts.
- If no, the flowcharts do not apply.
- If yes, work left to right through the pathways.

\* 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.



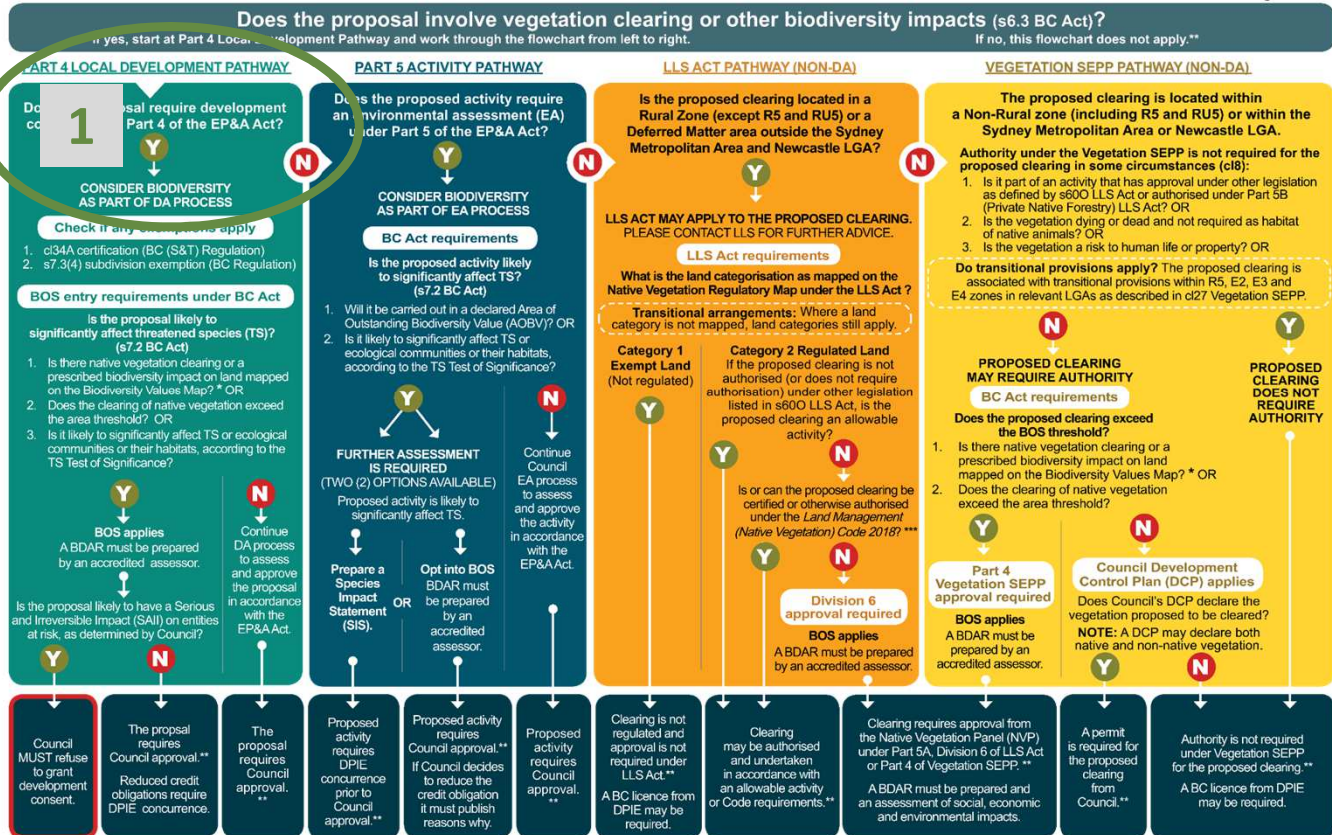


# Summary flowchart



## NSW Biodiversity Offsets Scheme and Land Management Framework Biodiversity Assessment and Approval Pathways for Local Government

4 August 2020



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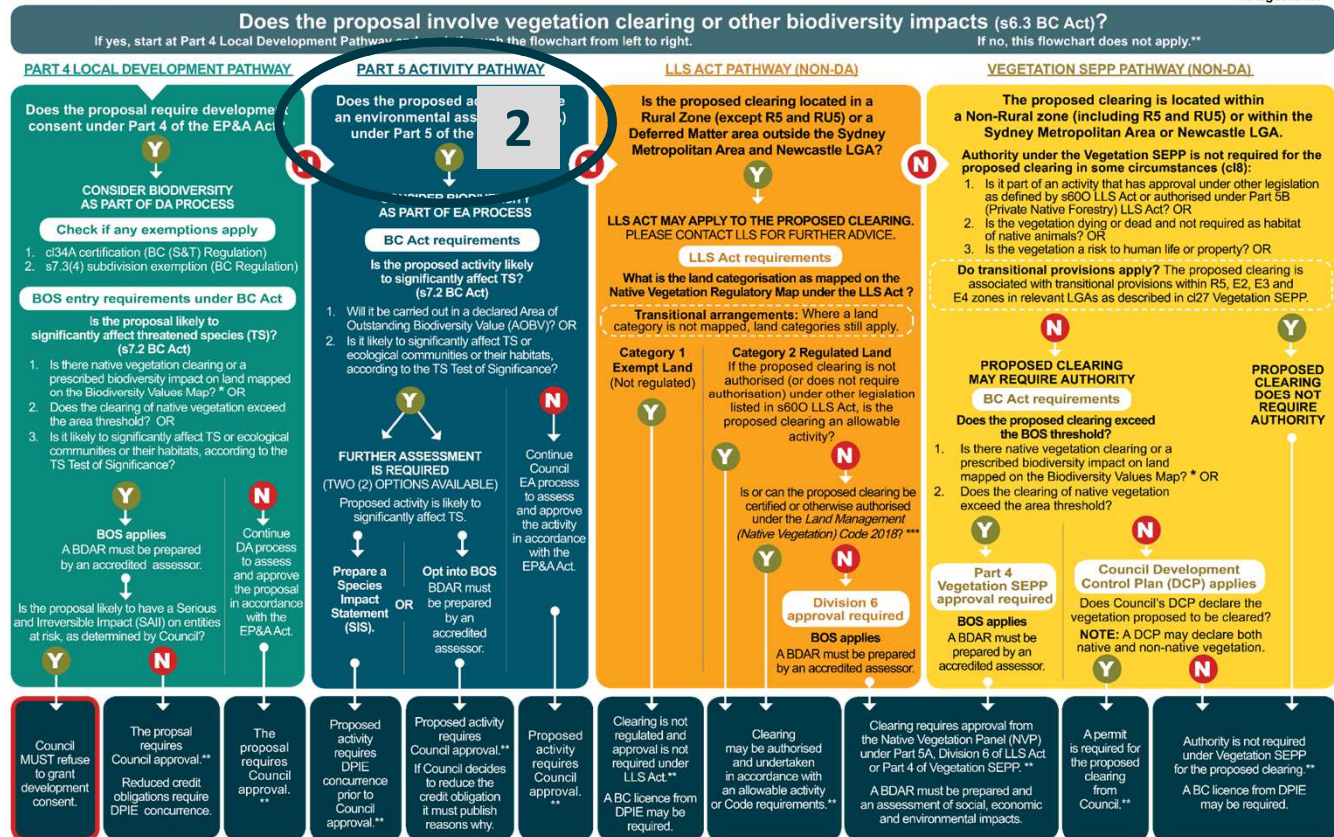


# Summary flowchart



## NSW Biodiversity Offsets Scheme and Land Management Framework Biodiversity Assessment and Approval Pathways for Local Government

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\* 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.



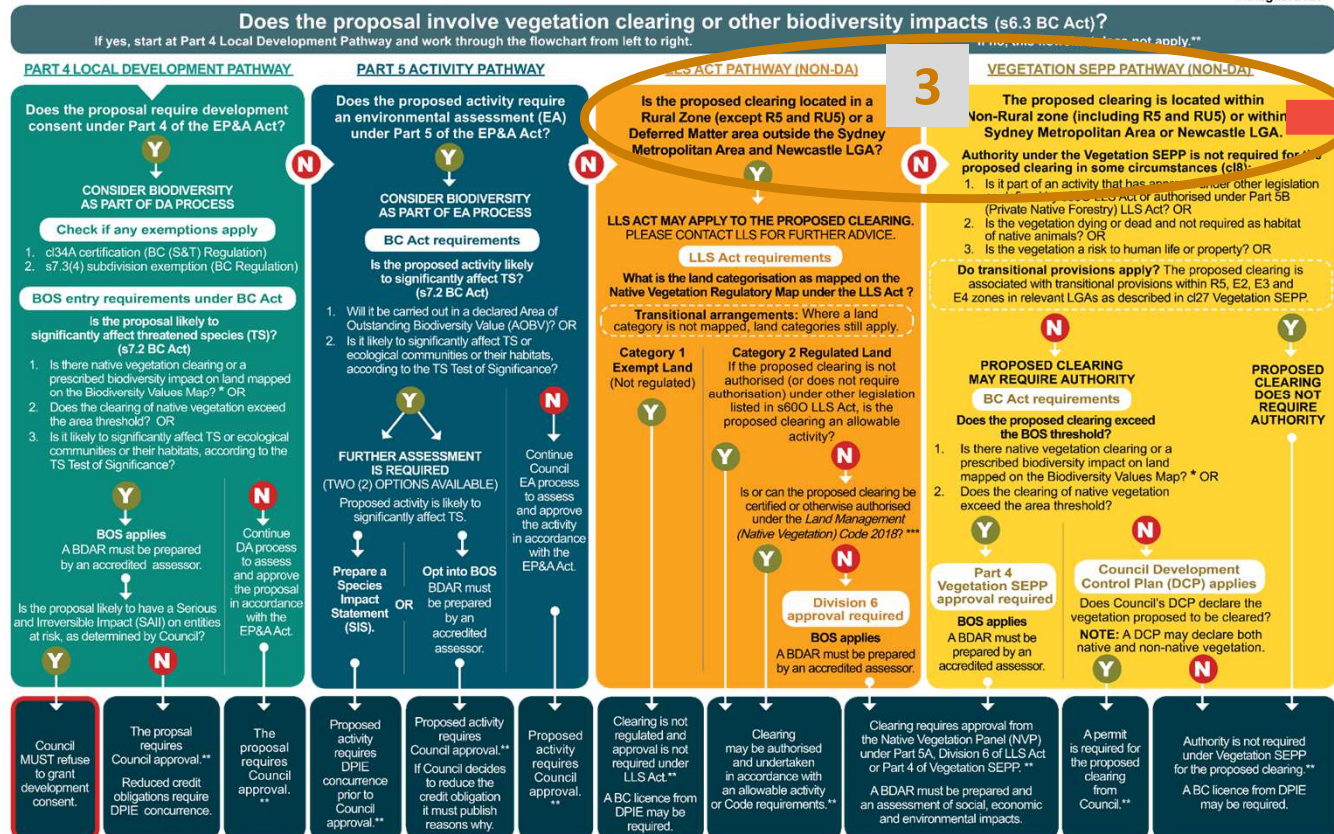


# Summary flowchart



## NSW Biodiversity Offsets Scheme and Land Management Framework Biodiversity Assessment and Approval Pathways for Local Government

4 August 2020



\* Note: Prescribed Impacts are defined under d6.1 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.

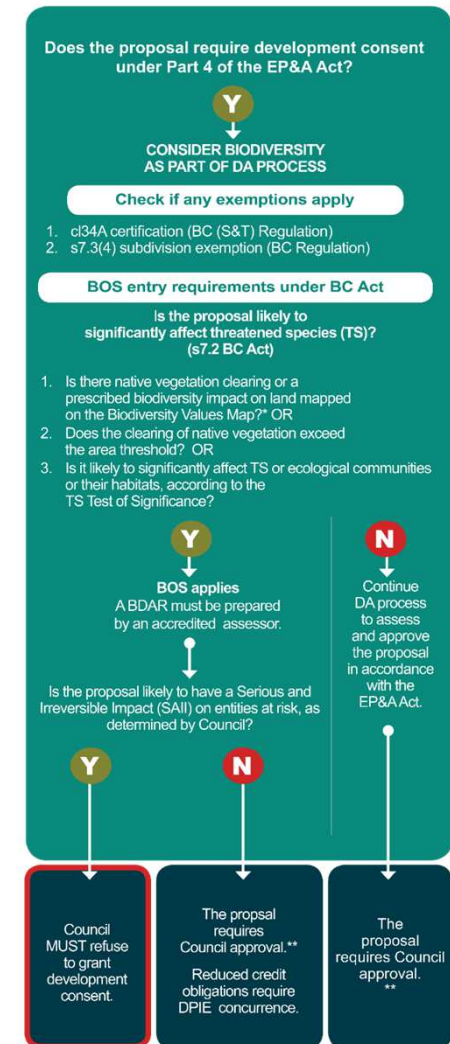




## Part 4 Local Development Pathway

- Biodiversity is assessed as part of the application for consent.
- Check if any exemptions apply.
- Determine whether proposal is likely to significantly affect threatened species.
- If yes, the BOS applies and a Biodiversity Development Assessment Report (BDAR) must be prepared by an accredited assessor and accompany the application.
  - Council is required to consider the impact of the proposal as assessed in the BDAR.
  - Council will need to determine whether the proposal is likely to have a serious and irreversible impact on entities at risk.
  - Council can consider any additional local biodiversity requirements adopted in local EPIs as part of assessment under EP&A Act.
  - Council’s consideration of matters outside of the scope of these flowcharts (e.g. heritage, built form) are unchanged by preparation of a BDAR.
- If the proposal is not likely to significantly affect threatened species, council continues assessment and determination in accordance with EP&A Act.

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## Part 4 Local Development Pathway – Key resources and tools

- Biodiversity Values Map and Threshold (BMAT) Tool.
- Local Government implementation support webpage.
- Local government Q&A webpage.
- Test of Significance webpage and guidelines.
- Serious and irreversible impact webpage.

**Biodiversity Assessment and Approval Pathways for Local Government<sup>6</sup>**  
**PART 4 LOCAL DEVELOPMENT PATHWAY**  
 4 August 2020

**Does the proposal require development consent under Part 4 of the EP&A Act?**

**CONSIDER BIODIVERSITY AS PART OF DA PROCESS**

**Check if any exemptions apply**

1. s24A certification (BC (S&T) Regulation)
2. s7.2(4) subdivision exemption (BC Regulation)

**BOS entry requirements under BC Act**

Is the proposal likely to significantly affect threatened species (TS)? (s7.2 BC Act)

1. Is there native vegetation clearing or a prescribed biodiversity impact on land mapped on the Biodiversity Values Map? OR
2. Does the clearing of native vegetation exceed the area threshold? OR
3. Is it likely to significantly affect TS or ecological communities or their habitats, according to the TS Test of Significance?

**BOS applies**

A BDAR must be prepared by an accredited assessor.

**Continue DA process to assess and approve the proposal in accordance with the EP&A Act.**

Is the proposal likely to have a Serious and Irreversible Impact (SAI) on entities at risk, as determined by Council?

**Y** Council MUST refuse to grant development consent.

**N** The proposal requires Council approval.<sup>7</sup> Reduced credit obligations require DPIE concurrence.

**Y** The proposal requires Council approval.<sup>8</sup>

**DETAILED PATHWAY GUIDANCE**

**EXEMPTIONS MAY APPLY TO THE PROPOSAL**

1. s24A CERTIFICATION - Special rules may apply if there is a previous offset arrangement recognised under the BC Act transitional provisions. DPIE can advise if s24A BC (S&T) Regulation of the transitional provisions applies.
2. s7.2(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 s7.2(4) BC Regulation subdivision exemption applies.

**THREATENED SPECIES AND BIODIVERSITY IMPACTS**

1. Biodiversity impacts are defined under s6.1 BC Act.
2. TS and TECs are defined under s1.6 BC Act. Refer to Definitions (p2).
3. Prescribed impacts are defined under s8.1 BC Regulation.

**TO DETERMINE IF PROPOSAL IS LIKELY TO SIGNIFICANTLY AFFECT TS**

1. 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.
2. The BOS threshold is established under s7.2(1)(b) BC Act and s7.1(1) BC Regulation and the Test of Significance is defined in s7.3 BC Act.
3. Biodiversity Values Map is defined under s7.1(1)(b) and s7.3 BC Regulation.

**NOTE:** Prescribed impacts are defined in s8.1 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:** s7.3(3) BC Regulation describes 11 types of land that may be included on the Biodiversity Values Map (which includes ACRVA).

1. Area threshold (refer to s7.1(1)(a) and s7.2 BC Regulation).
2. 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**

1. The BOS applies to new DAs and modification of consents under Part 4 EP&A Act that are likely to significantly affect TS.
2. The BAM established in the Biodiversity Assessment Method Order 2017 under s7.3 BC Act must be copied and a BDAR prepared in accordance with s7.7 BC Act for new DAs and s7.12 BC Act for modification of consents.
3. The BDAR must be prepared by an accredited assessor under s8.10 BC Act and meet the minimum requirements of the BAM.
4. The BDAR must consider SAI. SAI are defined by s6.5 BC Act.
5. Council is responsible for determining if the proposal is likely to have an SAI 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 SAI under s7.15(2) BC Act and s7.11(2)(a) BC Act respectively.
7. A request for a reduced credit obligation requires DPIE concurrence in accordance with s55 EP&A Regulation.

**DEVELOPMENT APPLICATION PROCESS**

1. 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 EP&As and any other NSW and Commonwealth legislative efforts to avoid and minimise impacts may be considered in this context.

**PATHWAY RESOURCES AND TOOLS**

**REFER TO KEY ACRONYMS, LEGISLATION AND DEFINITIONS**

**KEY RESOURCES**

- a. DPIE WEBSITE - Local Development information page
- b. DPIE WEBSITE - s24A certification information page
- c. DPIE WEBSITE - Local government implementation support (Guidelines, Practice Notes, LG updates)
- d. DPIE WEBSITE - Local government FAQs
- e. DPIE WEBSITE - Biodiversity Values Map information page
- f. DPIE WEBSITE - Threatened species Test of Significance information page
- g. DPIE WEBSITE - SAI information page
- h. DPIE GUIDE - Biodiversity Assessment Method, Operational Manual (Stage 1 and Stage 2)
- i. DPIE WEBSITE - Looking for offset obligation
- j. BOS SUPPORT - Online Form

**DPIE ONLINE TOOLS**

- a. ONLINE MAP - Biodiversity Values Map and Threshold (BMAT) Tool AND User Guide
- b. ONLINE REGISTER - Accredited Assessor Public Register
- c. ONLINE CALCULATOR - Biodiversity Assessment Method Calculator (BAM-C) AND User Guide
- d. ONLINE CALCULATOR - Biodiversity Offset Calculator (BOPC) AND User Guide

**COMMONWEALTH LEGISLATION RESOURCES**

- a. COMMONWEALTH WEBSITE - Environment Assessment and Approvals information page

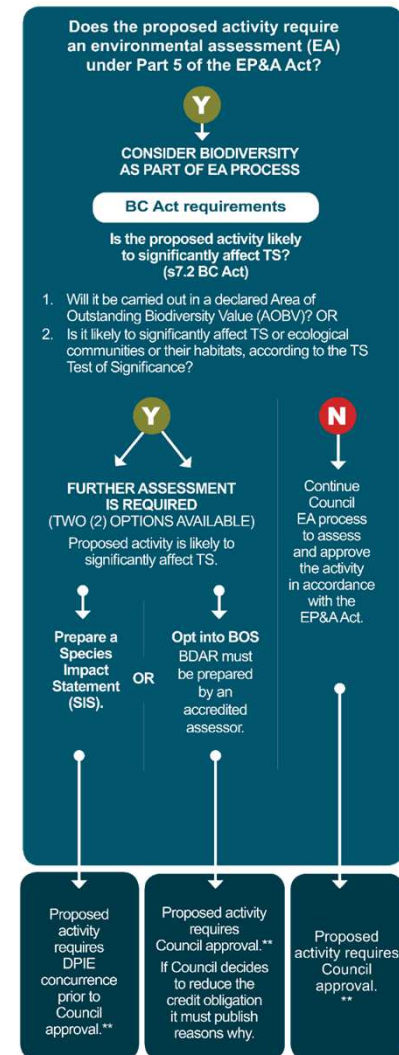
**LOCAL LAND SERVICES ACT PATHWAY**

**VEGETATION SEPP PATHWAY**



## Part 5 Activity Pathway

- Applies to environmental assessment of activities under s5.1 EP&A Act.
  - These are activities undertaken by council as part of their everyday responsibilities eg. pedestrian pathways and cycleways in a public reserve, road widening.
- Can include a range of works (as defined in the EP&A Act), but does not include:
  - development that requires consent
  - exempt development
  - prohibited development
  - development carried out in accordance with a development control order.
- As part of environmental assessment, council needs to consider whether the proposed activity is likely to significantly affect threatened species.

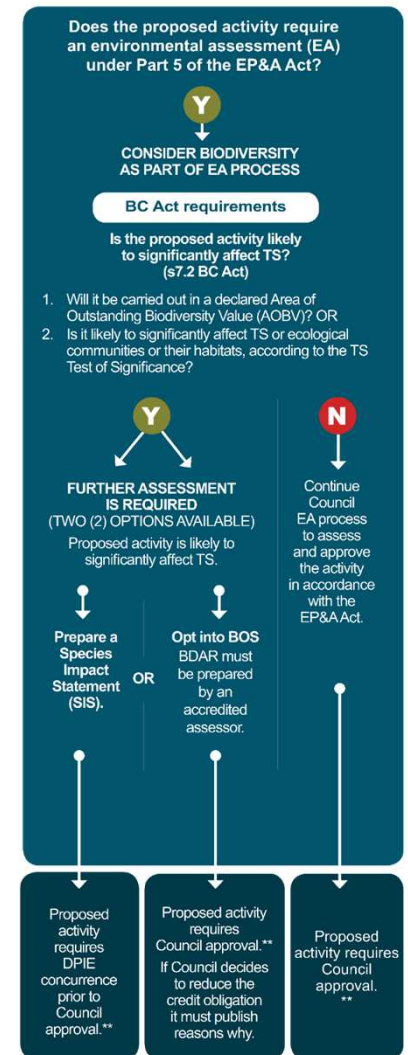






## Part 5 Activity Pathway

- If the proposed activity is likely to significantly affect threatened species, further impact assessment is required.
- The BOS applies where council **opts in**.
- A BDAR must be prepared by an accredited assessor and forms part of council's environmental assessment.
- If the activity is approved, and council decides to reduce the credit obligation from the number and class of credits set out in the BDAR, council must publish reasons why.





## Part 5 Activity Pathway – Key resources and tools

- Development without consent webpage.
- Area of Outstanding Biodiversity Value webpage and register.
- Test of Significance webpage and guidelines.
- Serious and irreversible impact webpage.

**Biodiversity Assessment and Approval Pathways for Local Government<sup>®</sup>**  
**PART 5 ACTIVITY PATHWAY**  
 4 August 2020

**Does the proposed activity require an environmental assessment (EA) under Part 5 of the EP&A Act?**

**CONSIDER BIODIVERSITY AS PART OF EA PROCESS**

**BC Act requirements**

Is the proposed activity likely to significantly affect TS?  
 (s 7.2 BC Act)

1. Will it be carried out in a declared Area of Outstanding Biodiversity Value (AOBV)? OR  
 2. Is it likely to significantly affect TS or ecological communities or their habitats, according to the TS Test of Significance?

**FURTHER ASSESSMENT IS REQUIRED (TWO (2) OPTIONS AVAILABLE)**

Proposed activity is likely to significantly affect TS.

Continue Council EA process and approve the activity in accordance with the EP&A Act.

Prepare a Species Impact Statement (SIS) OR  
 Opt into BOS. The BDAR must be prepared by an accredited assessor.

**ENVIRONMENTAL ASSESSMENT PROCESS**

6 Proposed activity requires DPE concurrence prior to Council approval.\*\*

7 Proposed activity requires Council approval.\*\*

8 Council decides to reduce the credit obligation (it must publish reasons why).

**ENVIRONMENTAL ASSESSMENT PROCESS**

6 In accordance with s 7.1 (1) EP&A Act, Council as a determining authority must assess whether a Part 5 activity is likely to significantly affect the environment.

7 Factors listed under s 7.2(2) EP&A Regulation are required to be considered to assess the likely impacts of the proposed activity on the environment.

8 \*NOTE: This assessment should also include consideration of any other NSW and/or Commonwealth legislative requirements that may apply to the proposed activity.

**DETAILED PATHWAY GUIDANCE**

**THREATENED SPECIES AND BIODIVERSITY IMPACTS**

1 TS and TECs are defined under s 1.6 BC Act. Refer to Definitions (p2).

- Biodiversity impacts are defined under s 6.3 BC Act.
- Prescribed impacts are defined under s 6.1 BC Regulation.

**TO DETERMINE IF ACTIVITY IS LIKELY TO SIGNIFICANTLY AFFECT TS**

2 s 7.2 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.

1. AOBVs are declared under s 3.1 BC Act. The areas eligible to be declared are defined by s 3.2 BC Act and the criteria is specified under s 3.3 BC Regulation.

2. The Test of Significance is defined in s 7.3 BC Act. The *Threatened Species Test of Significance Guidelines* have been developed in accordance with s 7.3(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)**

- s 7.3(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.

3 **OPTION A - SPECIES IMPACT STATEMENT (SIS)**

- Concurrence is required from DPE prior to Council approval for the activity in accordance with s 7.1(2)(3) BC Act.
- Council must request assessment requirements from DPE and follow the requirements for a SIS set out in Part 7 Div 6 BC Act and s 7.6 BC Regulation.

4 **OPTION B - OPT INTO THE BOS**

- If Council opts into the BOS, the BAM established in the *Biodiversity Assessment Method (BAM) 2017* under s 7.7 BC Act must be applied and a BDAR prepared in accordance with s 7.8 BC Act.
- The BDAR must be prepared by an accredited assessor under s 6.10 BC Act and meet the minimum requirements of the BAM.
- The BDAR must consider SAII. SAII are defined by s 6.5 BC Act.
- Council is to consider if the proposed activity is likely to have an SAII on entities at risk of an SAII in accordance with the *Guidance to assist a decision-maker to determine a serious and irreversible impact*.

5 If Council decides to reduce the credit obligation, it must publish reasons why in accordance with s 7.15 BC Act.

**PATHWAY RESOURCES AND TOOLS**

**REFER TO KEY ACRONYMS, LEGISLATION AND DEFINITIONS**

**DPE RESOURCES**

- DPE WEBSITE - Development without Consent information page
- DPE WEBSITE - Local government implementation support (Bulletin, Practice Notes, LG updates)
- DPE WEBSITE - Local government O&A
- DPE WEBSITE - Areas of Outstanding Biodiversity Value information page
- DPE WEBSITE - Threatened species Test of Significance information page
- DPE WEBSITE - SAII information page
- DPE QUICK - Biodiversity Assessment Method Operational Manual Stage 1 and Stage 2
- DPE WEBSITE - Lodging an offset obligation
- BOS SUPPORT - Online Form

**DPE ONLINE TOOLS**

- DPE 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 (BOCPC) AND User Guide

**COMMONWEALTH LEGISLATION RESOURCES**

- COMMONWEALTH WEBSITE - Environment Assessment and Approvals information page

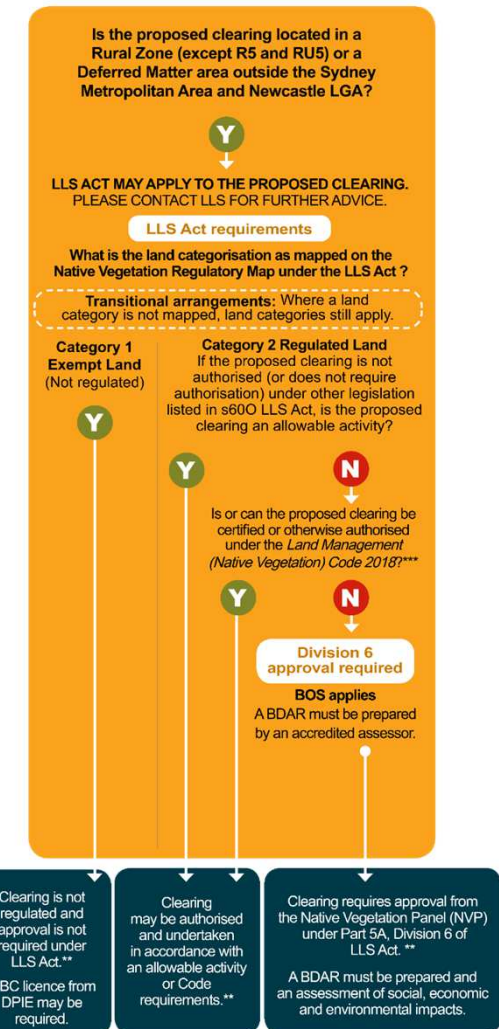
**LOCAL LAND SERVICES ACT PATHWAY**

**VEGETATION SECP PATHWAY**



## LLS Act Pathway

- Included to maintain consistency with the original product and provide a comprehensive summary of the BOS and land management framework.
- Where the LLS Act may apply, enquiries are to be directed to LLS.
- Applies where vegetation clearing is proposed on land located in a Rural Zone (except R5 and RU5) or a Deferred Matter area outside the Sydney Metropolitan Area and Newcastle local government area.
- The BOS applies where clearing is on category 2 regulated land and cannot be carried out as an allowable activity or under the LMNV Code.







## LLS Act Pathway – Key resources and tools

### LLS resources

- LLS contact details.
- Land Management in NSW webpage.
- LLS Factsheets.
- Native Vegetation Panel webpage.

### DPIE resources

- Native Vegetation Regulatory (NVR) Map webpage.
- NVR Map.
- Biodiversity Conservation Licence webpage.

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**Biodiversity Assessment and Approval Pathways for Local Government**  
LOCAL LAND SERVICES ACT PATHWAY  
4 August 2020

**THE LLS ACT APPLIES**

- Part 5A Div 1 s600 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 Div 2 LLS Act (s601 & s602) and Part 14 Div 2 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 s601 LLS Act.
- While approval is not required under the LLS Act, under s2(1)(10) 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 s602 LLS Act and is divided into three (3) sub-categories (regulated, sensitive and vulnerable).
- Authorisation is not required separately under s2(3)(b) BC Act if clearing is undertaken in accordance with an allowable activity or under the Code.
- Clearing authorised under other legislation listed in s602 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 Div 4 s604 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 Div 5 s605 LLS Act and within the Land Management (Native Vegetation) Code 2016.
- 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 Div 6 LLS Act.
- In accordance with s607G LLS Act, the NVP application must include a BDAR and apply the BAM established in the Biodiversity Assessment Method Order 2017 under s5.7 BC Act.
- The application must also include an assessment of social, economic and environmental impacts in accordance with s607E(2) LLS Act.
- The BDAR must be prepared by an accredited assessor under s5.10 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 s607E(3) 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 or contact your local staff, or email LLS at [slm.info@lls.nsw.gov.au](mailto: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 GUIDE - Biodiversity Assessment Method Order: Manual Stage 1 and Stage 2.
- 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 Panel Calculator (BOC-C) AND User Guide.

**COMMONWEALTH LEGISLATION RESOURCES**

- COMMONWEALTH WEBSITE - Environmental Assessment and Approvals information page.

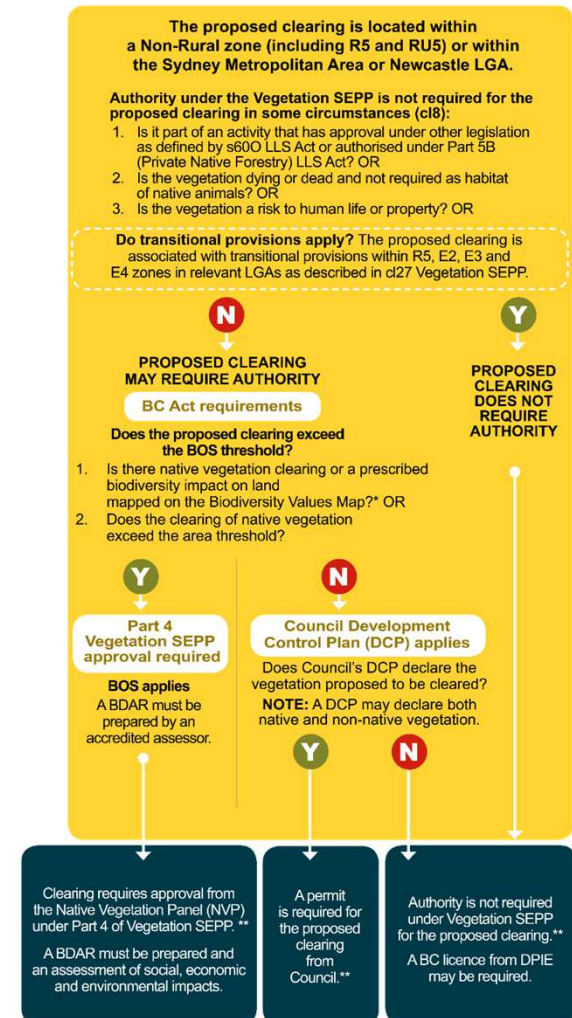
**LLS Act Transitional Arrangements**

- 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

- May apply where proposed clearing is located within a Non-Rural zone (including R5 and RU5) or within the Sydney Metropolitan Area or Newcastle local government area.
  - There are some circumstances where authority is not required.
- The BC Act and BOS need to be considered where the clearing may require authority.
- The BOS applies where clearing of native vegetation or a prescribed impact (clearing of non-native vegetation) occurs on Biodiversity Values Map **OR** where clearing of native vegetation exceeds the relevant area clearing threshold.
- If the BOS does not apply, Council’s Development Control Plan may declare the vegetation proposed to be cleared for purposes of the Vegetation SEPP.





## Vegetation SEPP Pathway – Key resources and tools

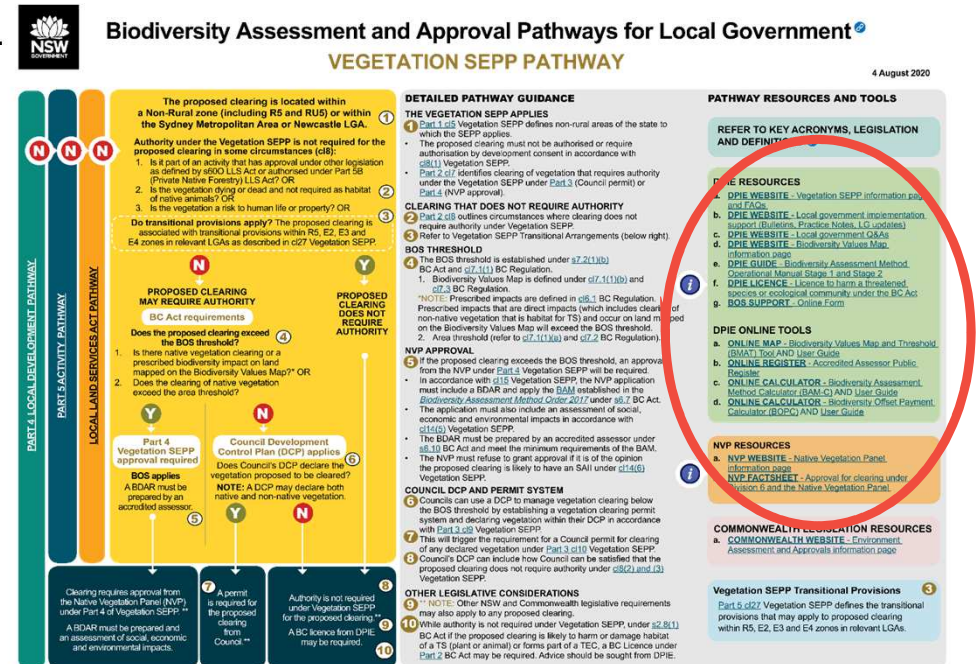
### DPIE resources

- Vegetation SEPP webpage.
- Local government implementation support webpage.
- BMAT tool.
- Biodiversity Conservation Licence webpage.

### LLS resources

- Native Vegetation Panel webpage.
- For more information on the BOS threshold, refer to *Guidance for local government on applying the Biodiversity Offset Scheme threshold.*

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## Summary

- Five flowcharts providing clear guidance on how the BOS applies to development that requires consent, Part 5 activities and vegetation clearing regulated by the LLS Act and Vegetation SEPP.
  - Summary flowchart - standalone resource to identify the types of impacts that require the BOS and Land Management Framework to be considered and provide an overview of when the BOS applies to these proposals
  - Four detailed flowcharts for each pathway, with detailed guidance and links to relevant resources
- Doesn't include biodiversity certification, planning proposals or major projects.
- Support for local government is continuing through webinars, email updates and BOS educational videos.



## Future work

- Ongoing updates to ensure currency and functionality.
- Simplify guidance to improve web accessibility.
- For assistance with web accessibility of the Flowcharts, contact the [BOSCREDITS@environment.nsw.gov.au](mailto:BOSCREDITS@environment.nsw.gov.au) mailbox.
- Continue to use normal channels for guidance on specific applications or sites.