

PANEL REFERENCE	PPSHCC-335 - MA2024/00381 (PAN-482741)
LGA	Newcastle City Council
Proposal	Section 4.55(2) modification to DA2019/01169 for mixed use development, demolition of structures, erection of 14 storey mixed use including seniors living and aged care facilities - design changes to replace seniors living and aged care facilities with residential apartments
ADDRESS	124-126 Bull Street, Newcastle West (formerly known as 309 King Street, Newcastle West)
APPLICANT	GWH King Street Pty Ltd
OWNER	GWH King Street Pty Ltd
DATE OF LODGEMENT	5 November 2024
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Attachment A: Amended Schedule of Conditions – changes shown in red • Attachment B: Amended Schedule of Conditions – clean set • Attachment C: Updated Architectural Drawings • Attachment D: Solar Analysis Assessment prepared by Gyde • Attachment E: Supplementary Sun Eye View Analysis prepared by Fender Katsalidis
RECOMMENDATION	Approval

This memo provides supplementary information for the proposed modification application (MA2024/00381) including associated design changes and analysis relating to Part 4A - Solar and Daylight Access of the Apartment Design Guide (ADG).

This is due to amended plans submitted after the Council Assessment Report of 12 May 2025 that address a drafting error described below. The Hunter Central Coast Regional Planning Panel (HCCRPP) is to consider this application (MA2024/00381) at a determination meeting on 19 May 2025. This supplementary report is to be considered in conjunction with the Council Assessment Report dated 12 May 2025 on the proposal.

Background

Following a review of the submitted documentation for the application to modify the consent, anomalies were identified in the proposed development's solar access compliance assessment. An examination of the applicant's ArchiCAD files dating back to 2018, and the original development application (DA) approval (DA2019/01169), found the previously submitted sun-eye view diagram incorrectly drafted. This error caused a 15-degree shift in the sun's angle.

The approved modification application (MA2023/00221) stated 70% of apartments received a minimum of two hours of direct sunlight to their primary living areas and private open space during mid-winter. However, when the correct solar coordinates were applied only 35% of approved apartments met the ADG requirement. This drafting error mainly impacts the balconies on the eastern façade of Tower B where they previously received the minimum 2 hours in the 9am-11am period at June 21.

Using the correct sun angle, the current sun access diagrams for the proposed modification indicate 35% of apartments achieve the minimum ADG requirement of 2 hours during the June 21 winter solstice.

A meeting was held with the applicant and design team on 9 May 2025 to discuss the matter and potential amendments to improve amenity. CN's Urban Design Review Panel (UDRP) Chair was in attendance. Following this a further review of the non-compliance has been undertaken, and analysis has been prepared by Gyde and Fender Katsalidis (refer to **Attachment D** and **Attachment E**), an assessment of this information is provided below.

Design Changes

Due to the site's orientation and the current planning layout, design modifications have been incorporated to enhance solar access to the apartments on the eastern façade of Tower B. These involve reducing the width of the air conditioning plant enclosures on each balcony by 450mm. This adjustment will improve sunlight penetration into the bedrooms and living areas, as demonstrated in the half-hour solar access analysis provided in **Attachment D**. The extract from **Attachment D** demonstrates the design change to increase sunlight access, as shown in Figure 1.

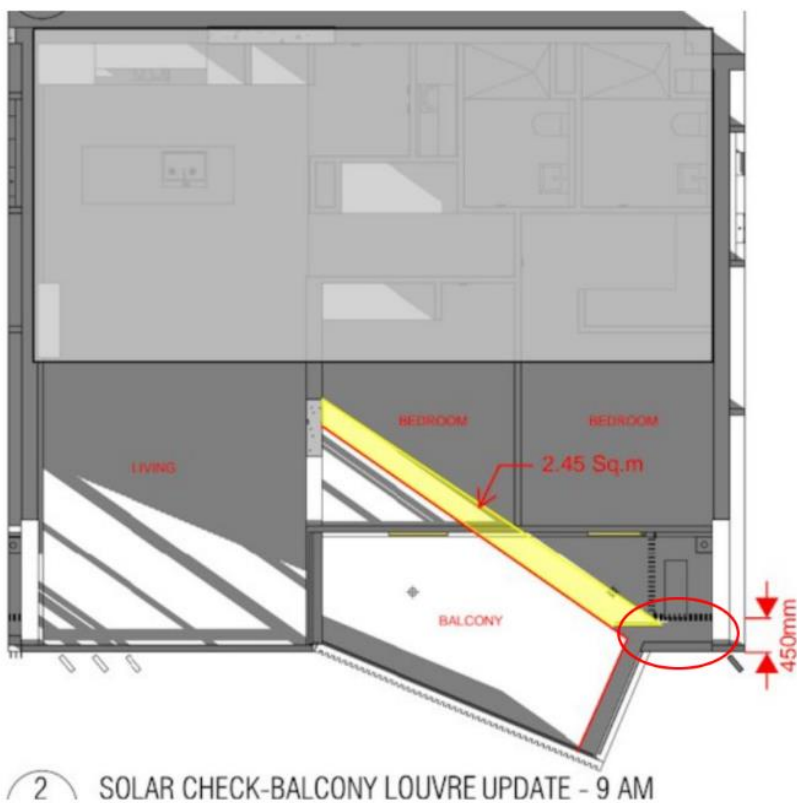


Figure 1 Extract from SK558 indicating the amendment to the air conditioning enclosure and increase in sunlight at 9am of the winter solstice

Apartment Design Guide - Part 4A Solar and Daylight Access Assessment

Additional architectural analysis was submitted to demonstrate that reducing the width of the plant enclosure will provide adequate amenity to apartments. The applicant states a high standard of residential amenity is achieved, and solar access has been optimised, despite the numerical non-compliance with Objective 4A-1 of the ADG. In support of this, the applicant references four specific project statistics outlined on page 3 of the letter from GYDE dated 12 May 2025 at **Attachment D**.

These statistics are reiterated below in italics, followed by assessment comments.

- *72% of apartments that will achieve at least 1.5 hrs of direct sunlight in mid-winter*

Assessment comment: The assessment found 218 of the total 280 apartments (77%) will receive a minimum of 1hr and 30 mins solar access between 9am and 3pm at mid-winter to the living room and private open space.

- *32% of apartments that will receive more than 2 hrs of sunlight during daylight hours in mid-winter.*

Assessment comment: The assessment found 100 of the total 280 apartments (35%) proposed in Tower A (west) and Tower B (east) will achieve a minimum of 2 hrs solar access between 9am and 3pm at mid-winter to the living room and private open space.

- *69% of apartments achieve 1.45 hrs of direct sunlight in mid-winter.*

Assessment comment: The assessment found, 110 of the total 280 apartments (39%) will receive a minimum of 1hr and 45 mins solar access between 9am and 3pm at mid-winter to the living room and private open space.

- *84% of Tower A apartments and 79% of Tower B apartments private open space enjoys more than 2hrs sunlight of direct sunlight in mid-winter*

Assessment comment: The assessment found 89 of the 129 apartments (69%) in Tower A (west) will receive a minimum of 2hrs solar access between 9am and 3pm at mid-winter to the apartment private open space. 129 out of the 151 apartments (**85%**) in Tower B (east) will receive a minimum of 2hrs solar access between 9am and 3pm at mid-winter to the apartment private open space.

The supplementary sun eye view analysis and assessment at **Attachment D** and **E** sufficiently address ADG Objective 4A-1 and despite the numerical non-compliance, the proposed modification demonstrates that apartments will achieve adequate amenity during the June 21 Winter Solstice. A detailed assessment of Objective 4A-1 is provided below.

A4 Solar and daylight access		
Objective 4A-1		
To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space		
Design Criteria:	Comment:	Compliance:
1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.	<p><u>Tower A + Tower B</u></p> <p>Analysis of the submitted 'VIEW FROM SUN DIAGRAMS' prepared by Fender Katsalidis (drawings DA557 and DA563, dated 24 April 2024) submitted for the proposed modification found 100 out of the total 280 apartments proposed in Tower A (west) and Tower B (east), or 35%, will achieve a minimum of 2 hrs solar access between 9am and 3pm at mid-winter to BOTH the living room and private open space.</p>	Satisfactory (Merit based assessment)

	<p>The justification for the numerical non-compliance provided in the letter from GYDE dated 12 May 2025 explains:</p> <ul style="list-style-type: none"> • The ADG is a performance-based document which is not intended to set strict development standards, • The relevant question is despite the departure from numerical criteria, has the relevant ADG Objective been meet. Specifically - have the number of apartments receiving sunlight to habitable rooms, primary windows and private open space been optimised? • The proposed modification continues to optimise solar access by locating the primary living areas on the building façade and incorporating innovative and generously sized saw-tooth balconies which maximised solar access and captured northerly views • Amendments are proposed to the approved air conditioning enclosure on eastern apartment balconies (setting back 450mm from the face of the building) to further improve direct sunlight access to the apartments internal and private open spaces. • The proposed modification continues to result in apartments with high standard of amenity and optimises levels of solar access. <p>The letter from GYDE dated 12 May 2025 and accompanying attachments illustrate proposed changes to the air conditioning unit enclosures and solar access. It was referred to CN's UDRP Chair for comment. Response to this electronic referral was received 13 May 2025 confirming the UDRP's position that:</p> <p><i>"While the numeric figures for the eastern units Internal Living spaces fall somewhat short of the ADG recommended minimum percentages, the apartments' adjacent private open spaces, which are also fairly sheltered, receive good winter solar access until after 11:00am.</i></p> <p><i>The units can be considered to provide a good level of amenity to residents, and I confirm that the UDRP is confident that design excellence has been maintained in</i></p>	
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	<p><i>spite of a technical shortfall in respect to ADG recommendations. I note also that the latter is intended to be guidelines rather than rigid controls.</i></p> <p>The design drawings and written justification suitably demonstrate how;</p> <p>(1) the site constraints and orientation (dual street frontages with significant views to the south, and eastern boundary dictate the site planning) impeding meeting the design criteria and,</p> <p>(2) the proposal design has regard to optimizing the number of apartments receiving sunlight to habitable rooms, primary windows, and private open space.</p> <p>As such, assessment is satisfied the proposed modification complies with the design guidance for this objective, and the objective has been met notwithstanding the numerical departure.</p> <p>For completeness, detailed calculations per tower are provided under the relevant building heading below.</p>	
	<p><u>Tower A (west)</u></p> <p>Analysis of the submitted 'VIEW FROM SUN DIAGRAMS' prepared by Fender Katsalidis (drawings DA557 and DA563, dated 24 April 2024) submitted for the proposed modification found 50 out of the 129 apartments proposed in Tower A (west), or 38%, will achieve a minimum of 2 hrs solar access between 9am and 3pm at mid-winter to BOTH the living room and private open space.</p> <p>Details of these apartments are below:</p> <ul style="list-style-type: none"> • Level 1 (podium) = nil • Level 2 = 4 apartments (207A, 208A, 209A, and 210A) • Level 3 = 4 apartments (307A, 308A, 309A, and 310A) • Level 4 = 4 apartments (407A, 408A, 409A, and 410A) • Level 5 = 4 apartments (507A, 508A, 509A, and 510A) • Level 6 = 4 apartments (607A, 608A, 609A, and 610A) 	<p>Satisfactory (Merit based assessment)</p>

	<ul style="list-style-type: none"> • Level 7 = 4 apartments (707A, 708A, 709A, and 710A) • Level 8 = 4 apartments (807A, 808A, 809A, and 810A) • Level 9 = 4 apartments (907A, 908A, 909A, and 910A) • Level 10 = 4 apartments (1007A, 1008A, 1009A, and 1010A) • Level 11 = 4 apartments (1107A, 1108A, 1109A, and 1110A) • Level 12 = 3 apartments (1207A, 1208A, and 1209A) • Level 13 = 3 apartments (1307A, 1308A, and 1309A) • Level 14 = 4 apartments (1407A, 1404A, 1408A, and 1409A) 	
	<p>Tower B (east) Analysis of the submitted 'VIEW FROM SUN DIAGRAMS' prepared by Fender Katsalidis (drawings DA557 and DA563, dated 24 April 2024) submitted for the proposed modification found 50 out of the 151 apartments proposed in Tower B (east), or 33%, will achieve a minimum of 2 hrs solar access between 9am and 3pm at mid-winter to BOTH the living room and private open space.</p> <p>Details of these apartments are below:</p> <ul style="list-style-type: none"> • Level 1 (podium) = 2 apartments (101B, and 102B) • Level 2 = 2 apartments (203B, and 204B) • Level 3 = 3 apartments (302B, 303B, and 304B) • Level 4 = 3 apartments (402B, 403B, and 404B) • Level 5 = 3 apartments (502B, 503B, and 504B) • Level 6 = 3 apartments (602B, 603B, and 604B) • Level 7 = 3 apartments (702B, 703B, and 704B) • Level 8 = 3 apartments (802B, 803B, and 804B) • Level 9 = 3 apartments (902B, 903B, and 904B) • Level 10 = 5 apartments (1001B, 1002B, 1003B, 1004B, and 1011B) 	<p>Satisfactory (Merit based assessment)</p>

	<ul style="list-style-type: none"> Level 11 = 5 apartments (1101B, 1102B, 1103B, 1104B, and 1111B) Level 12 = 5 apartments (1201B, 1202B, 1203B, 1204B, and 1211B) Level 13 = 5 apartments (1301B, 1302B, 1303B, 1304B, and 1311B) Level 14 = 5 apartments (1401B, 1402B, 1403B, 1404B, and 1411B) 	
Design Criteria:	Comment:	Compliance:
2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter.	N/A	N/A
Design Criteria:	Comment:	Compliance:
3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	<u>Tower A + Tower B</u> Analysis of the submitted 'VIEW FROM SUN DIAGRAMS' prepared by Fender Katsalidis (drawings DA557 and DA563, dated 24 April 2024) submitted for the proposed modification found 40 out of the total 280 apartments proposed in Tower A (west), or 14% , receive no direct sunlight between 9am and 3pm at mid-winter.	Complies
	<u>Tower A (west)</u> Analysis of the submitted 'VIEW FROM SUN DIAGRAMS' prepared by Fender Katsalidis (drawings DA557 and DA563, dated 24 April 2024) submitted for the proposed modification found 40 out of the 129 apartments proposed in Tower A (west), or 31% , receive no direct sunlight between 9am and 3pm at mid-winter. Details of these apartments are below: <ul style="list-style-type: none"> Level 1 (podium) = 2 apartments (101A, and 102A) Level 2 = 3 apartments (204A, 205A, and 206A) Level 3 = 3 apartments (304A, 305A, and 306A) Level 4 = 3 apartments (404A, 405A, and 406A) Level 5 = 3 apartments (504A, 505A, and 506A) Level 6 = 3 apartments (604A, 605A, and 606A) 	Satisfactory (merit based assessment)

	<ul style="list-style-type: none"> • Level 7 = 3 apartments (704A, 705A, and 706A) • Level 8 = 3 apartments (804A, 805A, and 806A) • Level 9 = 3 apartments (904A, 905A, and 906A) • Level 10 = 3 apartments (1004A, 1005A, and 1006A) • Level 11 = 3 apartments (1104A, 1105A, and 1106A) • Level 12 = 3 apartments (1204A, 1205A, and 1206A) • Level 13 = 3 apartments (1304A, 1305A, and 1306A) • Level 14 = 2 apartments (1405A, and 1406A) <p>Whilst Tower A alone does not achieve this design criteria, the development as a whole does comply. This is considered acceptable.</p>	
	<p>Tower B (east)</p> <p>Analysis of the submitted 'VIEW FROM SUN DIAGRAMS' prepared by Fender Katsalidis (drawings DA557 and DA563, dated 24 April 2024) for the proposed modification found all 151 apartments in Tower B (east) receive at least 15 minutes direct sunlight between 9am and 3pm at mid-winter.</p> <p>For clarity, this means 0 out of the 151 apartments proposed in Tower B (east), or 0%, receive no direct sunlight between 9am and 3pm at mid-winter.</p>	Complies

UDRP Chair Review

The Urban Design Review Panel (UDRP) Chair reviewed the additional analysis and advised:

"While the numeric figures for the eastern units internal living spaces fall somewhat short of the ADG recommended minimum percentages, the apartments' adjacent private open spaces, which are also fairly sheltered, receive good winter solar access until after 11:00am.

The units can be considered to provide a good level of amenity to residents, and I confirm that the UDRP is confident that design excellence has been maintained in spite of a technical shortfall in respect to ADG recommendations. I note also that the latter is intended to be guidelines rather than rigid controls."

In accordance with the UDRP's advice, the modified development allows for satisfactory amenity to apartments and continues to exhibit design excellence.

Revisions to conditions

To ensure implementation of the design changes to achieve satisfactory amenity, Condition 3A has been inserted (refer to **Attachment A** and **Attachment B**). This requires compliance prior to the commencement of construction works above the ground floor slab level as follows:

3A. *Before the issue of the first construction certificate for works above the ground level slab (i.e., whether for part or whole of a building), the development must be amended as follows:*

a) *The width of the air conditioning enclosure (also referred to as 'balcony louvres') on the eastern balconies of Tower A and Tower B must be reduced by a minimum of 450mm, as indicated on approved drawings SK558 to SK563 prepared by Fender Katsalidis Pty Ltd.*

Full details are to be included in the documentation for a Construction Certificate application.

Following a review of the Schedule of Conditions (**Attachment A** to the Council Assessment Report) by the applicant and minor updates to revision numbers and dates, the following amendments have been made:

- Condition 1:
 - Amendments to the following plan revisions and dates:
 - 3D Perspective View Drawing no. DA401-DA406
 - Height Plane Analysis Drawing no. DA500
 - Deleted plans (no longer relevant or included on other plans)
 - Landscape Diagrams Drawing no. DA520
 - Building Separation Diagrams Approved and Proposed Drawing no. DA570-DA571
 - Inserted:
 - Sun eye view check Drawing no. SK558-SK563.
- Condition 75: Amended to remove reference to line markings and parking, not relevant to the archival photographic record keeping condition.

The Schedule of Conditions provided with the Council Assessment Report has been updated and is included at **Attachment A** and **Attachment B**.

Conclusion

This Supplementary Memo, in combination with the revisions to the Schedule of Conditions and the additional analysis prepared by Fender Katsalidis, comprehensively addresses Part 4A of the ADG.

The recommendation to approve MA2024/00381 should be supported based on the Council Assessment Report of 12 May 2025 and this Supplementary Memo.

Should you require any further information on this matter please contact Eliza Arnott, Principal Development Officer (Concierge) on (02) 4974 1343.

Eliza Arnott
Principal Development Officer (Concierge)