



*Planning Proposal – Ballina Local
Environmental Plan 2012*

» ***Deferred Matters
Integration – Stage 1***



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1. Introduction and Background

1.1 Summary of Planning Proposal

This planning proposal seeks to integrate land identified as “deferred matters” into Ballina Local Environmental Plan (LEP) 2012. Appropriate zones (including environmental zones) are proposed having regard for legislative requirements, the NSW Department of Planning and Environment’s Northern Councils E Zone Review Final Recommendations Report 2015, the associated s.117 Ministerial Direction and Council’s resolution of 27 October 2016.

This planning proposal is Stage 1 of a staged program to integrate of all deferred matters into the Ballina LEP 2012.

1.2 Project Background

Ballina Shire Council engaged in the preparation of a comprehensive local environmental plan (LEP) under the State Government’s Standard LEP Instrument program between 2006 and 2013. This planning process was underpinned by a comprehensive and sustained community engagement program and considerable and careful deliberation by the elected Council and staff over a prolonged period.

Council resolved to endorse a new draft LEP for the shire in December 2011 and subsequently sought finalisation and implementation of the draft plan through the NSW Department of Planning and Environment. Prior to Council’s draft plan being finalised by the Department (it had received endorsement by the Department’s regional office in Grafton), the then Minister for Planning, the Hon. Brad Hazzard made a decision to initiate a review of environmental protection zones in five local government areas on the Far North Coast.

The consequence of the Minister’s decision was that Council’s comprehensive LEP was only partly made, with areas identified as having environmental values excluded from the plan. These areas remain subject to the provisions of the Ballina LEP 1987 (being the instrument the new plan was to replace).

The Department indicated that the “E zone review” would be completed by March 2013, however it was not able to meet this timeframe. An interim report on the application of the E zones prepared by the State Government’s Consultants, Parsons Brinkerhoff, was published for exhibition and comment in May 2014. Council responded to this with the identification of an extensive suite of shortcomings, errors and omissions within the report. This report has not been updated, nor the issues identified by Council addressed for the public record.

In October last year, some three years after the Minister’s announcement and two and a half years late, the Department published its final recommendations report for the Northern Councils E Zone Review. The review recommendations do not align with Council’s endorsed draft LEP from 2011 or with almost 30 years of environmental protection zoning history and identified environmental attributes and values in the Ballina Shire local government area.

Notwithstanding the above, Council has resolved to proceed to integrate the deferred areas into the Ballina LEP 2012 in line with the Department’s Northern Councils E Zone Review Final Recommendations Report.

1.3 Land to Which the Planning Proposal Applies

This planning proposal (Stage 1 of Council's deferred area integration program) relates to land that is currently zoned 7(c) Environmental Protection (Water Catchment) Zone under the Ballina Local Environmental Plan 1987 as well as immediately adjacent land. The subject land is located in two areas of the shire as depicted in the following maps (Figures 1, 2 and 3).

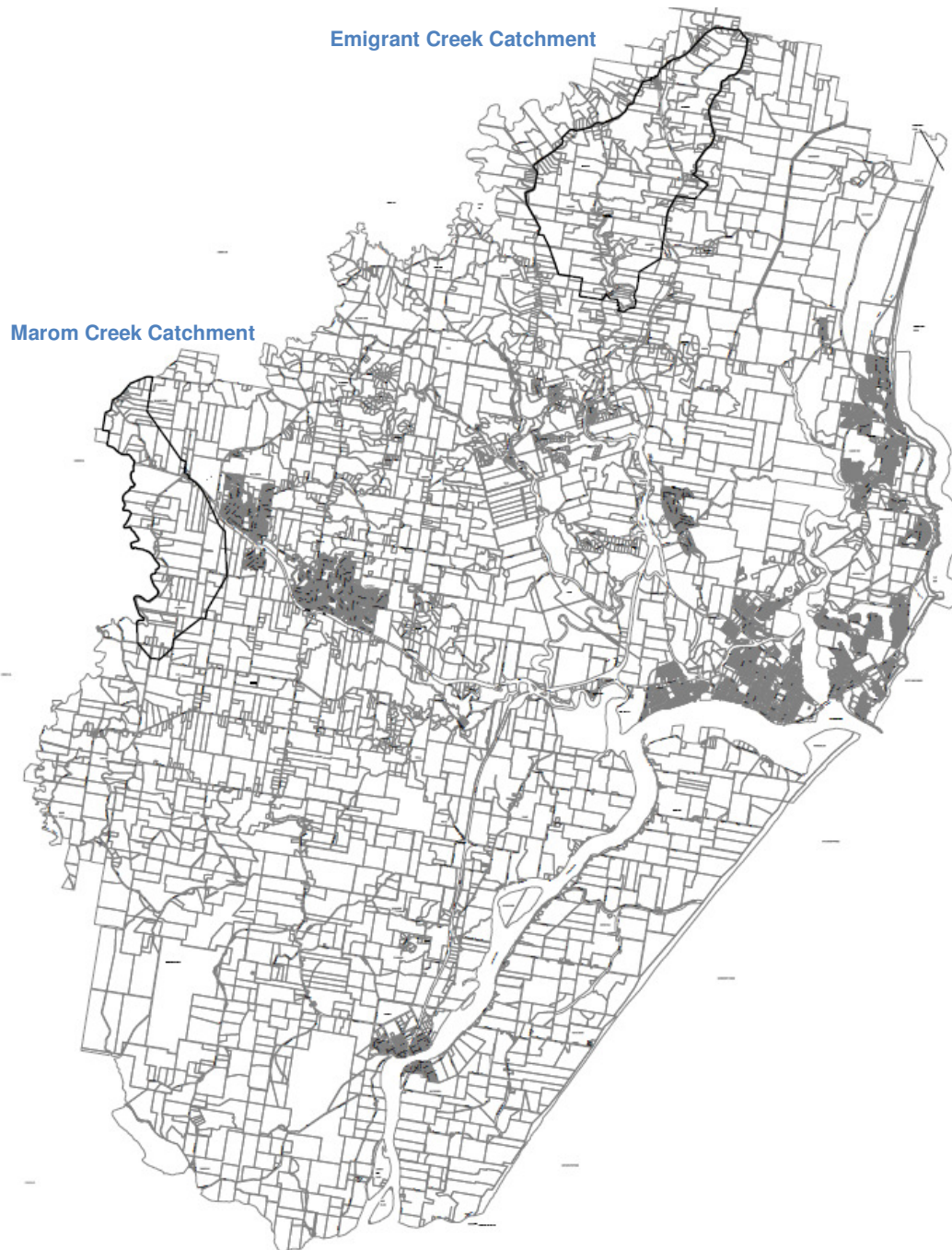


Figure 1: Land application map – Emigrant and Marom Creek Catchments

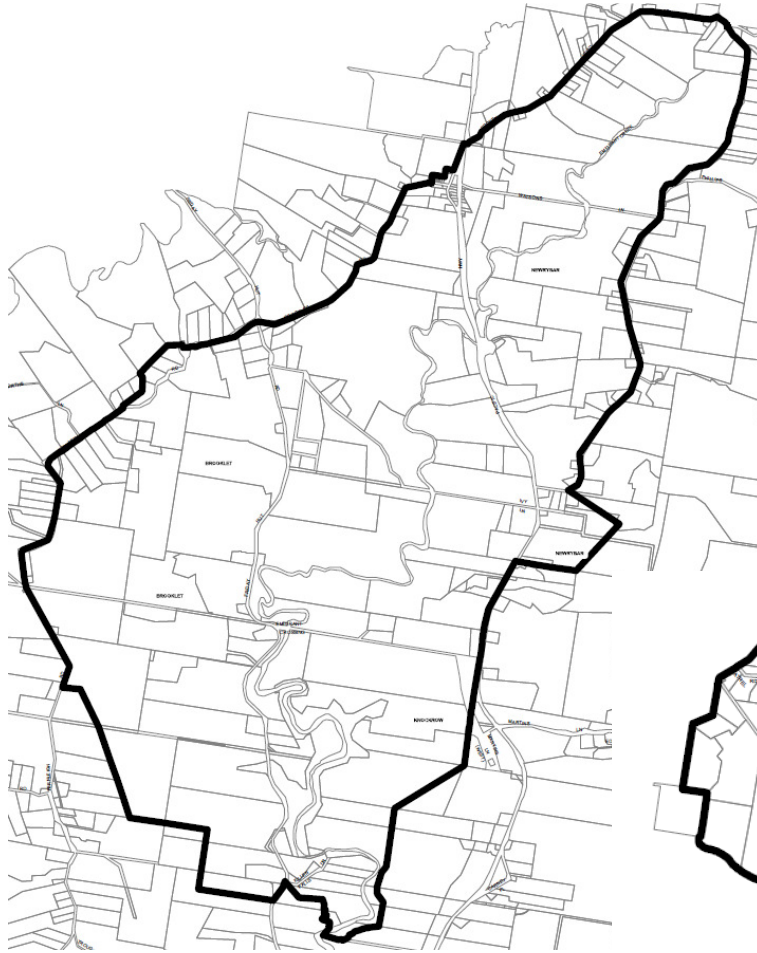


Figure 2: Area 1 – Emigrant Creek Catchment



Figure 3: Area 2 – Marom Creek Catchment

1.4 Council Decisions

Following consideration of the E zone matter by Council's Environmental and Sustainability Committee, Council resolved to adopt the following recommendations of the Committee at its December 2015 Ordinary Meeting [Minute No. 171215/22]:

- 1. That the Council receives and notes the information regarding the NSW Department of Planning and Environment's Northern Councils E Zone Review contained in this report.*
- 2. That the Council convene a briefing session concerning the Northern Councils E Zone Review to examine options to respond to the policy directives made by the Department of Planning and Environment.*
- 3. That Ballina Shire Council send a delegation of staff and Councillors to speak face to face with the current Planning Minister, Local Government Minister and the NSW Premier to address Council's LEP issues and inconsistencies and its unique situation in the Northern Rivers Region.*

Following on from the above, a report was presented to Council at its Ordinary Meeting of 28 April 2016 providing an overview of the key options available to respond to the Northern Councils E Zone Review. The preferred method recommended to Council was a staged approach to the integration of deferred matters which provides for integration of over 50% of the deferred areas into the BLEP 2012 within a two year period. Council resolved to adopt the following recommendations of the report [Minute No. 280416/11]:

- 1. That Council addresses the outcomes of the Northern Councils E Zone Review Recommendations Report by undertaking a staged approach to the integration of deferred matters into Ballina Local Environmental Plan 2012. The staged approach is to be based on Table 1 contained in this report.*
- 2. That Council writes to the Department of Planning and Environment to seek funding support for the integration of the deferred areas into the Ballina Local Environmental Plan 2012 given the State Government's decision to intervene in the process and apply a different set of requirements for environmental protection zones to the northern councils compared to the rest of NSW.*

In relation to item 2 of the above resolution, Council requested funding support from the Department of Planning and Environment in May 2016. The Department initially indicated that no funding would be provided but has now changed its position and has offered Council \$40,000 towards the integration project. The funding offer, including an adjusted staging program to shorten the timeframe of the integration of deferred matters, was reported to Council's Ordinary Meeting of 27 October 2016. Council resolved to accept the offer of funding and to adjust the staging as outlined in section 1.6 of this report [Minute No. 271016/7].

1.5 Gateway Determination

To be completed following Gateway determination.

1.6 Deferred Matter Integration Context and Interpretation

The application of environmental protection zones in Ballina Shire is required to be based on the Northern Councils E Zone Review Final Recommendations Report prepared by the Department of Planning and Environment. This report is supported by a Section 117 Ministerial Direction to ensure the application of E zones and mapped planning controls are consistent with the final recommendations report.

A number of matters set out in the final recommendations report and associated material require interpretation. In this regard, Council has progressed with its integration of the deferred areas based on the following understandings.

1. Primary use of land

Where an E2 or E3 environmental protection zone is proposed, the primary use of the land is to be considered. The primary use of land concept is not required to be directly applied in cases where zones other than E2 or E3 zones are proposed.

Environmental zones can be applied if the primary use of the land is considered to be Environmental Conservation (E2) or Environmental Management (E3) and the land has attributes which have been verified to meet the criteria for an E2 or E3 zone.

The primary use of the land is defined as the main use for which the land has been used for the last two years.

The primary use of land principle does not apply to land which already has a 7(a) Environmental protection (Wetlands) Zone or a 7(l) Environmental Protection (Habitat) Zone.

2. Verifying the E zone criteria

An E zone or other mapped planning controls can be applied to land where the presence of attributes that meet the criteria have been verified by using one or a combination of the following:

- Biodiversity field inspections and ground surveys conducted by an appropriately qualified person.
- Flora and fauna reports conducted by a suitably qualified person (field work must be less than five years old).
- Review of current (not more than five years old) high resolution digital aerial photography verified by another one of these verification techniques.
- Aboriginal heritage field inspections and ground surveys conducted by an appropriately qualified person or someone with extensive field experience.
- Cultural heritage reports conducted by a suitably qualified person and in accordance with current guidelines.
- Consultation with Aboriginal cultural knowledge holders in relation to culturally significant lands in accordance with current guidelines.

It is not mandatory to apply an E zone if the land has been verified to meet the criteria.

3. Transferring previous environmental protection (7) zones

Land that is currently zoned 7(a) Environmental Protection (Wetlands) and 7(l) Environmental Protection (Habitat) under the Ballina LEP 1987 may be transferred to an E2 or E3 zone once the attributes of the land have been verified against the criteria.

4. Public and private land inconsistent with the criteria

Public land may be zoned E2 or E3, despite being inconsistent with the criteria, if the primary use of the land is environmental conservation or environmental management.

Private land may be zoned E2 or E3, despite being inconsistent with the criteria, if it is consistent with a negotiated development outcome (eg master plan, rezoning, development consent or designated offset areas) or with the agreement of the landowner.

5. Voluntarily revegetated land

Land which has been voluntarily revegetated by the current landowner cannot have an E2 or E3 zone applied to it without the landowner's agreement providing:

- The revegetation has been actively undertaken and is not the result of natural regrowth;
- Active revegetation includes a combination of planting, seeding, weed control, fencing, removing stock, watering, ripping, mulching and soil improvement to encourage the natural regeneration of native vegetation; and
- The primary use of the land is agriculture.

Voluntarily revegetated land can be included on a Vegetation Map without the landowner's agreement provided the attributes have been verified to meet the E zone criteria and the primary use of the land is environmental conservation or environmental management.

If revegetation has been undertaken with the support of grant funding which requires ongoing protection of the vegetation, then an E zone may be applied to the land.

6. Zoning of State and regionally significant farmland

When zoning State or regionally significant farmland, council must have regard for the primary use of the land before applying an E zone or a rural zone. Notwithstanding this, the primary use of land principle does not apply to land currently zoned for environmental protection.

7. Application of multiple zones to a single property (split zoned lots)

More than one zone can be applied to properties where the characteristics of different areas of the land reflect different uses of the land.

8. Mapped planning controls and associated clauses

Mapped planning controls can be used to provide protection of environmental attributes as an alternative to an E zone.

Mapped planning controls and associated clauses may be used for protection of the following:

- Matters of public health, safety, risk and hazard such as drinking water catchments, flooding, coastal risk areas and land subject to strict development controls such as steep land.

- Land that contains significant native vegetation, or that has been verified to meet the E zone criteria where the primary use of the land is not environmental conservation or environmental management, may be included on a Vegetation Map.
- A Coastal Risk Map and associated clause is to be used to manage land affected by coastal hazards.

9. Scenic protection and aesthetic values

Council is not permitted to use scenic or aesthetic values as an attribute for the application of an E zone or mapped planning controls.

10. Permissibility of agriculture in E zones

Extensive agriculture is to be listed as permissible with consent in the E2 zone and permissible without consent in the E3 zone.

The E3 zone can encompass areas where extensive agriculture occurs, such as understorey grazing or flood refuge.

1.7 Deferred Matter Integration Program and Staging Overview

Council initially adopted a staged program at its April 2016 Ordinary Meeting to implement the deferred matters into the Ballina Local Environmental Plan 2012 (LEP) over a three year period.

However, to enable acceptance of the funding support from the Department of Planning and Environment an accelerated staging program was adopted by Council at its October 2016 meeting. The adjusted staging program as shown in Figure 4 provides for planning proposals for each stage to be lodged with the Department by June 2017.

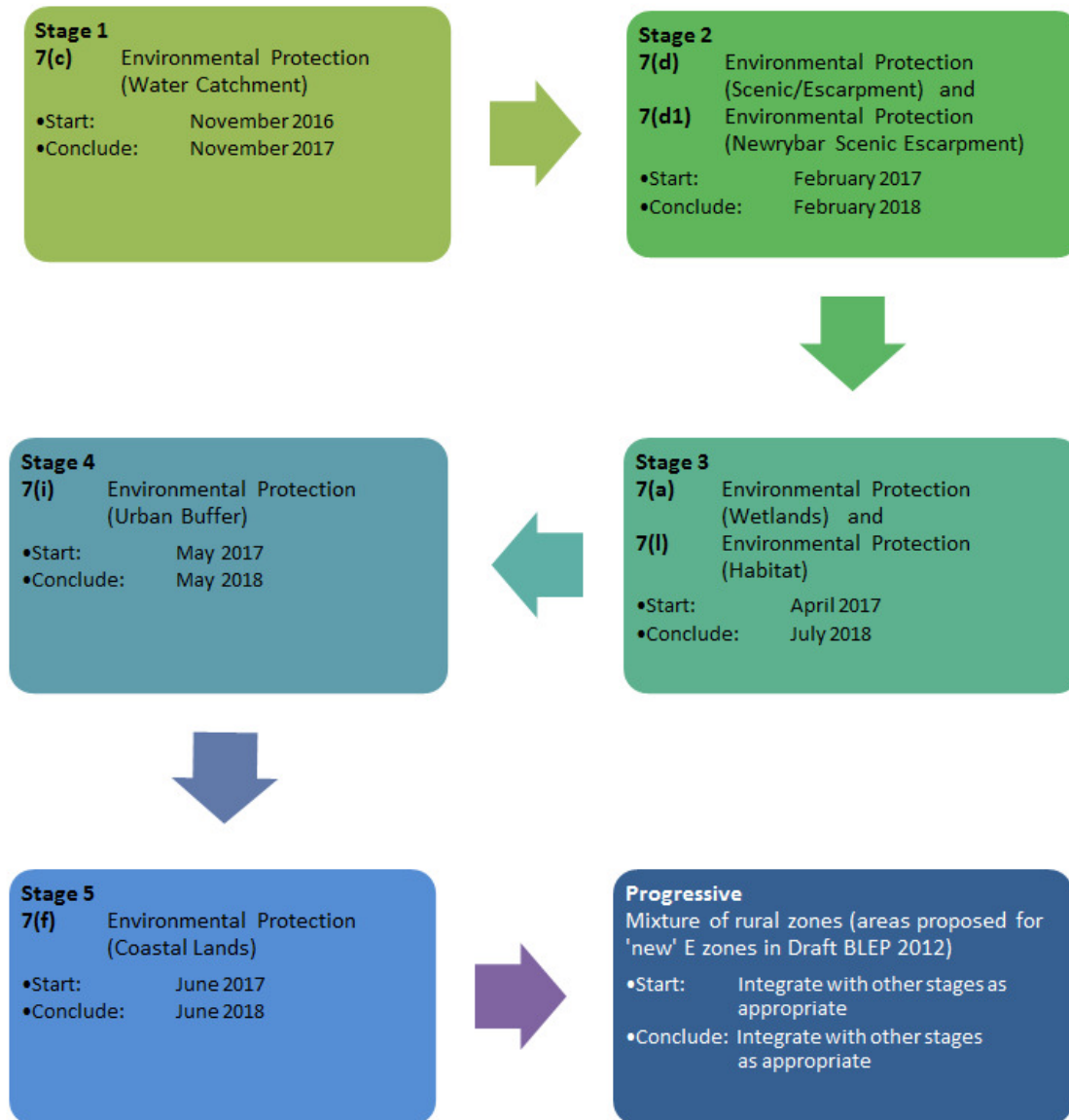


Figure 4: Staging Program for Integration of Deferred Areas into Ballina LEP 2012

2. Objectives & Intended Outcomes

The overarching objective of this planning proposal is to implement Stage 1 of the deferred matters integration program as adopted by Council at its Ordinary Meeting of 27 October 2016. Stage 1 involves the integration into the Ballina Local Environmental Plan (LEP) 2012 of areas in the Emigrant Creek and Marom Creek drinking water catchment areas predominately zoned 7(c) Environmental Protection (Water Catchment) Zone under Ballina LEP 1987. This stage also includes other contiguous areas that were identified for environmental zones under Council's adopted plan (prior to the State Government's decision to defer these areas from the Ballina LEP 2012).

More specifically this planning proposal seeks to achieve the integration of the deferred matters as shown in Figures 2 and 3 into the Ballina LEP 2012 and apply zoning, development standards and other planning provisions to the land shown in Figures 2 and 3 under the terms of the Ballina LEP 2012 through the following:

- Introduce the E2 Environmental Conservation and E3 Environmental Management zones into the Ballina LEP 2012 zoning palette.
- Apply environmental protection zones to land identified as meeting the criteria set out under the Northern Councils E Zone Review Final Recommendations Report.
- Apply rural and special uses zones to other land that does not meet the criteria for application of environmental protection zones as set out under the Northern Councils E Zone Review Final Recommendations Report.
- Apply height of building, minimum lot size, drinking water catchment and heritage provisions to the land.
- Introduce a local clause requiring consideration of certain matters in relation to development applications involving land in environmental protection or waterways zones. (Note: The clause may be adapted during later stages of the deferred matters integration to also include reference to any areas that are to be subject to a vegetation map overlay).
- Recognise existing commercial activities in Newrybar through application of additional permitted uses provisions under the Ballina LEP 2012.
- Adjust the Land Application Map to incorporate the land under the Ballina LEP 2012.

3. Explanation of Provisions

3.1 E2 and E3 Zone Table Introduction

Environmental zones ('E zones') are designed to recognise and protect land that has important environmental value. An overview of the E2 and E3 zones as proposed for introduction into Ballina Shire is provided below.

E2 Environmental Conservation

The E2 zone provides for the protection of key environmental assets within the shire whilst allowing a limited range of land uses that are compatible with the environmental values of such areas. The E2 zone will be applied to areas of high environmental significance where protection of environmental values is warranted, including existing wetland and habitat zones and other suitable areas that meet the set criteria.

Having regard for the outcomes of the Department of Planning's Northern Councils E Zone Review and the history and characteristics of Ballina Shire, it is proposed that the E2 zone be introduced into the Ballina LEP 2012 as follows. The zone provides for a limited range of permissible land uses recognising its targeted application to areas of high environmental value and significance.

Zone E2 Environmental Conservation

1 Objectives of zone

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

2 Permitted without consent

Environmental protection works; Home occupations.

3 Permitted with consent

Dwelling houses; Environmental facilities; Extensive agriculture; Research stations; Roads.

4 Prohibited

Business premises; Hotel or motel accommodation; Industries; Multi dwelling housing; Recreation facilities (major); Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3.

E3 Environmental Management

The E3 zone provides for the recognition, management and protection of environmental values whilst providing for a range of land uses compatible with those values. This zone is slightly more flexible in the range of permissible land uses than the E2 zone.

Having regard for the outcomes of the Department of Planning's Northern Councils E Zone Review and the history and characteristics of Ballina Shire, it is proposed that the E3 zone be introduced in the Ballina LEP 2012 as follows. The zone provides for a limited range of permissible land uses recognising its targeted application to areas of environmental value and significance.

Zone E3 Environmental Management

1 Objectives of zone

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.

2 Permitted without consent

Environmental protection works; Extensive agriculture; Home occupations.

3 Permitted with consent

Community facilities; Dual occupancies (attached); Dwelling houses; Emergency services facilities; Environmental facilities; Home-based child care; Home businesses; Information and education facilities; Kiosks; Recreation areas; Research stations; Roads; Roadside stalls; Water recreation structures.

4 Prohibited

Industries; Multi dwelling housing; Residential flat buildings; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3.

These zones are proposed for introduction in relation to both this planning proposal and for application in relation to subsequent planning proposals that relate to the integration of the deferred matters into the Ballina LEP 2012.

3.2 Application of E Zones

The application of E zones to deferred land in the shire is based on the Department of Planning and Environment's Northern Councils E Zone Final Recommendations Report and the associated s.117 Ministerial Direction under the *Environmental Planning and Assessment Act 1979*.

Land proposed to be zoned E2 or E3 must contain one or more of the criteria listed in tables 1 and 2 of the Department's Final Recommendations Report. The criteria is summarised in Table 1 below.

Table 1: Criteria for Application of Environmental Zones

Criteria	Description
E2 Environmental Conservation	
SEPP26 Littoral Rainforests	Land mapped as littoral rainforest in accordance with the SEPP26 provisions.
SEPP14 Coastal Wetlands	Land mapped as coastal wetlands in accordance with the SEPP14 provisions.
Endangered Ecological Communities (EECs)	Land containing vegetation communities listed as EECs under the <i>Threatened Species Conservation Act 1995</i> and the <i>Environment Protection and Biodiversity Conservation Act 1999</i> .
Key Threatened Species Habitat	This criterion includes: <ul style="list-style-type: none"> • old-growth forests where overstorey/canopy trees are in the late mature stage of growth; • areas of predicted high conservation value for forest fauna or endemic invertebrates; and • habitats for threatened species or endangered populations that cannot withstand further loss where the threatened species or endangered population is present.
Over-cleared vegetation communities	Land comprising: <ul style="list-style-type: none"> • over-cleared vegetation communities where more than 70% of the original (pre 1750) extent of the native vegetation type has been cleared; and • native vegetation in over-cleared Mitchell landscapes.
Culturally significant lands	Areas of culturally significant lands such as Aboriginal object sites, Aboriginal places of heritage significance and other significant objects identified by the local Aboriginal community.
E3 Environmental Management	
Riparian and estuarine vegetation and wetlands	Land comprising: <ul style="list-style-type: none"> • riparian and estuarine vegetation on waterfront land (the bed of any river, lake or estuary and any land within 40m of the river banks, lake shore or estuary mean high water mark); or • wetland areas other than those mapped as SEPP14 areas.
Rare, endangered and vulnerable forest ecosystems	Land comprising areas of rare, endangered and vulnerable forest ecosystems as defined by JANIS (refer to Appendix 1 of the Department's Final Recommendations Report).
Native vegetation on coastal foreshores	Native vegetation on land with frontage, or adjoining or adjacent to, a beach, estuary, coastal lake, headland, cliff or rock platform.

A survey of the Killen Falls area (parts of which are proposed to be zoned for environmental purposes) is currently being undertaken. The survey will provide more accurate cadastral boundaries which will be aligned with vegetation depicted in aerial photography to facilitate the application of zone boundaries. The planning proposal will be updated once this information is received.

3.3 Application of Rural Zones

The Ballina LEP 2012 contains two rural zones applicable to land used for agricultural purposes as well as areas identified for future urban land and areas of extractive and mineral resources. An overview of the two rural zones is provided below.

The RU1 Primary Production zone provides for the identification and management of land suitable for most kinds of primary production. It is suitable for application to rural land that supports a variety of agricultural activity including extensive agriculture, horticulture and intensive livestock agriculture.

The RU2 Rural Landscape zone provides for the management of rural land that has landscape values or that is identified as having some agricultural limitations. It is suitable for application to rural areas not identified for inclusion in the RU1 zone or an environmental protection zone.

The methodology for the application of zone boundaries is based on aerial photography, cadastral boundaries and data and mapping relating to agricultural classification and significance produced by the NSW Department of Primary Industries and the NSW Department of Planning.

Where the characteristics of the land warrant the application of a rural zone, such zones have been applied to land based on the following criteria:

- Land where both the following characteristics apply forms the basis for the application of the RU1 zone:
 1. Land is identified as class 1, 2, 3 or 4 agricultural land by agricultural land classification mapping provided by the NSW Department of Primary Industries.
 2. Land is identified as State or Regionally significant farmland under the Northern Rivers Farmland Protection Project and the associated s.117 Direction (5.3).

The application of the RU1 zone will be rounded to match cadastral boundaries as follows:

1. Where a land partially meets the criteria for the application of the RU1 zone, the RU1 zone is applied to the entire land parcel. This approach ensures the identification of all land that meets the RU1 criteria as primary production land.

The exception to this approach is where the area of a land parcel meeting the criteria for the RU1 zone is less than 5%. In such circumstances, the RU2 zone is applied.

2. Where land does not meet the RU1 criteria but is bound entirely by land that does meet the RU1 criteria, the RU1 zone will be applied to the land parcel(s).

- The RU2 zone is applied to all land that is not identified as RU1 based on the above.

The above approach is aimed at reasonably managing agricultural land whilst also providing, as far as practicable, for clear identification of zone boundaries on the ground. This approach is considered appropriate as the intent of this zone is to identify land considered suited to a variety of agricultural pursuits and a rounded approach provides for simplification of the interpretation of the zoning maps.

3.4 Application of Special Use Zones

The intent of the SP2 Infrastructure zone is to provide for specific uses (including ancillary or some other compatible uses) on identified sites to support the provision and retention of key infrastructure. The zone also serves to identify the location of such uses clearly to the community.

It is proposed to apply the SP2 zone to an area of land on which Rous County Council water supply infrastructure at the Emigrant Creek Dam. The zoning is accompanied by a notation on the zoning map recognising the water supply system use of the land.

3.5 Introduction of Natural Areas and Habitat Heads of Consideration Provision

As part of Council's adopted Ballina LEP 2012, Council included a clause that required the consideration of certain matters in relation to development applications involving land on which natural and/or habitat values were identified. This provision was not allowed to be included in the Ballina LEP 2012 due to the State Government's decision to undertake a review of E zones.

It is proposed that this provision now be introduced into the Ballina LEP 2012 to enable consideration of the specified matters in relation to E zones and waterways zones (as originally intended). The clause can also be adapted during later stages of the deferred matters integration to include reference to any areas that are to be subject to a vegetation map overlay.

The clause as originally adopted by Council is reproduced below to show the scope and intent of the proposed provision. The clause is designed to address direct and indirect impacts that may be caused by development in relation to significant water, biodiversity, public land and soil resources and attributes.

Natural areas and habitat [local]

- (1) The objective of this clause is to provide protection to the ecological, social and economic values of natural areas.
- (2) This clause applies to land located within or adjoining land or water in any of the following zones:
 - (a) Zone E1 National Parks and Nature Reserves,
 - (b) Zone E2 Environmental Conservation,
 - (c) Zone E3 Environmental Management,
 - (d) Zone W1 Natural Waterways,
 - (e) Zone W2 Recreational Waterways.
- (3) In determining whether to grant consent in relation to an application to carry out development on land to which this clause applies, the consent authority must be satisfied that the proposed development is sited, designed and managed to avoid or mitigate potential adverse impacts associated with the development in relation to the following matters:
 - (a) surface water and ground water quality and quantity, and
 - (b) terrestrial and aquatic flora and fauna, and
 - (c) ecological, habitat and biodiversity values, and
 - (d) access to public land, and
 - (e) declared aquatic reserves, marine parks, national parks or nature reserves, and

- (f) soil erosion and sedimentation.

3.6 Additional Permitted Uses

Schedule 1 of the BLEP 2012 (and associated Clause 2.5) refers to specific land parcels where additional permitted uses may be undertaken despite other provisions of the LEP. The listing of premises in this schedule provides clarity and definition around the uses permitted on certain land to avoid ambiguity.

The Macadamia Castle at Knockrow and various commercial premises in Newrybar are currently zoned 7(c) Environmental Protection (Water Catchment) Zone under Ballina LEP 1987 and will be integrated into Ballina LEP 2012 during Stage 1. These land parcels are recommended for inclusion in Schedule 1 and are listed below in Table 2 to recognise existing land use activities. This is consistent with Council’s originally proposed approach to these properties during its LEP renewal program (2006-2012).

Table 2: Additional Permitted Uses – Listings

Parcel Number	Property Address	Development Permitted With Consent
637	Lot 2 DP 785372, 419 Hinterland Way, Knockrow	Restaurant or café, Shop.
7472	Lot 3 DP 569455, 19 Old Pacific Highway, Newrybar	Shop.
17449	Lot 4 DP 1040699, 14 Old Pacific Highway, Newrybar	Shop.
17695	Lot 5 DP 1055157, 22 Old Pacific Highway, Newrybar	Shop.
17696	Lot 6 DP 1055157, 18-20 Old Pacific Highway, Newrybar	Restaurant or café.

3.7 Heritage Conservation

Items and places of environmental heritage significance in Ballina Shire have been identified based on the findings of the Draft Shire Wide Community Based Heritage Study (2008). Clause 5.10 of BLEP 2012 aims to conserve the heritage significance of heritage items and heritage conservation areas within the shire, including the associated fabric, settings and views, by outlining the matters for consideration with respect to development involving heritage items or within heritage conservation areas.

General heritage items and archaeological sites that have been identified as having local significance are listed in Schedule 5 of BLEP 2012 and are shown on the Heritage Map. The properties listed in Table 3 below are located in deferred areas within Stage 1 of the E zone integration program and are listed for inclusion in Schedule 5 of BLEP 2012. This is consistent with Council’s originally proposed approach to these properties during its LEP renewal program (2006-2012).

Table 3: Items for inclusion in BLEP 2012 Schedule 5 Environmental Heritage

Suburb	Item name	Address	Property description	Significance	Item number
Newrybar	Killen Falls	Killen Falls Drive (Public Reserve)	Lot 1 DP 251994	Local	177
Wollongbar	Wollongbar Agricultural Institute, old snow shed, registers, dreadnought farm scheme memorabilia and photographs (moveable heritage items), and group of 4 houses on Bruxner Highway adjoining the research station	Bruxner Highway	Lot 237 DP 755745	Local	195

3.8 Mapping Overview

An overview of the affected map sets and the changes being introduced in relation to this planning proposal is provided in Tables 4 and 5. The maps are provided in Appendix 4.

Table 4: Proposed changes to map sets for Area 1 – Emigrant Creek Catchment

Map Set	Proposed Change
Land use zoning map	- E2 (Emigrant Creek) - E3 (Killen Falls Reserve) - SP2 (Rous Water infrastructure) - RU1 (remainder)
Lot size map	- 20 ha applies to Lot 3 DP 1153559 - 40 ha to remainder of land
Height of buildings map	8.5m
Drinking water catchment map	Overlay mapping of Emigrant Creek water supply catchments to enable application of Clause 7.4 Drinking Water Catchments to proposals for development.
Additional permitted uses map	Five land parcels to include in Schedule 1 to recognise land uses (see Table 2)
Heritage map	Add item no. 177 to Schedule 5 (see Table 3)
Land application map	Inclusion of deferred land under the BLEP 2012

Table 5: Proposed changes to map sets for Area 2 – Marom Creek Catchment

Map Set	Proposed Change
Land use zoning map	RU1
Lot size map	40 ha
Height of buildings map	8.5m
Drinking water catchment map	Overlay mapping of Marom Creek water supply catchments to enable application of Clause 7.4 Drinking Water Catchments to proposals for development.
Heritage map	Add item no. 195 to Schedule 5 (see Table 3)
Land application map	Inclusion of deferred land under the BLEP 2012

4. Justification

4.1 Section A – Need for the Planning Proposal

Q1 Is the planning proposal a result of any strategic study or report?

Yes, the Northern Councils E Zone Review Final Recommendations Report published by the Department of Planning and Environment in October 2015. This report outlines the criteria for the application of environmental zones (“E” zones) to deferred matters previously identified as an E zone but excluded from the new plan (Ballina LEP 2012).

The planning proposal also follows on from extensive study and reporting completed as part of the Ballina LEP renewal program between 2006 and 2012.

Q2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. A planning proposal is the appropriate and only mechanism to integrate deferred matters into the Ballina LEP 2012.

4.2 Section B – Relationship to Strategic Planning Framework

Q3 Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?

The planning proposal is consistent with the Far North Coast Regional Strategy (2012) which provides the regional framework for the consideration of policy development and the overall vision of the future.

The proposal is also consistent with the Draft North Coast Regional Plan (2016) which is the proposed blueprint for sustainable development in the Far North Coast (and Mid North Coast) for the next 20 years.

Q4 Is the planning proposal consistent with a council’s local strategy or other local strategic plan?

The planning proposal is consistent with the principles of Council’s Community Strategic Plan and other local strategies in that it seeks to achieve application of a single local environmental plan to the shire consistent with local and State planning policy.

Q5 Is the planning proposal consistent with applicable State Environmental Planning Policies?

The proposal is considered to be generally consistent with applicable State Environmental Planning Policies (SEPPs).

Q6 Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The proposal is consistent with the relevant Section 117 Directions. A Section 117 Direction checklist for the planning proposal is contained in Appendix 1.

4.3 Section C – Environmental, Social and Economic Impact

Q7 Is there any likelihood that critical habitat or threatened species, population or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The amendments contained in this proposal are not expected to impact adversely on critical habitats, threatened species, populations or ecological communities or their habitats.

Q8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No significant adverse environmental impacts are likely to arise as a result of the planning proposal.

Q9 Has the planning proposal adequately addressed any social and economic effects?

The proposal will facilitate the provision of a more efficient and effective land use planning framework. The social and economic impacts associated with the proposal are considered to be positive.

4.4 Section D – State and Commonwealth Interests

Q10 Is there adequate public infrastructure for the planning proposal?

The planning proposal does not create the need for any additional public infrastructure.

Q11 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

Consultation will be undertaken with relevant agencies as required by the Gateway determination during the public exhibition stage of the LEP amendment.

5. Mapping

This planning proposal will necessitate updates to the following BLEP 2012 maps:

- Land Zoning Map;
- Lot Size Map;
- Height of Buildings Map;
- Heritage Map;
- Drinking Water Catchment Map;
- Additional Permitted Uses Map; and
- Land Application Map.

6. Community Consultation

This proposal will be exhibited in accordance with the Gateway determination and the terms of the *Environmental Planning and Assessment Act 1979*.

7. Project Timeline

The proposed timeline for completion of the planning proposal is as follows:

Plan Making Step	Estimated Completion (Before)
Gateway Determination	February 2017
Government Agency Consultation	April 2017
Public Exhibition Period	June 2017
Public Hearing	N/A
Submissions Assessment	August 2017
RPA Assessment of Planning Proposal and Exhibition Outcomes	September 2017
Submission of Endorsed LEP to DP&I for Finalisation	October 2017
RPA Decision to Make the LEP Amendment (if delegated)	N/A [#]
Forwarding of LEP Amendment to DP&I for Notification (if delegated)	N/A [#]

[#] Council is not proposing to exercise plan finalisation functions under delegation.

Appendices

Appendix 1 – s.117 Direction Checklist

Section 117 Direction Checklist	
Planning Proposal – Deferred Matters (E Zone Integration) – Stage 1	
Direction No.	Compliance of Planning Proposal
1. Employment and Resources	
1.1 Business and Industrial Zones	Does not apply to planning proposal.
1.2 Rural Zones	<p>Justifiably inconsistent.</p> <p>The planning proposal involves the rezoning of rural land to an environmental zone (E2 or E3). The inconsistency with this Direction is justified given that the E zones are proposed in accordance with the NSW Government's Northern Councils E Zone Review Final Recommendations Report and associated Ministerial Direction.</p> <p>The planning proposal provides for extensive agriculture as a permissible land use in both the E2 and E3 zones enabling certain agricultural activities on the land.</p> <p>The opportunity for the erection of dwelling houses on rural land is consistent with existing provisions of the Ballina LEP 2012.</p> <p>Accordingly, the planning proposal's inconsistency with this direction is considered justifiable under the circumstances.</p>
1.3 Mining, Petroleum Production and Extractive Industries	<p>Consistent.</p> <p>This proposal does not include any amendments that will result in compromising any future extraction of coal, minerals, petroleum or other resources.</p>
1.4 Oyster Aquaculture	Does not apply to planning proposal.
1.5 Rural Land	<p>Consistent.</p> <p>The planning proposal has been prepared having regard for the Rural Planning Principles in the <i>State Environmental Planning Policy (Rural Lands) 2008</i> and the NSW Government's Northern Councils E Zone Review Final Recommendations Report.</p> <p>The planning proposal provides for extensive agriculture as a permissible land use in both the E2 and E3 zones enabling certain agricultural activities on the land.</p>
2. Environment and Heritage	
2.1 Environmental Protection Zones	<p>Consistent.</p> <p>The planning proposal involves the application of environmental zones to land which meets the criteria contained within the NSW Government's Northern Councils E Zone Review Final Recommendations Report. This provides for the protection and conservation of environmentally sensitive areas.</p>
2.2 Coastal Protection	Does not apply to planning proposal.
2.3 Heritage Conservation	<p>Consistent.</p> <p>The proposed amendments to Schedule 5 of the BLEP 2012 and associated Heritage Map provide for the conservation of items identified as having heritage significance.</p>
2.4 Recreation Vehicle Areas	<p>Consistent.</p> <p>The proposal will not result in any adverse impacts from recreation vehicles on sensitive land or land with significant conservation values.</p>
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	<p>Consistent.</p> <p>The proposed environmental zones are consistent with the criteria as outlined in the Northern Councils E Zone Review Final Recommendations.</p>
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	Does not apply to planning proposal.
3.2 Caravan Parks and Manufactured Home Estates	<p>Consistent.</p> <p>This proposal will not result in any reduction in the existing availability of land for caravan parks or manufactured home estates.</p>

Section 117 Direction Checklist	
Planning Proposal – Deferred Matters (E Zone Integration) – Stage 1	
Direction No.	Compliance of Planning Proposal
3.3 Home Occupations	Consistent. The proposal will not affect any existing permissibility or exemptions for home occupations.
3.4 Integrated Land Use and Transport	Consistent. This proposal will not result in any negative impacts on accessibility or transport movements.
3.5 Development Near Licensed Aerodromes	Does not apply to planning proposal.
3.6 Shooting Ranges	Does not apply to planning proposal.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	Does not apply to planning proposal.
4.2 Mine Subsidence and Unstable Land	Does not apply to planning proposal.
4.3 Flood Prone Land	Does not apply to planning proposal.
4.4 Planning for Bushfire Protection	Consistent (subject to consultation with the NSW Rural Fire Service). The proposal will result in the alteration to some planning provisions affecting bush fire prone land. This results from changes to zoning and associated planning controls. The changes to zones and planning controls are intended to reflect the characteristics of the land and current and planned land use. Consultation will be undertaken with the NSW Rural Fire Service in accordance with this Direction.
5. Regional Planning	
5.1 Implementation of Regional Strategies	Consistent. The planning proposal is generally consistent with the planning framework set out under the Far North Coast Regional Strategy.
5.2 Sydney Drinking Water Catchments	Does not apply to Ballina Shire.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Consistent. The proposal does not propose the rezoning of identified significant farmland for urban, residential or rural residential purposes.
5.4 Commercial and Retail Development	Does not apply to planning proposal.
5.5 Development in the vicinity of Ellalong Paxton and Millfield (Cessnock LGA).	Revoked.
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	Revoked.
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	Revoked.
5.8 Second Sydney Airport: Badgerys Creek	Does not apply to Ballina Shire.
5.9 North West Rail Link Corridor Strategy	Does not apply to Ballina Shire.

Section 117 Direction Checklist	
Planning Proposal – Deferred Matters (E Zone Integration) – Stage 1	
Direction No.	Compliance of Planning Proposal
5.10 Implementation of Regional Plans	Consistent. The proposal is generally consistent with the vision, land use strategy, goals, directions and actions contained in the Far North Coast Regional Strategy and the Draft North Coast Regional Plan.
6. Local Plan Making	
6.1 Approval and Referral Requirements	Consistent. The planning proposal does not introduce any new concurrence or consultation provisions or any additional designated development types.
6.2 Reserving Land for Public Purposes	Consistent. The proposal includes a change to the zoning and associated planning controls for the Killen Falls public reserve. The proposed changes do not promote the acquisition of land or changes to the reserve status of the land.
6.3 Site Specific Provisions	Does not apply to planning proposal.
7. Metropolitan Planning	
7.1 Implementation of the Metropolitan Strategy	Does not apply to Ballina Shire.
7.2 Implementation of Greater Macarthur Land Release Investigation	Does not apply to Ballina Shire.

Appendix 2 – Council Resolutions

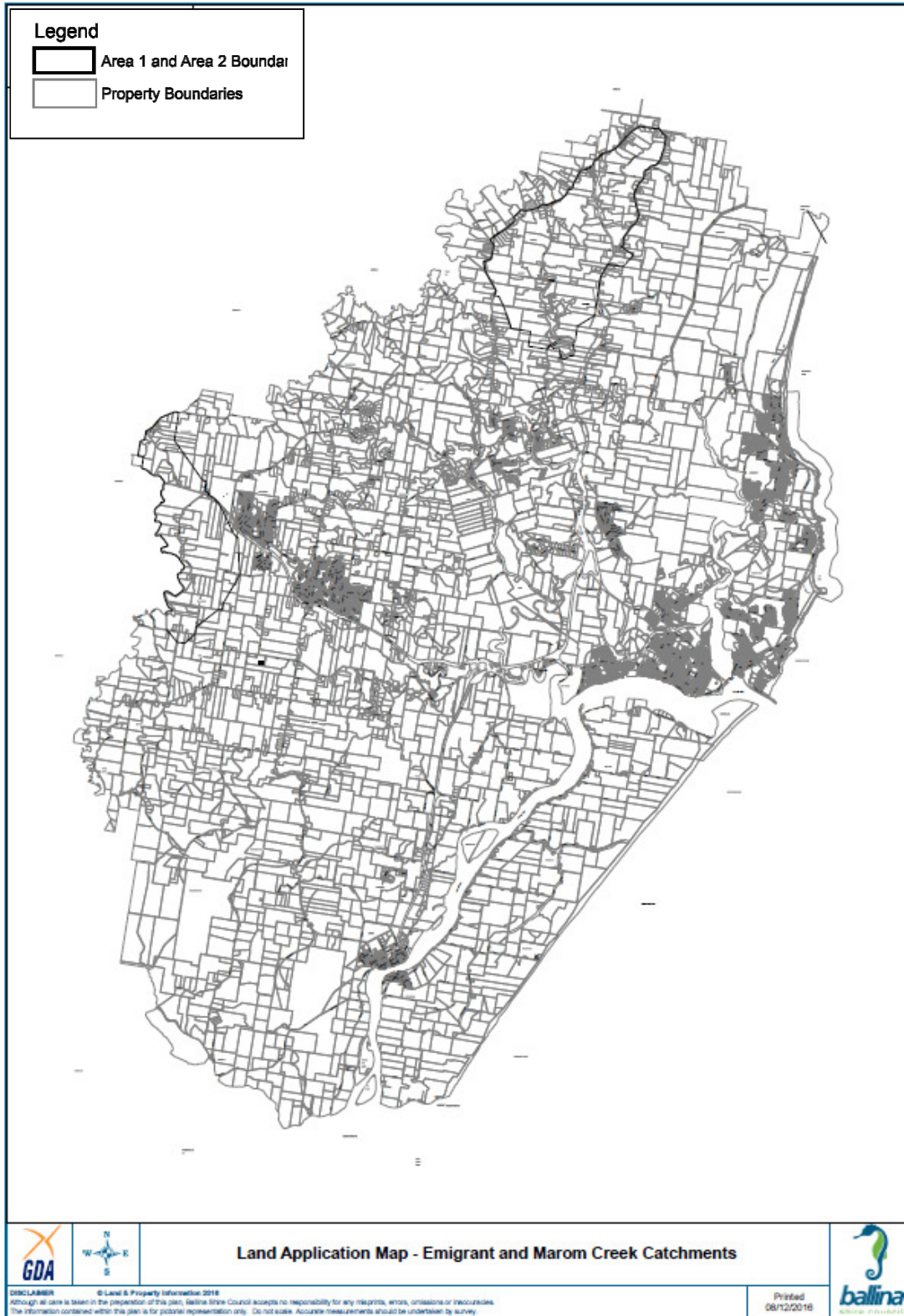
A copy of Council resolutions relating to the planning proposal will be included here.

Appendix 3 – Gateway Determination

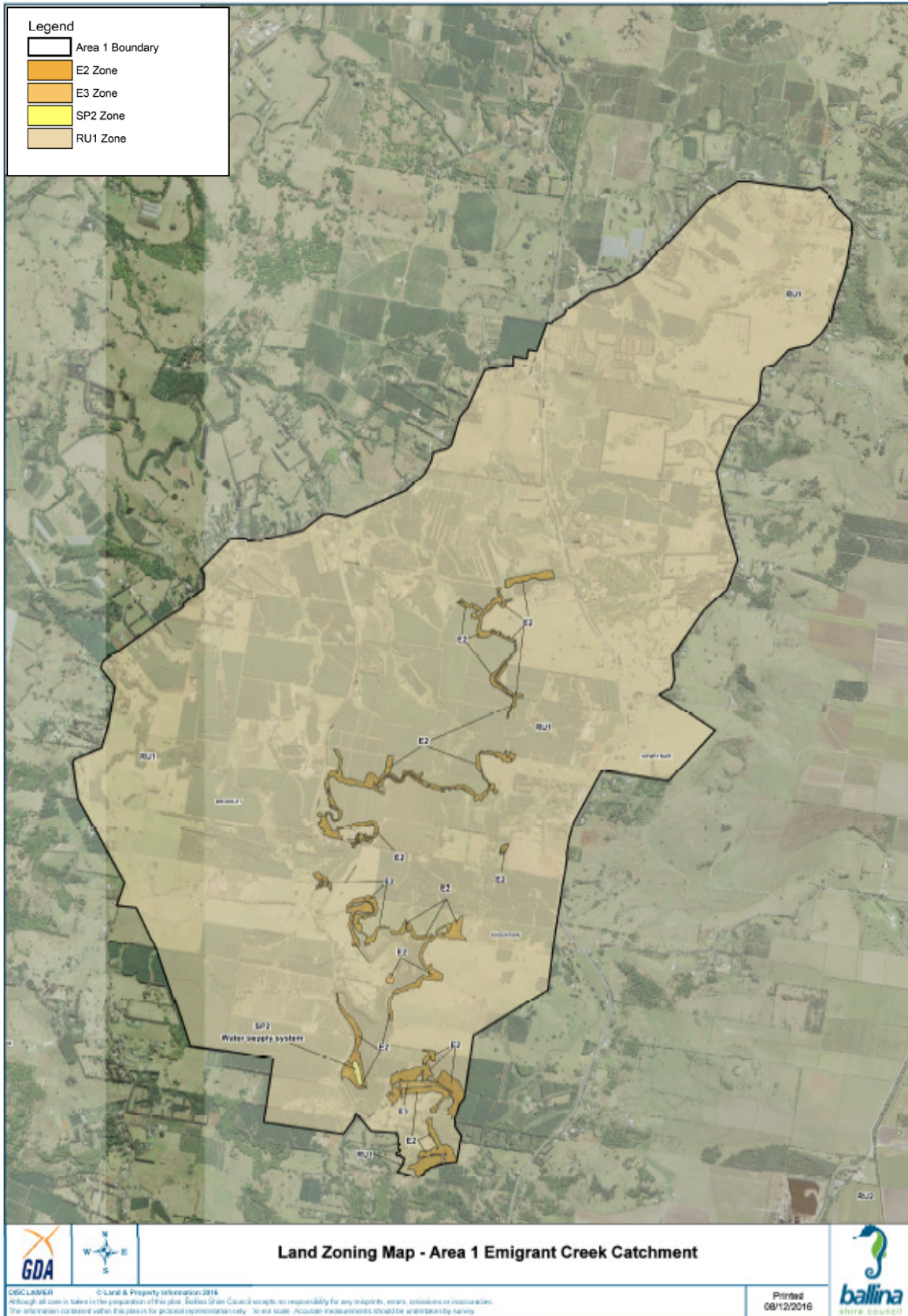
A copy of the Gateway determination will be included here.

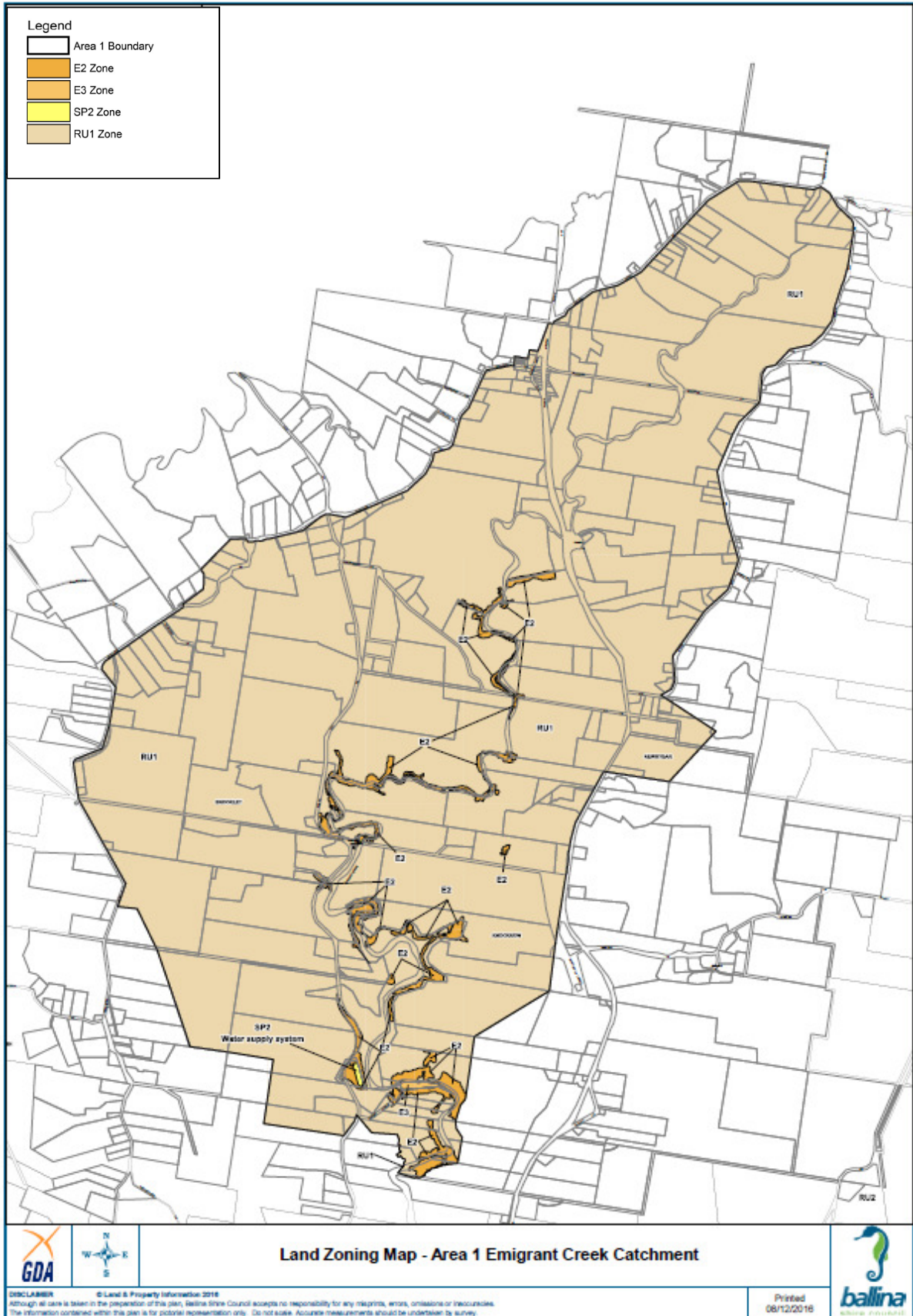
Appendix 4 – Mapping

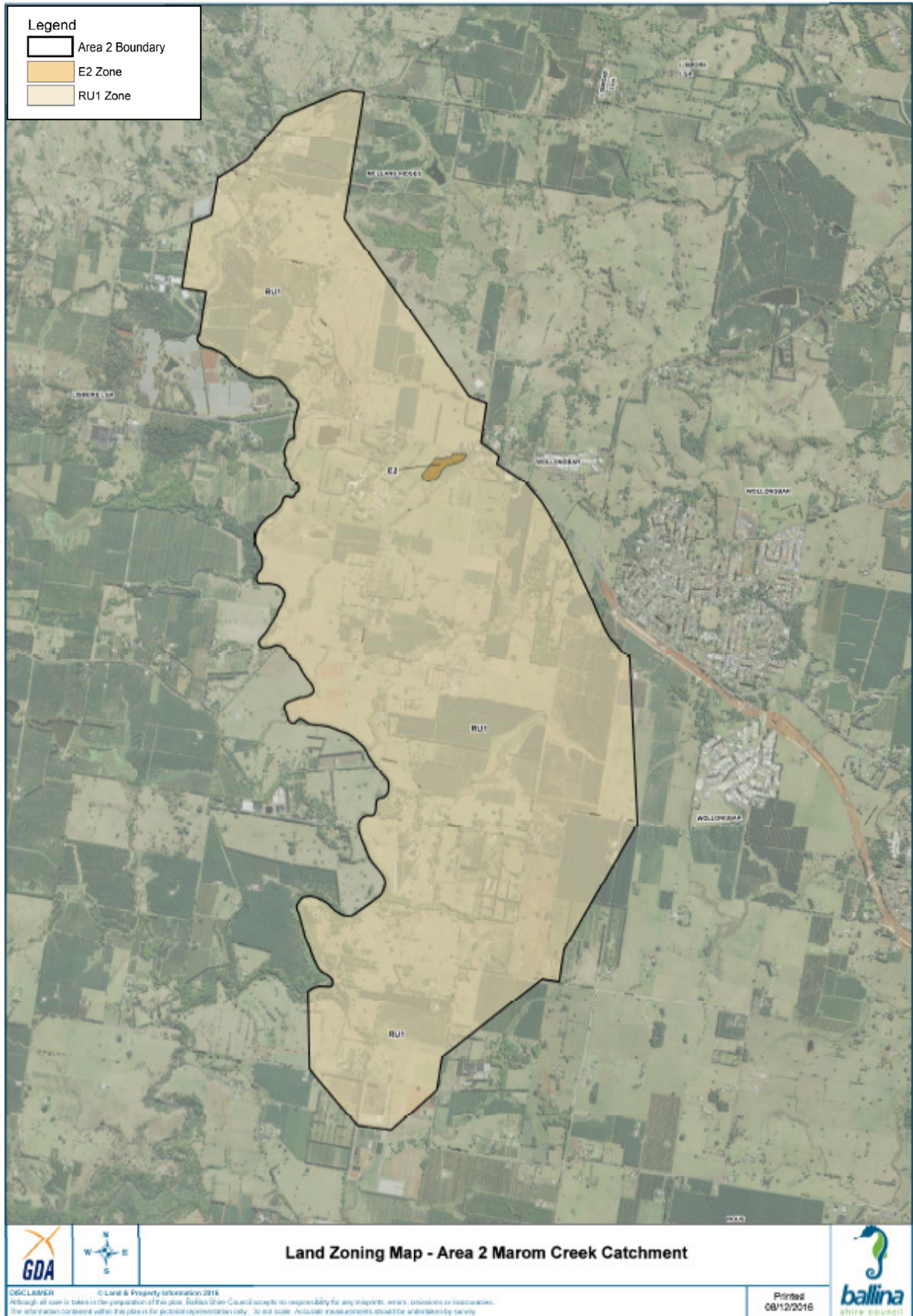
Land Application Map:

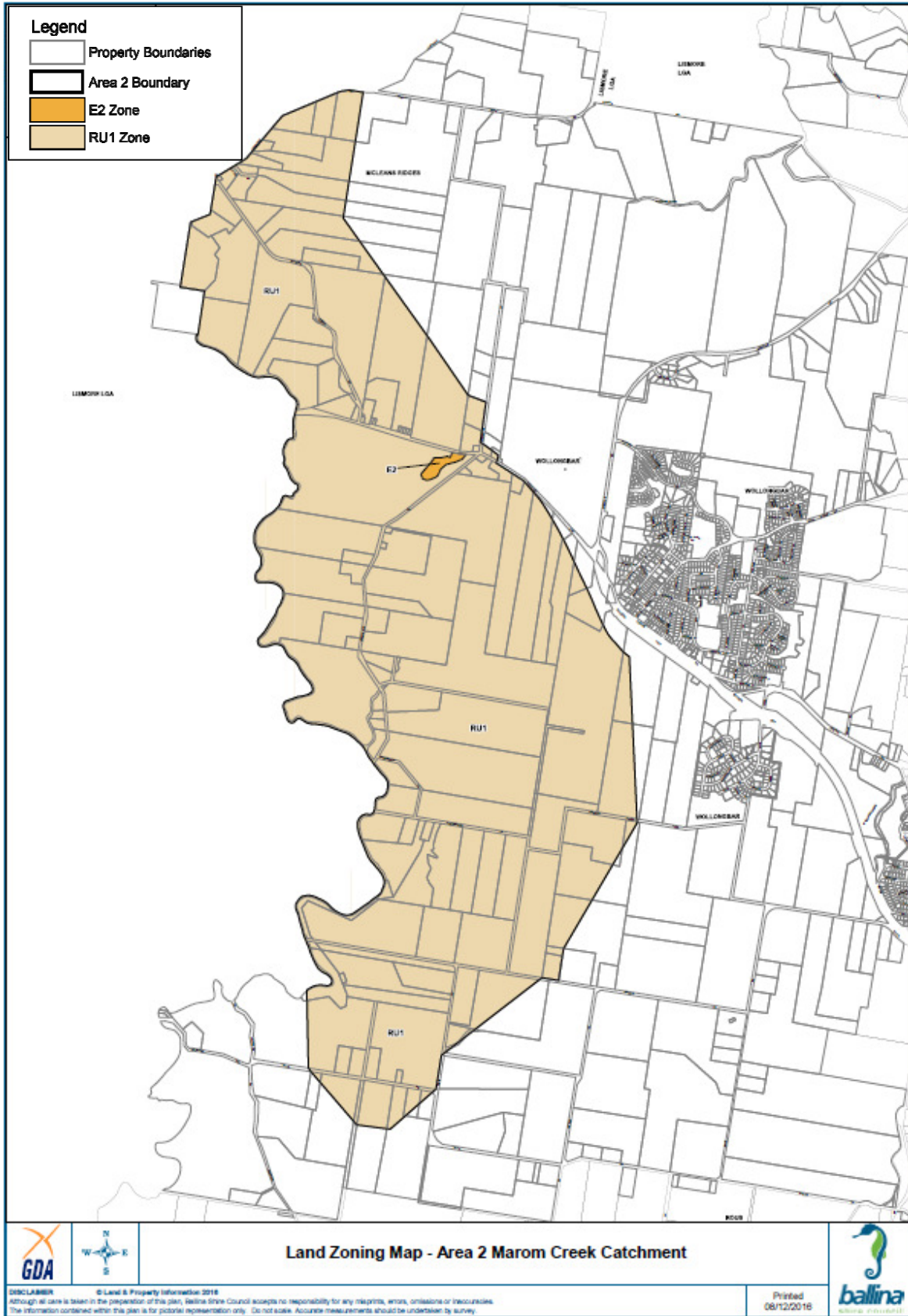


Land Zoning Maps:

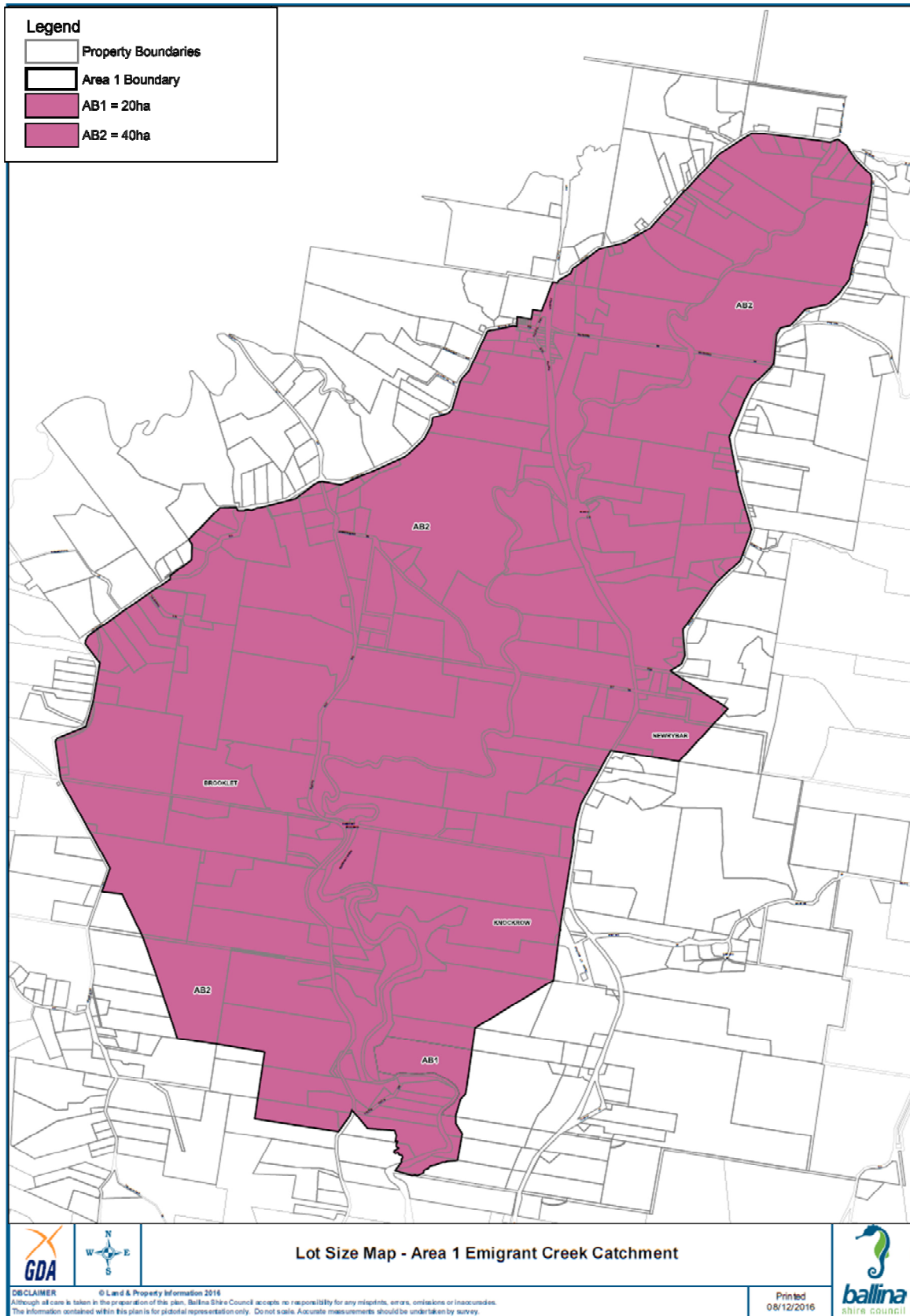




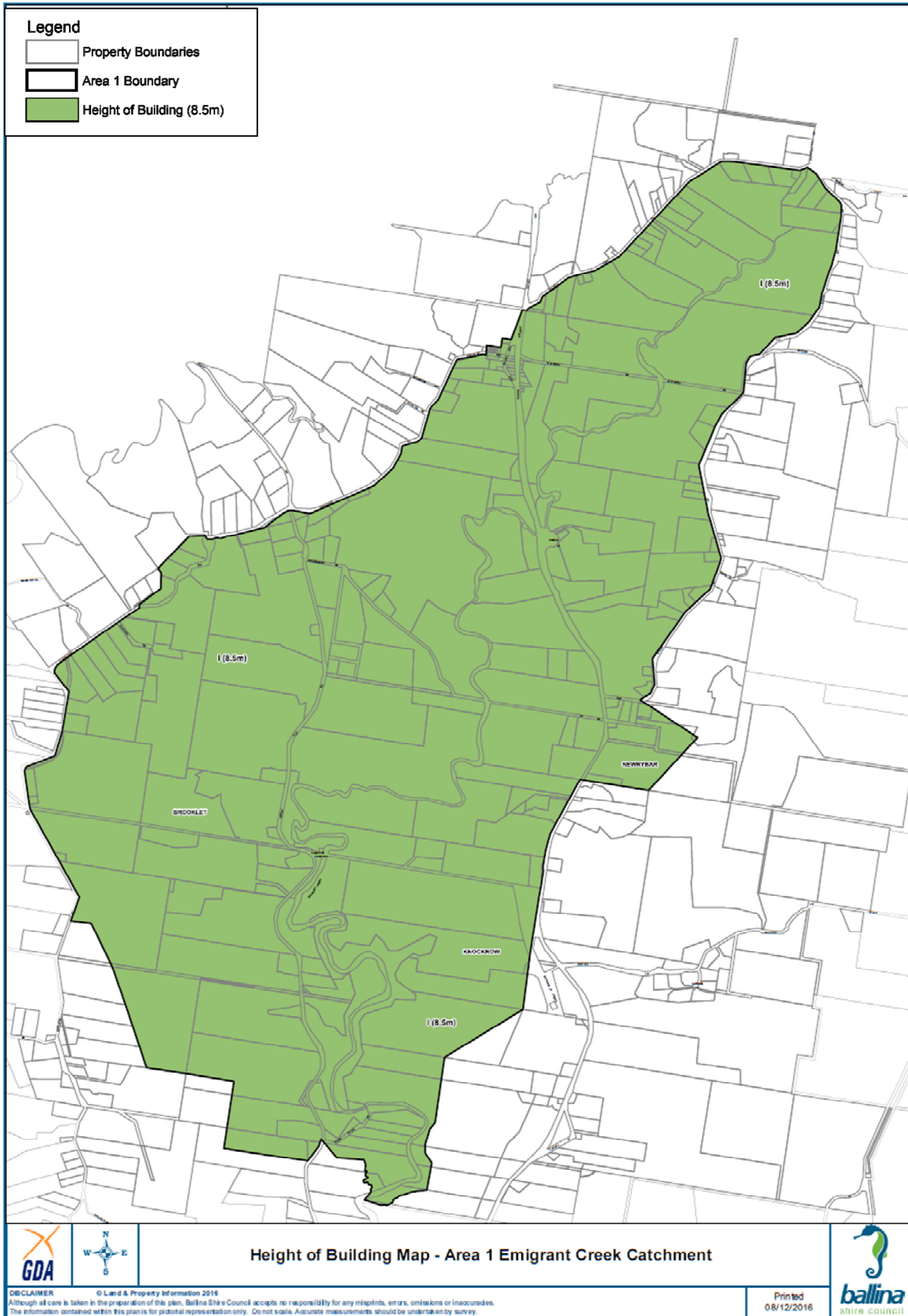


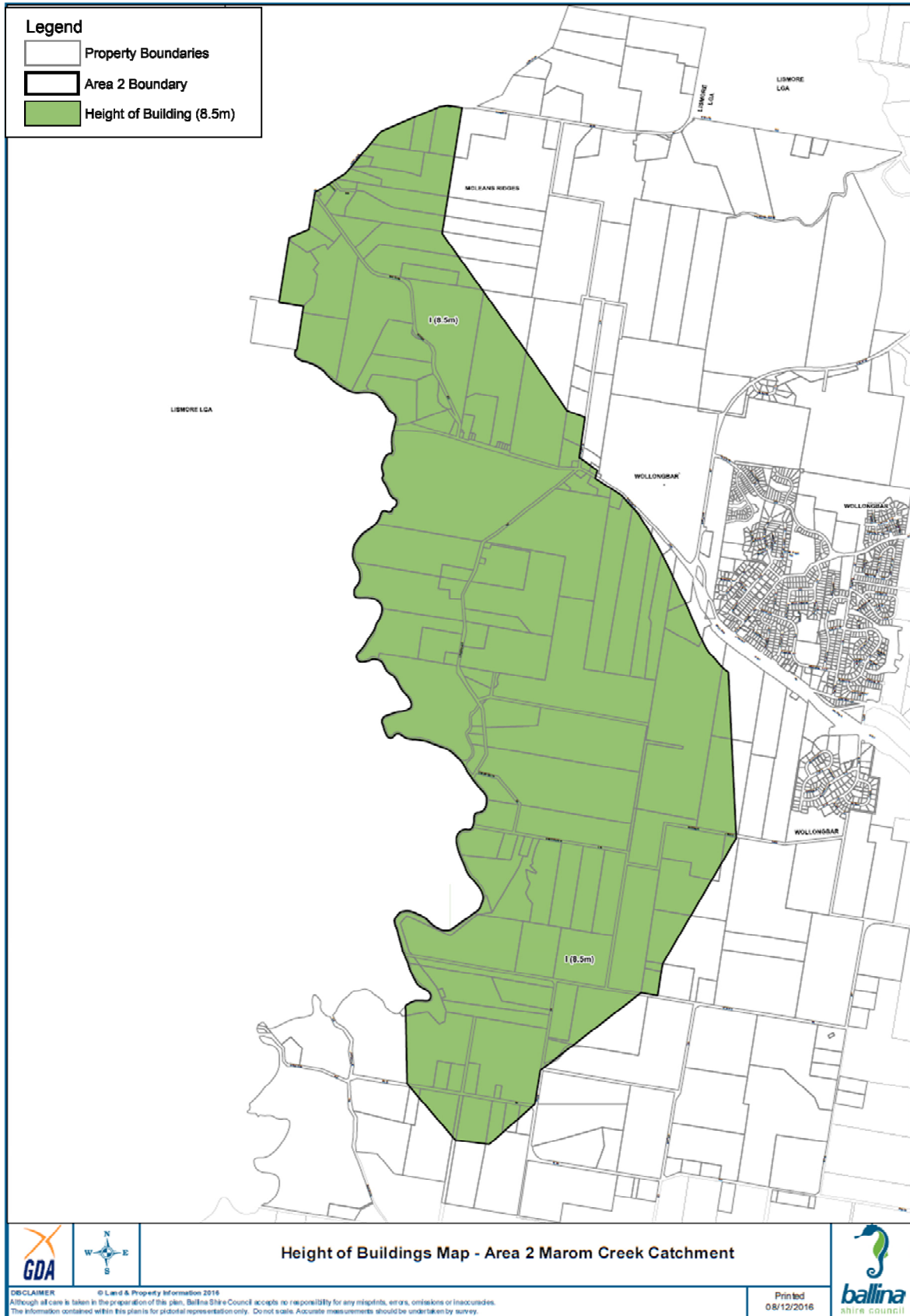


Lot Size Maps:

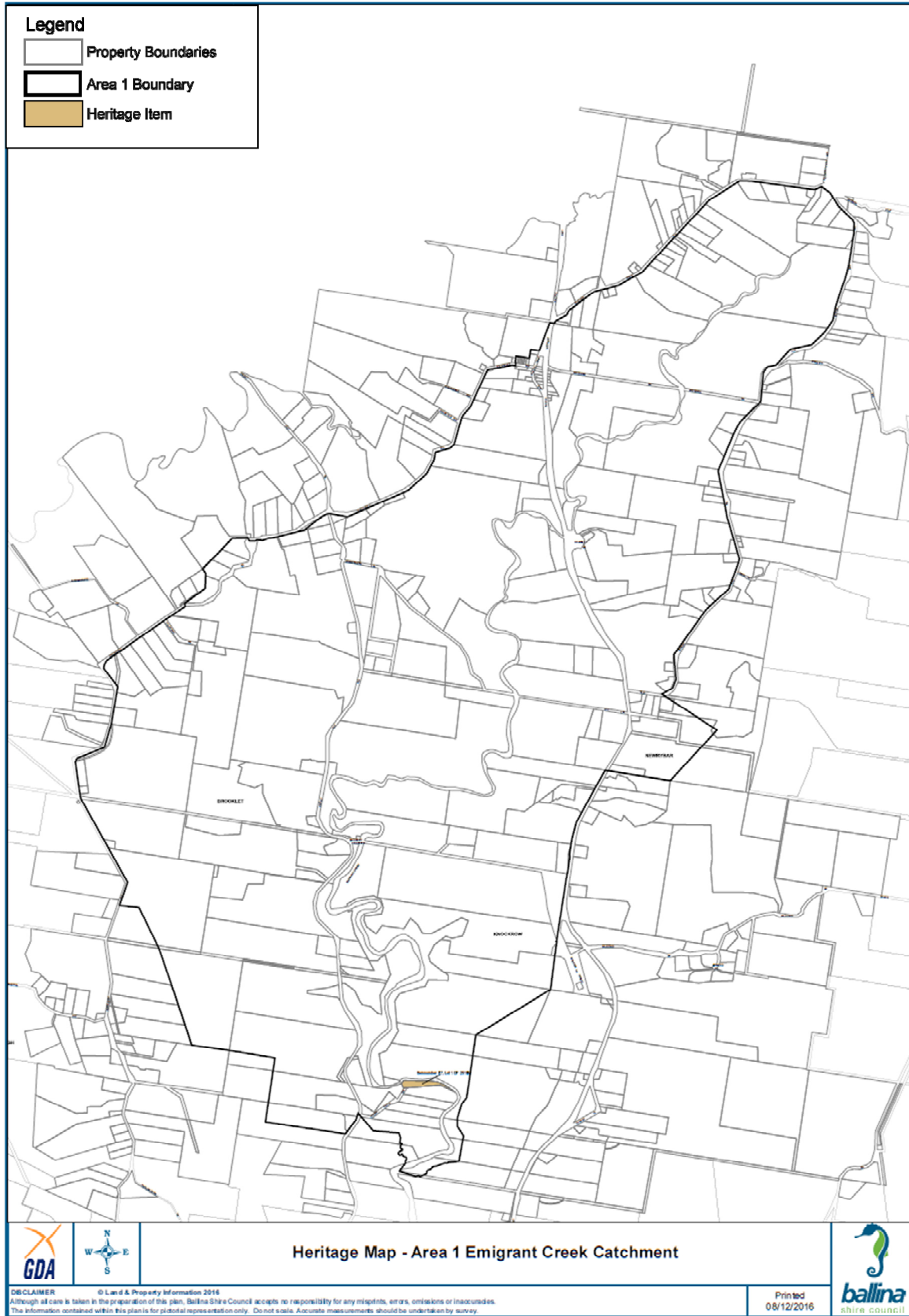


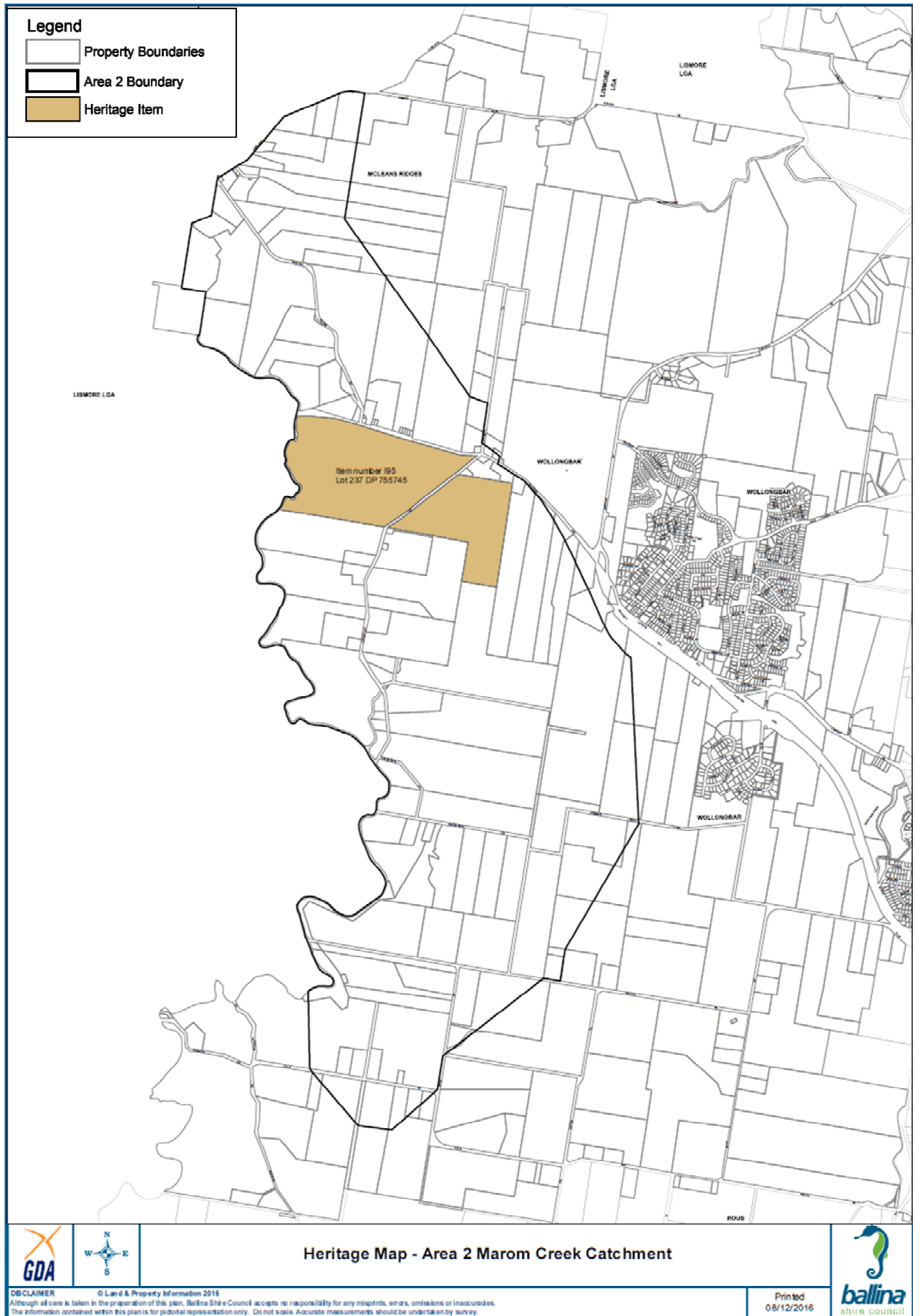
Height of Buildings Maps:



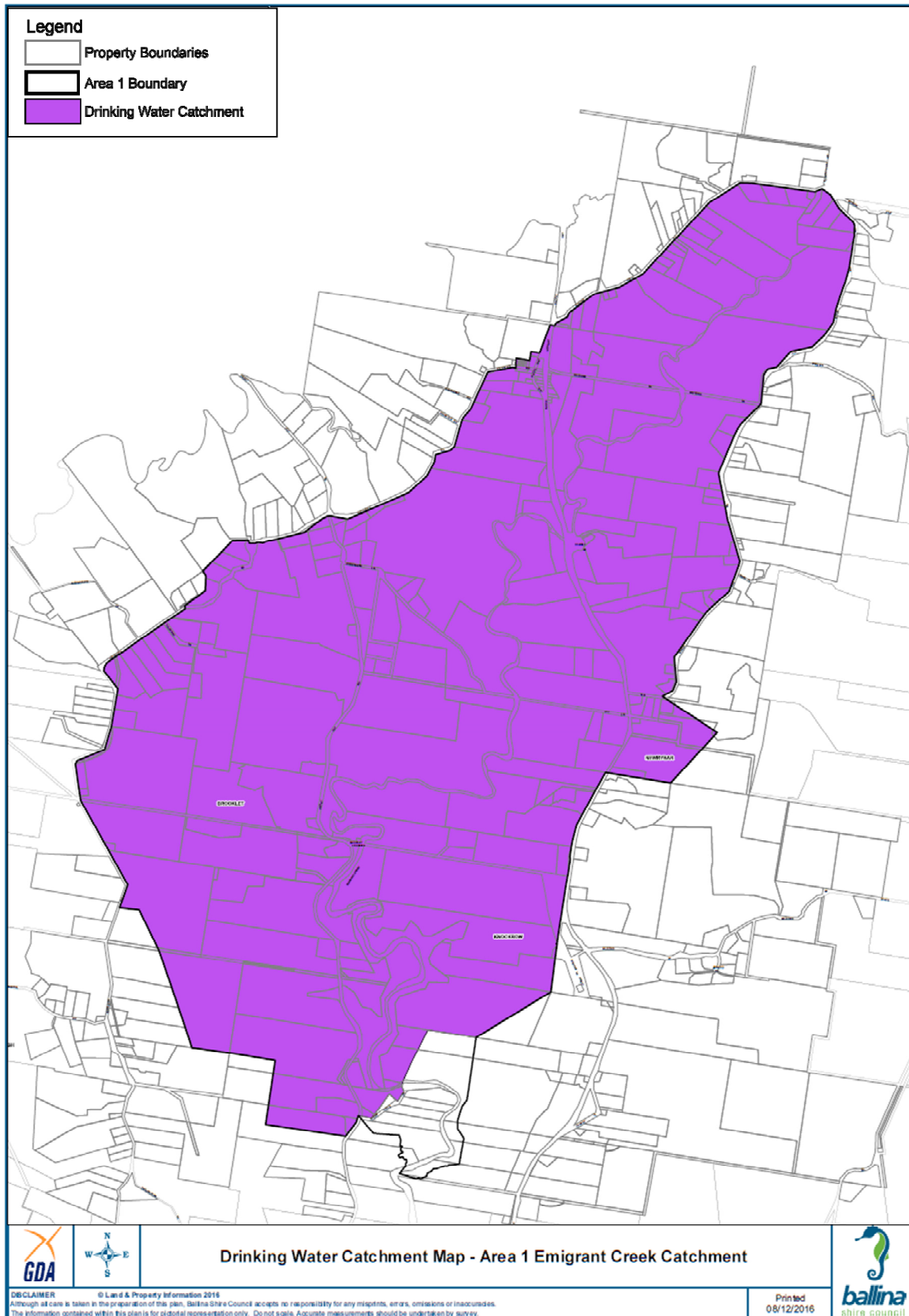


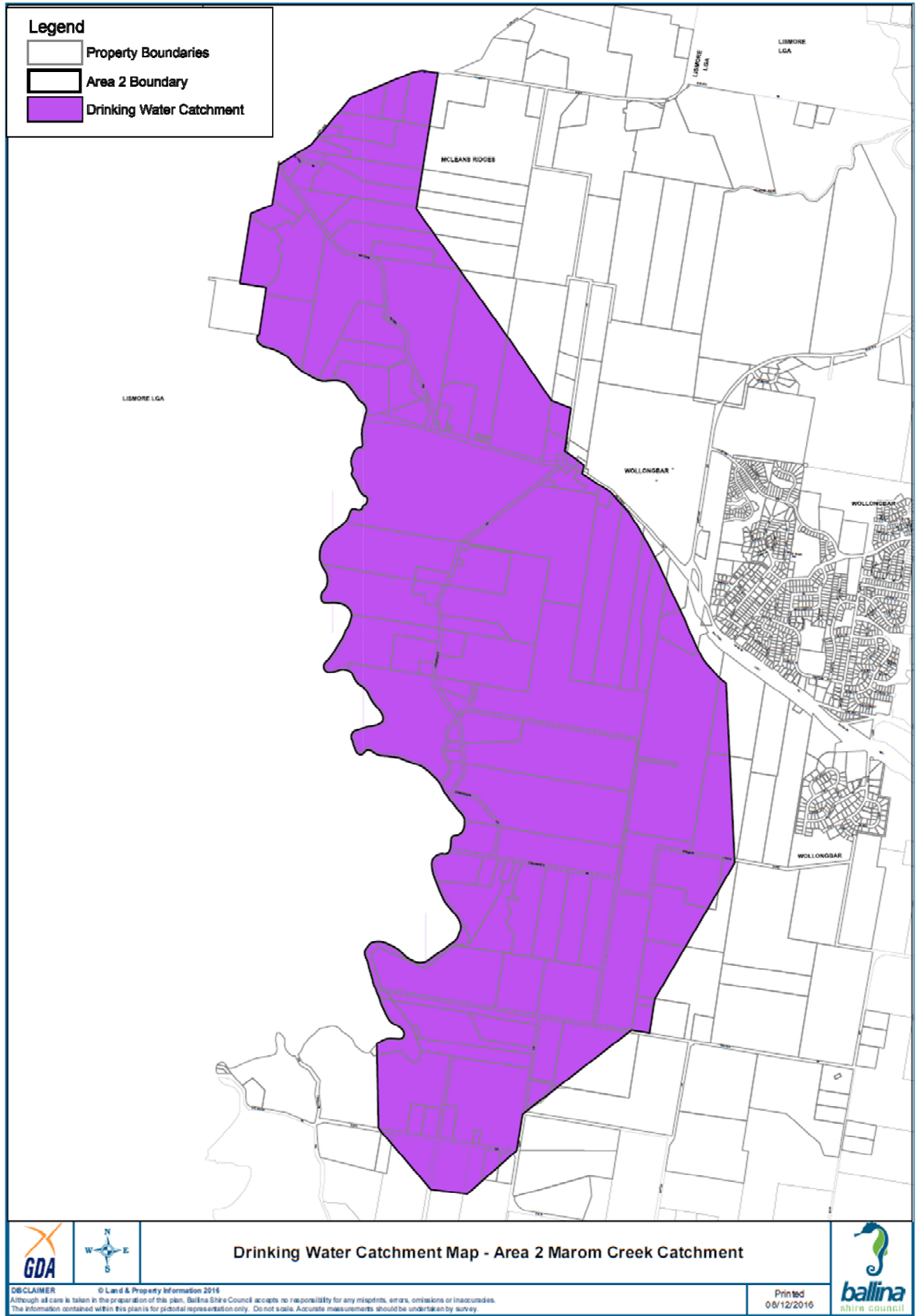
Heritage Maps:





Drinking Water Catchment Maps:





Additional Permitted Uses Map:

