

DATE OF DETERMINATION	14 July 2025
DATE OF PANEL DECISION	14 July 2025
DATE OF PANEL BRIEFING	8 July 2025
PANEL MEMBERS	Alison McCabe (Chair), Stephen Leathley, Cr Dr Elizabeth Adamczyk
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 3 July 2025.

MATTER DETERMINED

PPSHCC-335 – MA2024/00381 – Sec 4.55 (2) Modification to DA2019/01169 - 124 – 126 Bull Street, Newcastle West 2302 (as described in Schedule 1).

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel previously considered a comprehensive assessment report, and a supplementary memo dated 15 May 2025. Arising from the Panels consideration of the supplementary memo the Panel deferred determination of the application on the 28 May 2025 for the following information:

- (i) A comprehensive analysis and comparison of the accurate solar access achieved by the original approval, first modification, and current modification.
- (ii) Demonstrate that the calculation of solar access percentage is based on a “minimum of 1 sqm of direct sunlight, measured at 1m above the floor level, achieved for at least 15 minutes”
- (iii) Clarifies the discrepancies between Council calculations and the applicants
- (iv) Documents how the mistakes came to be, the chronology, and actions taken.

Additional information has been provided by the applicant and a supplementary report prepared for the Panels consideration. The Council’s supplementary report was uploaded to the Portal on 3 July 2025.

The Panel has considered the additional information and Councils report and the previous assessment report. The Panel accepts that a mistake has been made in respect to the original solar access analysis, the details of which are outlined in the latest report. In accepting this position, the Panel notes that it is an offence under the EPA Act 1979 to provide information in connection with a planning matter that the person knows, or ought reasonably to know, is false or misleading in a material particular.

The Panel accepts the Council and Urban Design Review Panels assessment that the amenity of the proposed development is acceptable, notwithstanding the noncompliance with the minimum ADG requirement for solar access to living rooms. The Panel notes that 77% of balconies achieve the minimum solar access.

The Panel is also of the opinion that the development as proposed to be modified is substantially the same development when considered against the development as originally approved.

The Panel considers that the modification application could be approved.

Application for modification of consent

The Panel determined to approve the modification application pursuant to section 4.55 of the *Environmental Planning and Assessment Act 1979* subject to the modifications of conditions outlined at Attachment G to the supplementary report uploaded to the Portal on 3 July 2025.

The decision was 2:1 in favour. Against the decision was Cr Elizabeth Adamczyk.

REASONS FOR THE DECISION

The Panel determined to approve the application for the reasons outlined in the Council Assessment and Supplementary reports.




Cr Adamczyk did not support the proposed modification as the development was not considered to be substantially the same development when compared against the approved DA. In addition, the noncompliance with the ADG requirements for solar access results in poor amenity outcomes.

CONDITIONS

The Modification Application was approved subject to the modification of conditions at Attachment G in the supplementary report uploaded to the Portal on 3 July 2025.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel notes that no written submissions were made during public exhibition.

PANEL MEMBERS	
 Alison McCabe (Chair)	 Stephen Leathley
 Elizabeth Adamczyk	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-335 – Newcastle - MA2024/00381
2	PROPOSED DEVELOPMENT	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
3	STREET ADDRESS	124 – 126 Bull Street, Newcastle West 2302
4	APPLICANT/OWNER	GWH King Street Pty Ltd GWH King Street Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Section 4.55(2) Modification Application
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Housing) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Sustainable Buildings) 2022 Newcastle Local Environmental Plan 2012 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Newcastle Development Control Plan 2012 Planning agreements: Nil Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i> Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations Public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council Supplementary Assessment Report: 3 July 2025 Council Supplementary memo dated: 15 May 2025 Council Assessment Report: 12 May 2025 Written submissions during public exhibition: 0 Total number of unique submissions received by way of objection: 0
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Initial Briefing: 18 December 2024 <ul style="list-style-type: none"> <u>Panel members</u>: Alison McCabe (Chair), Roberta Ryan, Tony McNamara, Elizabeth Adamczyk, Charlotte McCabe <u>Council assessment staff</u>: Eliza Arnott, Brian Gibson, Amy Ryan <u>Applicant representatives</u>: Rob Bisley, David Gunter, Rob Miriams, Sam Coles <u>Department</u>: Leanne Harris, Holly McCann Site inspection: <ul style="list-style-type: none"> Alison McCabe: 27 December 2024 Elizabeth Adamczyk: 20 December 2024 Stephen Leathley: 15 May 2025

		<ul style="list-style-type: none">• Final briefing to discuss the Council’s recommendation: 8 July 2025<ul style="list-style-type: none">○ <u>Panel members</u>: Alison McCabe (Chair), Stephen Leathley, Elizabeth Adamczyk○ <u>Council assessment staff</u>: Eliza Arnott, Brian Gibson, Amy Ryan and Philip Pollard○ <u>Department</u>: Leanne Harris, Holly McCann
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report