

3. Manly LEP 2013

The site is zoned R1 General Residential and a semi-detached dwelling is a permissible use in the R1 zone.

The objectives of the R1 General Residential Zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

It is considered that the proposed alterations and additions are consistent with the objectives of the R1 General Residential zone.

	Development Standard	Compliance
Zoning	R1 General Residential	Semi-detached dwellings permissible in the zone
FSR	Density Sub-zone F – 0.6:1 FSR maximum: 128.1m ²	No - Proposed FSR: 140m ² or 0.66:1. (Note: DCP allows variation: of 250m ² x 0.6 = 150m ²)
Height	8.5m	No - 8.85m
Heritage	The site is not a heritage listed item. The site is not located in a Heritage Conservation Area.	N/A
Lot size	250 m ²	Undersized Allotment - 213.5m ²

The site is an undersized allotment being less than the minimum lot size for sub-zone C of 250m² . The floor space ratio permitted is 0.6:1



Density Sub-zone F – FSR 0.6:1



Minimum Lot Size C – 250m²

Floor Space Ratio Non-compliance

Pursuant to Clause 3.4.2(b) of Residential DCP, *“On sites which are less than the minimum site area required in the relevant density sub-zone, the Council may consider a variation to the floor space ratio provided the applicant can demonstrate the objectives of the DCP can be achieved. This variation shall be limited to the allowable FSR for the minimum lot size in the relevant density sub-zone”*.

However, even though a variation is permitted under Clause 3.4.2(b) of the Residential DCP, a variation is required to be lodged under Clause 4.6 of the Manly LEP 2013 for non-compliance with the FSR standard of 0.6:1.

3.A Clause 4.6 Exceptions to development standards – Floor Space Ratio

Manly LEP 2013 applies to the land. The land is zoned R1 General Residential. The objectives of the zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

A request is made to vary Clause 4.4(2) of the Manly LEP 2013 which states that the maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the floor space ratio map.

The objectives of Clause 4.4 (relevant to the application) are:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain.*

The floor space ratio of the land is shown on the floor space ratio map to be 0.6:1. The site area is 213.5m². This equates to a maximum floor space of 128.1m². The proposed floor space is 140m² or 0.66:1, a variation of 9.3% which is less than 10%.

It is considered that the proposed area of the first floor addition and overall size of the development proposal meets the objectives of the development standard in the following ways:

- The bulk and scale of the development is consistent with the existing and desired streetscape character which is essentially single storey with a number of sensitively designed first floor additions setback from the ground floor. The bulk and scale of the proposed development is consistent and in many cases less than other first floor additions to semi-detached dwellings in Fairlight. The front part of the first floor addition is stepped in from the boundary of the ground floor and is designed to complement the existing character and streetscape by including a Dutch gable.
- The proposed first floor addition to the semi-detached dwelling at 10 Cecil Street will not obscure any important landscape and townscape features and will not have a negative impact on the public domain.
- The proposed alterations and additions at 10 Cecil Street will maintain an appropriate visual relationship between the new development and the existing character and landscape of the area as the semi-detached dwelling maintains its existing front setback at the ground floor and the first floor is setback behind the roofline of the building consistent with other first floor additions in the street. There will be no change to the existing character façade or verandah.
- It is considered that the bulk and scale of the proposed alterations and additions at 10 Cecil Street will not have an adverse environmental impact on the use and enjoyment of the adjoining properties in regard to privacy or solar access. The proposal meets the standards of the Manly DCP for solar access and privacy.

The proposed alterations and additions are also considered to be consistent with the objectives of the R1 General Residential Zone.

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed alterations and additions to a semi-detached dwelling increase the size of a family home to meet the needs of the family.

Reasons in support of the exception

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The reasons in support of the variation are:

- The proposed floor space ratio is consistent with previous approvals on lots less than 250m² in size in Fairlight. The Manly Independent Assessment Panel has approved an addition to a semi-detached house at 6 Cecil Street which has a FSR of 0.72:1 on a site of 215.7m². The Manly Independent Assessment Panel on 21 March 2013 approved a development at 13 Smith Street which had a proposed FSR of 0.8:1 on a site of 190m². The FSR of 152.42m² represents a non-compliance of 20%. Manly Council recently approved alterations to a semi-detached dwelling at 25 Thornton St Fairlight with an FSR of 0.7:1. The proposed variation to the development standard at 10 Cecil Street is minor at less than 10%.
- The recent Land and Environment Case, Four2Five vs Ashfield Council (2015) NSWLEC 90 requires any variations to the standards to demonstrate something more than just achieving the objectives of the standard. In this case, the Manly DCP gives a floor space ratio allowance of 0.6:1 (the density for the sub-zone) based on a site area of 250m² (minimum allotment size permitted for the sub-zone) for undersized allotments. As a result, Manly Council has consistently approved dwelling houses on undersized allotments with a FSR exceeding 0.6:1.
- Having regard to the matter of Veloshin v Randwick City Council (2007) NSWLEC 428, this is not a case where the difference between compliance and non-compliance is the difference between good and bad design.
- Having regard to the matter of Project Venture Developments v Pittwater Council (2005) NSWLEC 191 the size of the proposed development will not be unsympathetic or jarring within a streetscape context and is compatible with its surroundings.
- It is considered that the non-compliance with the floor space ratio standard will not have any adverse amenity impacts to adjoining properties with regard to visual bulk, overshadowing or loss of privacy.

That there are sufficient environmental planning grounds to justify contravening the development standard.

The amended proposal will have neutral impact in terms of environmental planning considerations and therefore satisfies the provisions of Clause 4.6(3)(b) of the Manly LEP 2013.

The proposed development has a satisfactory impact on the residential amenity of adjoining properties with regard to views, overshadowing, privacy and landscape quality.

Whether or not compliance is unnecessary or unreasonable in the circumstances and whether the non-compliance raises any matter of significance for State and Regional planning and the public benefit of maintaining the planning controls

The proposed non-compliance with the floor space ratio standard is not considered to raise any matters of significance for State and Regional planning. The proposal complies with the objectives of the standard and the area of non-compliance will not result in any significant environmental affectation. It is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

It is considered that the proposal satisfies the objectives of Clause 4.6

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

3.B Clause 4.6 Exceptions to development standards – Height

Manly LEP 2013 applies to the land. The land is zoned R1 General Residential. The objectives of the zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

A request is made to vary Clause 4.3(2) of the Manly LEP 2013 which states that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The objectives of Clause 4.3 (relevant to the application) are:

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

- (b) *to control the bulk and scale of buildings,*
- (c) *to minimise disruption to the following:*
 - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) *views between public spaces (including the harbour and foreshores),*
- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

The maximum height of a building on the site permitted under the LEP is 8.5m. The maximum height of the proposed roof above existing ground level is 8.85m. This equates to a variation of 350mm or 4.1%.

It is considered that the proposed area of the first floor addition and overall size of the development proposal meets the objectives of the development standard in the following ways:

- The bulk and scale of the development is consistent with the existing and desired streetscape character which is essentially single storey with a number of sensitively designed first floor additions setback from the ground floor. The bulk and scale of the proposed development is consistent with the first floor addition to the attached semi at 12 Cecil Street and has a similar ridge height (RL 61 and RL 61.1).
- The proposed first floor addition to the semi-detached dwelling at 10 Cecil Street will not obscure any views to or from the public domain.
- The height of the proposed addition is consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality.
- It is considered that the bulk and scale of the proposed alterations and additions at 10 Cecil Street will not have an adverse environmental impact on the use and enjoyment of the adjoining properties or the public domain in regard to solar access. The proposal meets the standards of the Manly DCP for solar access.

The proposed alterations and additions are also considered to be consistent with the objectives of the R1 General Residential Zone.

- *To provide for the housing needs of the community.*

- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed alterations and additions to a semi-detached dwelling increase the size of a family home to meet the needs of the family.

Reasons in support of the exception

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The reasons in support of the variation are:

- The non-compliance is very minor and the ridge height has the similar RL as the adjoining semi (RL 61 and RL 61.1).
- The recent Land and Environment Case, Four2Five vs Ashfield Council (2015) NSWLEC 90 requires any variations to the standards to demonstrate something more than just achieving the objectives of the standard. In this case, the proposed building maintains the same ridgeline as the adjacent semi which is consistent with past approvals.
- Having regard to the matter of Veloshin v Randwick City Council (2007) NSWLEC 428, this is not a case where the difference between compliance and non-compliance is the difference between good and bad design.
- Having regard to the matter of Project Venture Developments v Pittwater Council (2005) NSWLEC 191 the size of the proposed development will not be unsympathetic or jarring within a streetscape context and is compatible with its surroundings.
- It is considered that the minor non-compliance with the height standard will not have any adverse amenity impacts to adjoining properties with regard to visual bulk, overshadowing or loss of privacy.

That there are sufficient environmental planning grounds to justify contravening the development standard.

The amended proposal will have neutral impact in terms of environmental planning considerations and therefore satisfies the provisions of Clause 4.6(3)(b) of the Manly LEP 2013.

The proposed development has a satisfactory impact on the residential amenity of adjoining properties with regard to views, overshadowing, privacy and landscape quality.

Whether or not compliance is unnecessary or unreasonable in the circumstances and whether the non-compliance raises any matter of significance for State and Regional planning and the public benefit of maintaining the planning controls

The proposed non-compliance with the height standard is not considered to raise any matters of significance for State and Regional planning. The proposal complies with the objectives of the standard and the area of non-compliance will not result in any significant environmental affectation. It is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

It is considered that the proposal satisfies the objectives of Clause 4.6

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

4. Manly DCP 2013

The general aims of this plan are to:

- a) Ensure that development contributes to the quality of the natural and built environments.*
- b) Encourage development that contributes to the quality of our streetscapes and townscapes.*
- c) Ensure that development is economically, socially and environmentally sustainable and to require the principles of ecologically sustainable development to be taken into consideration when determining development applications.*
- d) Ensure future development has consideration for the needs of all members of the community.*
- e) Ensure development positively responds to the qualities of the site and its context.*
- f) Ensure development positively responds to the heritage and character of the surrounding area.*

It is considered that the proposed development is consistent with the objectives of the DCP.

Residential Development Objectives

Objectives for residential development that are relevant to the development proposal include:

Objective 3) To ensure that building form, including alterations and additions, does not degrade the amenity of surrounding residences, the existing environmental quality of the environment or the aesthetic quality of Manly.

Objective 4) To improve the quality of the residential areas by encouraging landscaping and greater flexibility of design in both new development and renovations.

It is considered that the proposed development meets the above objectives for residential development.

4.1 Compliance Table

Part 3 – General Controls for All Development	
3.1 Streetscape	
Control	Compliance
<p><i>Development in the streetscape (including buildings, fences and landscaping) should be designed to:</i></p> <ul style="list-style-type: none"> <i>-complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;</i> <i>-ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;</i> <i>-maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;</i> <i>-visually improve existing streetscapes through innovative design solutions; and</i> <i>-incorporate building materials and finishes complementing those dominant in the locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged.</i> 	<p>The proposed development complements the existing streetscape which comprises single storey dwelling houses and semi-detached dwellings, two with first floor additions. The bulk and scale of the development is consistent with other dwellings in the street.</p> <p>The setback of the first floor addition and the proposed height of the building are consistent with the other two storey dwellings in the street.</p> <p>The front part of the first floor addition is stepped in from the boundary of the ground floor and is designed to complement the existing character and streetscape by including a Dutch gable. There will be no change to the existing character façade or verandah.</p> <p>The bulk and design of the development contributes to the amenity of the public domain.</p> <p>The proposal complies with the building height specified in the LEP and the wall and roof height specified in the DCP.</p> <p>The proposal complements the predominant building form, distinct building character, building material</p>