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# Review of developer servicing charges for secondary dwellings

Responsible Officer: Group Manager Planning & Delivery (Andrew Logan)

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## Recommendation

That:

1. Council notes the update on the assessment and review of secondary dwelling water consumption and the financial impact to Council.
2. The Development Servicing Plan for Bulk Water Supply 2016 methodology apply for all development applications lodged with constituent councils on or after 1 November 2021 for secondary dwelling bulk water developer contributions including granny flats.
3. Council notes that its decision of 19 August 2015 ([72/15]) will continue to have effect for relevant development applications lodged with constituent councils but not yet determined as at 31 October 2021 inclusive.

## Background

In 2009, State Environmental Planning Policy (Affordable Rental Housing) was introduced to provide for the development of secondary dwellings (commonly known as granny flats) to increase affordable housing stock. In 2014 and 2015, the constituent councils all separately implemented different policies and approaches to reduce developer charges payable for secondary dwellings. The purpose was to promote additional housing development in areas with existing infrastructure and to provide alternative low-cost housing opportunities, as well as opportunities for additional income, alternative retirement options and inter-generational care.

In August 2015, following requests from some of the constituent councils, Rous County Council (RCC) resolved [72/15] to adopt the methodology utilised by Lismore City and Ballina Shire Councils (reproduced below) for determining developer charges for granny flats.

*No charges payable where the secondary dwelling is less than 60m<sup>2</sup> or 25% of the floor area of the principal dwelling and the total development on the respective lot does not exceed five bedrooms, three water closets and two laundries.*

A copy of that Council report is included as information in [Attachment A](#).

The methodology was adopted for RCC bulk water developer charges across all the constituent councils and was developed to reflect what is considered one standard equivalent tenement (ET) for the purposes of development assessment. One standard ET is the typical developer charge payable for a single dwelling and equates to 230kL/annum (630L/day) of water consumption (as defined by the NSW Water Directorate Equivalent Tenement (WDET) Guidelines). Where the total development was within the criteria, the expected water use of the combined primary and secondary dwelling was considered to be within that of one standard ET and thus provides justification for the non-payment or waiving of developer charges.

It is noted that, Byron Shire Council and Richmond Valley Council do not consider the number of laundries or toilets in their methodologies.

Council also resolved in August 2015 that when data is available from the constituent councils, the impact of the adopted methodology for determining developer charges for secondary dwellings be assessed and reported back to Council. A review was undertaken and reported to the Regional Water Supply Liaison Committee in 2018, however due to an oversight, it was not reported to Council at the time. This Council report includes details of the review.

### Purpose of this report

- *Update Council on the assessment and review of secondary dwelling water consumption and the financial impact to Council.*
- *Recommend an alternative interim position pending completion of the review of the Development Servicing Plan for Bulk Water Supply 2016.*

Since resolution [72/15], the constituent councils have undertaken individual reviews and made changes to their respective policies regarding determination of developer charges for secondary dwellings. Table 1 presents a summary of the key criteria currently being utilised by each constituent council and RCC.

**Table 1: Summary of constituent council and RCC positions on secondary dwellings developer charges**

Council	Current (May 2021) criteria for determining developer charges for secondary dwellings
Ballina Shire Council	No charges payable where the secondary dwelling is: <ul style="list-style-type: none"> <li>• less than 60m<sup>2</sup>, and</li> <li>• a maximum of 2 bedrooms are contained within the secondary dwelling, and</li> <li>• the total development on the respective lot does not exceed five bedrooms, three water closets and two laundries.</li> </ul> 50% reduction for detached secondary dwellings and 100% reduction for attached secondary dwellings
Byron Shire Council	Council resolved to remove the reduction on the payment of contributions on secondary dwellings at its Ordinary Council Meeting of 17 October 2019 (previous policy was similar to Richmond Valley Council)
Lismore City Council	Have ceased their policy to discount developer contributions for secondary dwellings from 1 <sup>st</sup> July 2020.
Richmond Valley Council	No charges payable where the secondary dwelling is: <ul style="list-style-type: none"> <li>• less than 60m<sup>2</sup> or 25% of the floor area of the principal dwelling, and</li> <li>• the total development on the respective lot does not exceed five bedrooms.</li> </ul>
Rous County Council	No charges payable where the secondary dwelling is: <ul style="list-style-type: none"> <li>• less than 60m<sup>2</sup> or 25% of the floor area of the principal dwelling, and</li> <li>• the total development on the respective lot does not exceed five bedrooms, three water closets and two laundries.</li> </ul>

### Application of methodology

For customers supplied directly from the RCC water supply network, RCC staff assess whether the secondary dwelling meets RCC criteria and whether developer charges are payable. Secondary dwellings that do not meet the criteria for the waiving of developer charges are typically levied between 0.4 and 0.6 ET, which equates to between \$3,548 and \$5,323 based on RCC's 2020/21 charge per ET of \$8,872. Where charges are payable, these are paid direct to RCC. A Certificate of Compliance issued under Section 307 of the *Water Management Act 2000* is provided to the developer to confirm all bulk water developer charges have been paid.

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Under the current Service Level Agreement, the constituent councils assess, collect and remit bulk water developer charges on RCC's behalf for customers supplied from the constituent council retail water supply systems where RCC is the bulk water supplier. The clause is reproduced below.

*A1.4.3.4 Calculation of Equivalent Tenements (ETs) for Developments*

*You (constituent council) agree to determine the number of ETs by Your adopted methodology and that this will be utilised for the calculation of Our (Rous County Council) bulk water supply charge. The parties agree that the adopted methodology should be consistent with the NSW Water Directorate's Section 64 Determination of Equivalent Tenements Guidelines for known categories of developments.*

However, the above clause does not apply to waivers or deferrals of developer charges, which is covered under the clause reproduced below.

*A1.4.3.3 Deferral of developer charges*

*We (Rous County Council) may defer charges payable by a developer in accordance with Rous County Council Development Servicing Plan for Bulk Water Supply. You (constituent council), in assessing developments, agree to assess the merit of the request to defer Developer Charges. All requests for deferring Our bulk water developer servicing charges must be referred to Us for determination after You have made Your assessment of such a request.*

RCC wrote to the constituent councils in October 2015 advising of RCC's adopted methodology for determining developer charges for secondary dwellings and requested that any application to waive developer charges be referred to RCC.

### **Current issues**

While some secondary dwelling developments in the constituent council retail water supply areas have been referred to RCC as requested, this does not appear to be undertaken consistently. An ad-hoc review of secondary dwelling development applications on the constituent councils' online DA trackers found the constituent councils have been applying the RCC adopted methodology for reducing bulk water developer charges on RCC's behalf without referral to RCC. This was a result of unclear terms in the Service Level Agreement (SLA) arrangements of the time and has been corrected in the updated SLA documents.

As previously noted, not all the constituent councils have the same adopted methodology as RCC for their own developer charges on secondary dwelling developments. This, at times, results in charges being reduced by the constituent council, and RCC bulk water charges still being payable or vice versa. This is confusing to the applicant and does not support RCC's intention in waiving the charges or supporting the constituent councils in their objectives to encourage infill development and alternative low-cost housing.

RCC has been referred developments for assessment of developer charges where the number of bedrooms is five or less, however the number of toilets is greater than three due to the occupant of the house needing ready access to toilet facilities for medical reasons. In one example, Council resolved [91/17] to refund the Rous County Council developer contributions levied on a secondary dwelling development where there were more than three toilets. Under RCC's current position, this development would not qualify for a waiving of developer contributions due to the number of toilets. However, demand for water is driven by the occupants of the house and the maximum number of occupants in the house is limited by the number of bedrooms. There is no known evidence to suggest a direct link between the number of toilets and laundries in a residential development and an increase the water demand.

There have been anecdotal reports that some of the secondary dwellings receiving waivers of developer charges are being used for short term accommodation purposes, particularly in the coastal areas. This is not consistent with the objective of the waiving developer charges for secondary dwellings. The constituent councils have addressed this through either a merit assessment against the criteria of the Affordable Rental Housing State Environmental Planning policy or requiring the applicant to declare the secondary dwelling will not be used for short term accommodation.

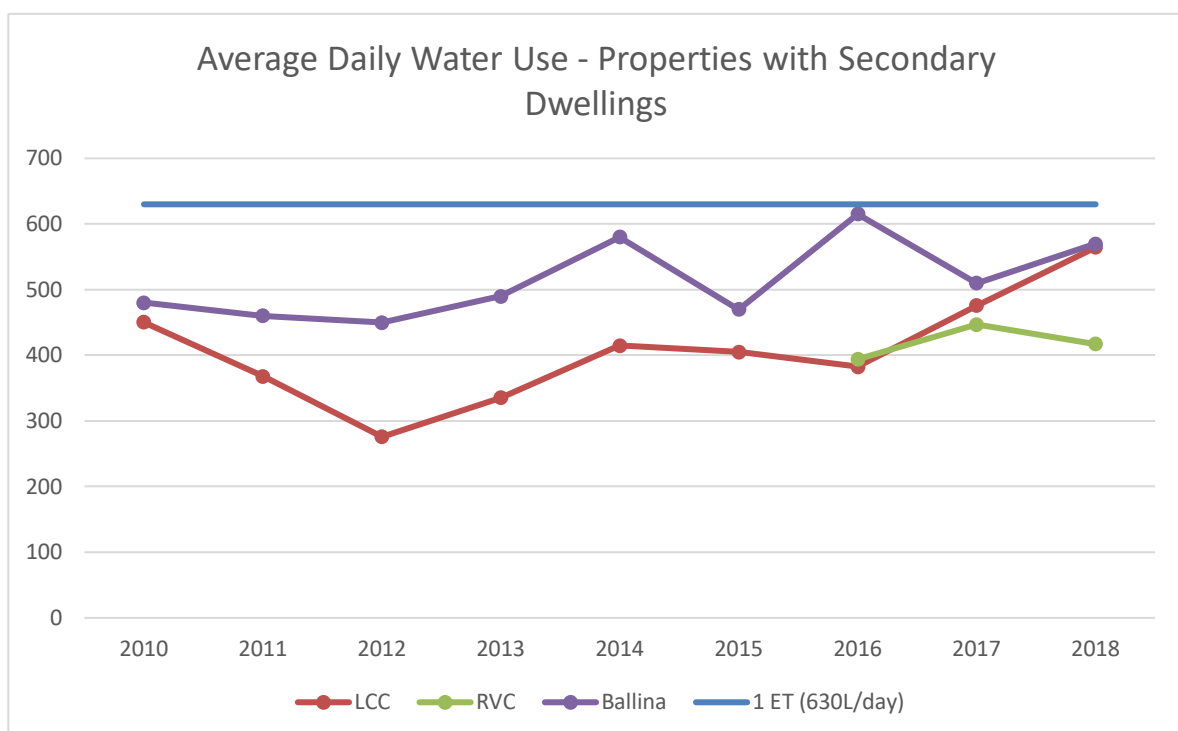
### Review of water consumption

Developer charges are levied on every development that places additional demand on community infrastructure to fund the future renewal and upgrade of the assets involved in providing community services. The charges are based on an assessment of the water demand generated by the development and calculated based on each Council's Developer Servicing Plan. Any reduction of developer charges reduces the available funds to renew and upgrade infrastructure.

In 2018, RCC staff undertook a review of the consumption of water from residential properties with approved secondary dwellings to determine if waiving of developer charges was justifiable. The review analysed water consumption data from residential properties with secondary dwellings to determine the additional demand created by a secondary dwelling and if the water demand of the combined primary and secondary dwelling was above one ET (630L/day).

The reasoning behind this is that a single residential dwelling development will typically be levied developer charges equivalent to one ET giving them a theoretical entitlement to 630L/day. If the combined average daily water usage of the primary and secondary dwelling is below this figure, this suggests that a waiving of developer charges is appropriate. However, it should be noted that this approach does not examine the water consumption of the ultimate development (i.e. all bedrooms occupied) but rather the water consumption of the current occupants.

RCC obtained available water consumption data from residential properties with approved secondary dwellings from most constituent councils. Richmond Valley Council provided data for 22 properties, Lismore for 11 properties and Ballina for 26 properties. Data was not provided by Byron Shire Council for this review.



While it is acknowledged that development of a secondary dwelling will increase potential occupancy of the property and the associated increase in water demand, the chart shows the average daily water use for properties with secondary dwellings is consistently below the WDET Guidelines of 630L/day/ET.

### Future options for determining developer charges on secondary dwellings

Given that constituent councils have made changes to their policies since 2015 and there are now some significant differences in positions between RCC and those policies, several options for future policy in this area have been identified and are presented in Table 2.

**Table 2: Options for future position on secondary dwellings developer charges**

Option for future policy	Commentary
1. Maintain current waiving position	<p>Current RCC position is contrary to the four constituent councils, with only two having a policy in place.</p> <p>Having a different policy to the constituent councils does not achieve the intended objective to support the constituent councils in their objectives of encouraging infill development and alternative low-cost housing.</p> <p>Further, toilets and laundries are not directly linked to increased water usage and including these in the assessment criteria is not required and could lead to discriminatory application of the policy.</p> <p>However, based on the review of water consumption between 2010 and 2018, properties with secondary dwellings appear to have water consumption below what is considered 1 ET, so it could be argued the impact of secondary dwellings on water demand is covered within the existing single dwelling allowances.</p>
2. Removal of waiving policy	<p>Byron Shire Council removed their reduction policy in October 2019 stating that the potential impacts on housing affordability are outweighed by the cost to Council from lost contributions revenue for the provision of infrastructure and the policy did not achieve its primary objective to lower median rents.</p> <p>Lismore City Council removed their policy in July 2020.</p> <p>Removal of the RCC waiving position would require all secondary dwelling developments to pay RCC bulk water developer charges, of which some developments may also be eligible to have their constituent council developer contributions waived. Under current constituent council policy, this would place RCC out of step with Richmond Valley and Ballina Shire Councils. As shown in Table 3 below, between 2015 and August 2020, this would affect approximately 179 developments, or around 22% of all eligible developments across the region for the period.</p> <p>RCC receives no benefit in providing a waiving of developer charges for secondary dwellings other than to support the objectives of the constituent councils, and rather is forgoing revenue to fund future infrastructure growth and renewal.</p> <p>Removal of the RCC waiver position would reduce confusion for developers and provide a more equitable collection of developer contributions.</p>
3. Modify position to remove criteria limits on toilets and laundries	<p>Toilets and laundries are not directly linked to increased water usage and including these in the assessment criteria is not required and could lead to discriminatory application of the position.</p> <p>Revising the waiving position to remove the toilet and laundry criteria would simplify its application.</p>

Option for future policy	Commentary
4. 'Mirror' position of the constituent council in which a subject development is occurring	<p>The RCC waiving position would match or mirror that of the constituent council in which the development is occurring.</p> <p>There would be no waiver position for customers supplied direct from the RCC water supply system, regardless of their constituent council position.</p> <p>The advantage of this approach is that it would result in the RCC waiver position being consistent with the policy of the constituent councils. This will simplify its application for developments and remove any inconsistency in positions between RCC and the constituent councils which better aligns with the RCC objective of supporting the constituent councils in their objectives.</p> <p>Further, this is consistent with the determination of developer charges for customers of the constituent councils as per the current Service Level Agreement.</p> <p>The disadvantage of this approach is that it could be interpreted as supporting Richmond Valley and Ballina Shire Councils for these type of developments.</p>

## Governance

- Finance

### Review of financial impact

Table 3 below presents the number of secondary dwellings approved in the region between August 2015 (when the waiver position was implemented by RCC) and August 2020.

**Table 3: Number of secondary dwellings approved across constituent councils between August 2015 and August 2020**

Council	Number of approved secondary dwellings
Rous	33
Ballina	160 (approx.)
Byron	600 (approx.)
Lismore	No data provided
Richmond Valley	19
<b>TOTAL</b>	<b>800 (approx.)</b>

Based on discussions with Byron Shire Council planning staff and assessment of approved secondary dwellings on the RCC network, it is estimated that approximately half of the approved secondary dwellings met the criteria to be eligible for a waiving of developer charges. The WDET Guidelines recommend secondary dwellings be levied between 0.4 and 0.6 ET developer contributions.

Across the RCC supply area and excluding Lismore City Council, this equates to lost RCC bulk water developer contributions over the last 5 years in the order of \$1.6M from the approved secondary dwellings. RCC has responded to this in 2021/22 and is undertaking regular checks of advertised DAs on constituent councils' websites against notifications and payments to RCC. The NSW Government's adoption of a state-wide Planning Portal for all DAs has also assisted in improving RCC's visibility over DAs that constituent councils are considering for their impacts to RCC. While this improvement is beneficial, it is a time-consuming task to review each constituent councils' list of DAs for their impacts to RCC, so RCC staff are focusing on working with constituent council development assessment staff to ensure that we are considered up front as a referral agency.

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RCC's Development Servicing Plan for Bulk Water Supply (DSP) is scheduled to be reviewed and updated in 2021/22. Whilst there is a link between the DSP and this issue of waiving of developer charges for secondary dwellings, it is considered appropriate to implement the proposed change for secondary dwellings now, given the ongoing confusion for applicants, the inconsistency in positions across the region and the ongoing loss of revenue.

### Consultation

Discussions have occurred with relevant development and planning staff within each of the constituent councils regarding the proposed change of RCC's position on developer contributions for secondary dwellings. The feedback is presented below.

<b>Ballina</b>	If Rous were to discontinue the waiver it would be challenging to administer, but not impossible. We would have to adjust our contributions calculator to make sure the Rous contribution still came up, and make sure staff were aware that only the Ballina contributions were waived.
<b>Byron</b>	No objection to RCC discontinuing our waiver policy
<b>Lismore</b>	Council has chosen not to extend its policy of providing discounts on developer contributions payable by secondary dwellings and would not object to Rous County Council discontinuing to provide similar discounts on its own developer contributions.
<b>RVC</b>	No objections

### Conclusion

The current RCC position for waiving of developer charges for secondary dwellings is inconsistent with the policies of most constituent councils. The position no longer meets RCC's primary objective of supporting the constituent councils in their objectives of encouraging infill development and alternative low-cost housing.

It is recommended that Rous County Council discontinue the waiver position adopted in August 2015 as it provides little benefit to RCC, is no longer consistent with most constituent councils' policies for secondary dwelling development applications and has resulted in the loss of an estimated \$1.6M in revenue since 2015. If approved, this change would come into effect for all DAs lodged with constituent councils from 1 November 2021, with all current DAs submitted in the intervening period to be considered under RCC's current policy.

A full review of the DSP will be undertaken in 2021/22 and will include the investigation of options for secondary dwellings.

#### Attachment

1. Copy of Council report dated 19 August 2015 – Developer Servicing Charges for granny flats