

REPORT:**History**

On 15 March 2018, Council received a Development Application for a carport, to be located at 11 Town Beach Road, Tocumwal. In accordance with Council's *Development Control Plan*, Council notified all affected neighbouring properties about the proposed development and invited submissions.



Figure 1 – Aerial Photo showing subject site and neighbouring properties (satellite imagery from 2010)

Council received one formal submission on the 11 April 2018 opposing the development. In response to the opposition, the applicant volunteered revised plans and drawings on 29 May 2018 which reduced the northern quarter of the shed's height from 5.5 metres to the eaves to 3.4 metres. The revised plan is the subject of this development application.

Proposal

The Development Application is for a proposed carport to be located at 11 Town Beach Road, Tocumwal. The carport will be used for general residential storage, vehicle parking, motorcycle storage and boat storage.

Gross Floor Area

The proposed carport will be 24 metres by 10 metres, with a total gross floor area of 240 meters² (see figure 2 below).

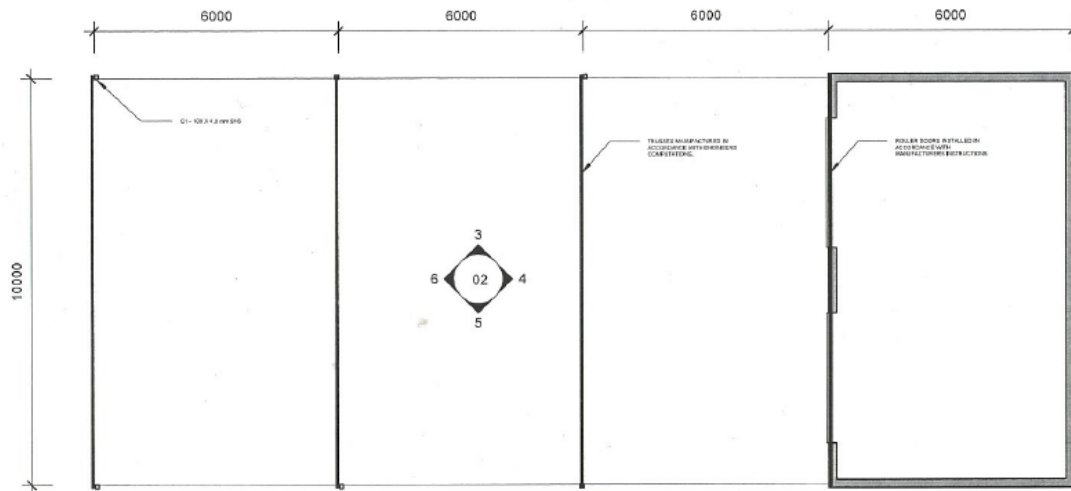


Figure 2 – floor plan of the proposed carport

Configuration

A description of the bulk and scale for the proposed carport is broken up into three sections and is described as follows:

- The northern section (6 metres long) will be 3.4 metres high to the eave with a 10° roof pitch. In this section, the proposed carport will be open on either side.
- The middle section (12 metres long) will be 5.5 metres high to the eave with a 10° roof pitch. In this section, the proposed carport will contain a Mezzanine and will be enclosed with colorbond material from 3.4 metres to the eaves. The area from 3.4 metres high to the ground level will be open on either side.
- The southern section (6 metres long) will be 5.5 metres high to the eave with a 10° roof pitch. In this section, the proposed carport will be totally enclosed with colorbond material. It will have two roller doors for access (from Sandy Lane).

The proposed carport will have a concrete floor and utilise steel for the frame and colorbond for the sections of the walls to be enclosed. Figure 3-5 below provide elevation drawings for the proposed carport.

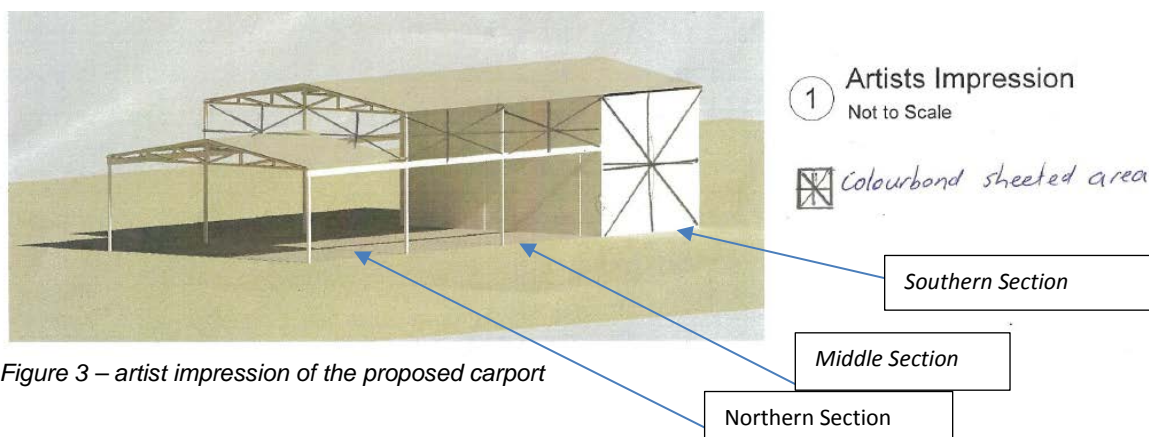


Figure 3 – artist impression of the proposed carport

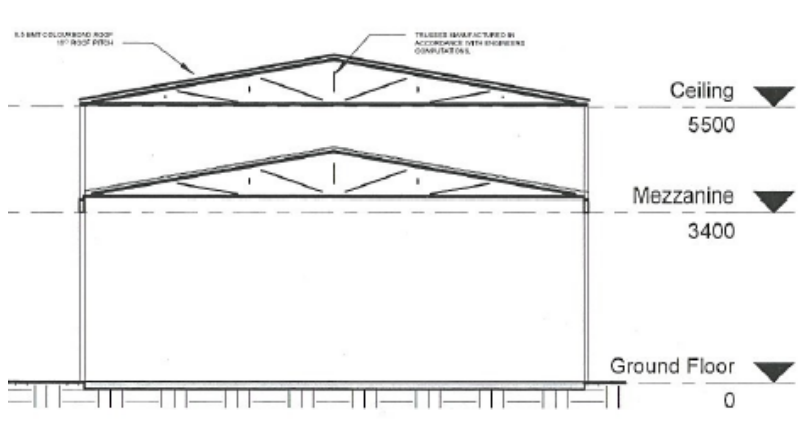


Figure 4 – elevation drawings of the proposed carport (street view from Sandy Lane)

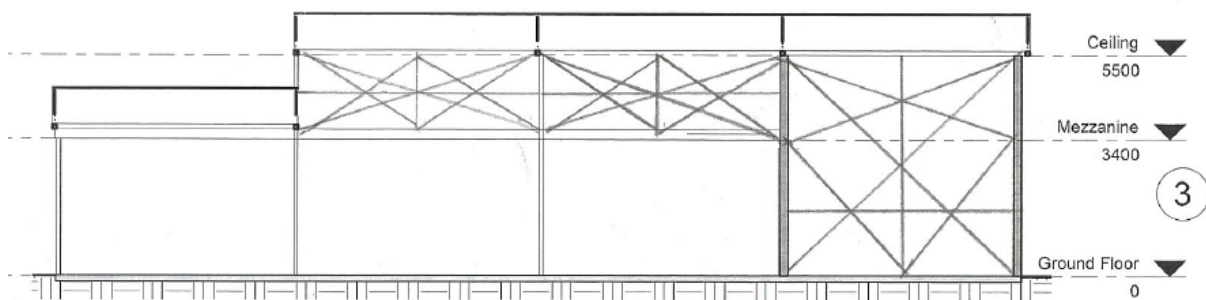


Figure 5 – elevation drawings of the proposed carport

Setbacks

The proposed carport will have a setback of 200 mm from the eastern and southern boundary and 1.2 metres from Sandy Lane (on the northern boundary), see figure 6 below.

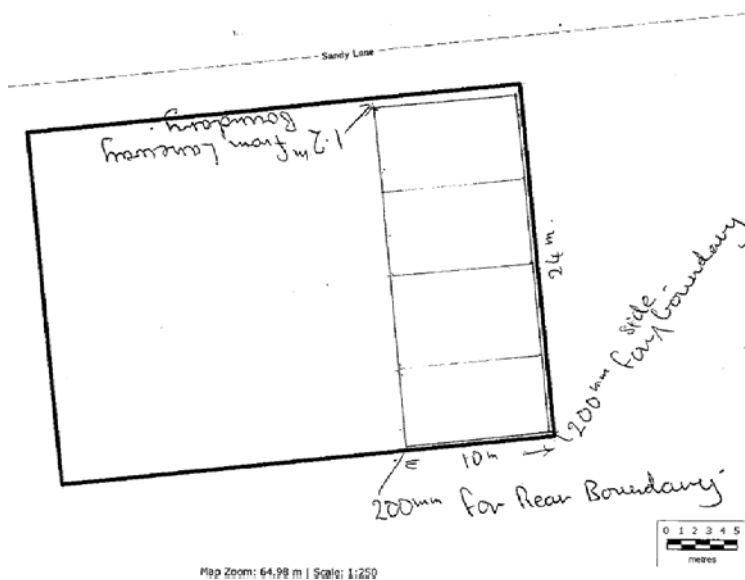


Figure 6 – site plan for the proposed carport

Subject Site and Locality

The subject site is located at 11 Town Beach Road, Tocumwal, which is also identified as Lot 41 DP616085. The subject site has a total area of 885 metres². The lot is zoned RU5 Village in the *Berrigan Local Environmental Plan 2013* (BLEP). Currently the subject site has been improved by the construction of a Dwelling and a carport. The existing carport is proposed to be replaced with the carport subject to this development application. The existing carport is approximately 3 metres high and setback 5 metres from Sandy Lane. The existing carport gains access via Sandy Lane.

The subject site has a garden area on the north/east section of the lot (in particular includes a large tree) between Town Beach Road and the proposed carport.



Figure 7 – street view of the location of the proposed carport

Surrounding Land uses

A description of the land uses surrounding the subject site is as follows:

- To the south, the neighbouring Lot has an established residential dwelling and garage. The Lot is set approximately 2 metres higher than the subject site and utilises a retaining wall to level the site for the existing dwelling onsite.
- To the east, the neighbouring lot has an established dwelling that is set slightly lower than the subject site. The dwelling is setback approximately 19 metres from Sandy Lane. There is significant vegetation between the dwelling and the proposed carport. The dwelling gains access from Sandy Lane due to the topography of Boyd Street making access problematic for the site and its residential address is Sandy Lane.



Figure 9 - subject site with 1 metre contour overlay



Figure 10 – view south from subject site

- To the north of the subject site is Sandy Lane. Further north of Sandy Lane has a Lot with an established two storey residential dwelling built with a raised living area to gain a view of the Murray River. Further east along Sandy Lane is a Lot with a unit development set at a similar ground level to the subject site.
- To the west of the subject site is Town Beach Road, the levee bank for the Murray River, then vacant land vegetated with native trees and then the Murray River.



Figure 11 – street view to lot to the north of the subject site



Figure 12 – existing dwelling to the north of the subject site

Sandy Lane

Due to existing use of Sandy Lane as an access road, many Lots along Sandy Lane have infrastructure either gaining access from Sandy Lane or even fronting their development to the laneway. For example the existing unit development to the north of the subject site has the southern units fronting and gaining access from Sandy Lane. See figure 13 below of an aerial view of development along Sandy Lane.



Figure 13 – aerial view of development along Sandy Lane (image from 2010)

Assessment

There are a number of potential impacts related to a proposal of this type which must be addressed if development approval is to be granted.

- **Relevant State Environmental Planning Policy provisions**

The State Environmental Planning Policy which needs to be taken into account in the assessment of this application is deemed SEPP - *Murray Regional Environmental Plan No 2—Riverine Land* applies to riverine land of the River Murray within Berrigan Shire. One of this SEPP's main objectives is 'to ensure that appropriate consideration is given to development with the potential to adversely affect the riverine environment of the River Murray. As the current building is located more than 100 metres from the River, and does not cause adverse impact, this development proposal will also not cause any adverse impact to the riverine land.

- **Relevant *Berrigan Local Environmental Plan 2013 (BLEP)* and *Berrigan Development Control Plan 2014 (BDCP)* provisions**

The proposed carport is permissible with consent within the RU5 Village Zone under the BLEP when it achieves the objectives of the RU5 – Village Zone. The objectives of the Village Zone is to provide for a range of land uses, services and facilities that are associated with a rural village whilst enhancing and maintaining the unique village character of Berrigan, Barooga, Finley and Tocumwal. To assist in assessing development if it meets the objectives of the zones, the *Berrigan Development Control Plan 2014 (BDCP)* provides guidance and control mechanisms for appropriate development. Chapter 2 of the BDCP relates to Residential Development, which this development is classified. The objectives and control guidelines of the relevant sections within chapter 2, which the proposed development relates, are assessed in **Appendix "C"**.

Neighbour Notification

The main issue which needs to be considered when undertaking this assessment is that the proposed development is located in close proximity to the eastern and southern Lot boundaries and thus has the ability to impact on the neighbouring property. As per the provisions in the BDCP, notification was given to the landowners of the neighbouring properties on the southern and eastern side of the Lot from 23 May 2018 for 14 days to make them aware that the development may affect their property. One formal submission was made on the proposal.

Summary of Formal Submission

A summary of the submission made to Council on the proposed development and an assessment on points raised is provided in **Appendix "D"**.

Overall Assessment

An overall assessment takes into considering the objectives of the BLEP RU5 – Village Zone, the BDCP, relevant planning regulations and policy and the submitters objections.

Taking into consideration the BDCP objectives, the bulk and scale of the proposed development has been assessed as larger than the existing built form in the neighbouring environment (in particular along Sandy Lane), is larger compared to recently approved development proposals in the Shire for carports, garages and residential storage sheds and is generally to be in proportion with the size of the Lot that it is to be placed. Due to the bulk and scale of the proposal, it has been assessed that the proposal would not meet the objectives for creating an aesthetically pleasing residential neighbourhood, particularly by not meeting the objectives for making a positive contribution to the Sandy Lane streetscape. As per the objectives of the BDCP, proposed development would generally not be a compatible size with the existing and likely development in the residential precinct. In regards to meeting the objectives for outbuildings, even though the proposed structure will be replacing an old structure with new materials, the comments from the submitter of the impacts of the bulk and scale of the structure having an impact on residential amenity have been noted. The total floor area and height of an outbuilding have been considered as larger than existing and future development in the neighbouring environment and would generally not meet the outbuildings objectives of the BDCP.

It should be noted however that due to the topography of the land in the general area, the rear section of the carport is cut back into the sandhill and adjoins a high retaining wall which supports the dwelling, shed and other structures located on the adjoining property at the rear, which reduces its prominence in the landscape somewhat. Another mitigating factor is the agreement of the proponent to remove the mezzanine floor for the first 25% of the structure when viewed from Sandy Lane thereby stepping the roof line down which also reduces the impact of the structure within the landscape.

An assessment in regards to the BLEP, as the proposal would generally not meet the objectives of multiple sections of the BDCP, it would not therefore generally meet

the objectives of the BLEP to enhance and maintain the unique village character of the Shire.

The submitters discussion points on the impacts of the proposed development with reduced setbacks and the bulk and scale of the development as having an effect on the Sandy Lane streetscape and the residential amenity of the neighbourhood environment have been noted.

Conclusion

In assessing this development application, the relevant parts of Section 4.15 of the *Environmental Planning and Assessment Act 1979* have been taken into account. Whilst the development is permissible in the RU5 Village Zone, there are a number of factors in this situation that have been considered in the determination in an assessment against the BLEP and the BDCP that considers the proposal to bulk and scale to be large in comparison to existing development in the neighbouring environment (particularly Sandy Lane) and on the size Lot for the subject site, that would generally not achieve the objectives of multiple objectives in the BDCP and the BLEP.

In considering this development proposal it would appear that there are three options available for consideration.

1. Due to the bulk and scale of the structure and impact on the locality and adjoining property the application be refused.
2. Consent be granted subject to a condition of consent that the mezzanine floor be further reduced in size to mitigate potential impact on the adjoining property and the locality.
3. Approve the application given that the applicant has already compromised by reducing the length of the mezzanine floor and that the existing vegetation located on the adjoining property effectively screens the proposed development from that property.

Recommendation

That the Council consider the options above.

Appendix A - Assessment *Berrigan Development Control Plan 2014* (BDCP) provisions

CHAPTER 2 - BDCP OBJECTIVES AND CONTROLS	ASSESSMENT
<p>2.1 Neighbourhood Character</p> <p>The objective of this section is to create aesthetically pleasing residential neighbourhoods. The control guidelines state that the design of residential development is to suit the existing scale, density, setbacks and character of the neighbourhood.</p>	<p>This section assists in determining appropriate residential dwelling development and their associated outbuildings.</p> <p><u>Bulk and scale of proposed development</u> – in comparison to existing carports, garages and residential storage sheds in the vicinity of the subject site, the bulk and scale of the proposed development has been assessed as being substantially larger. Also in comparison, in the most recent 16 approvals in the Berrigan Shire for carports, garages and residential storage sheds in the RU5 Village Zone, in predominantly residential areas, the average size structure approved is 61 metre² with an average height of 3.28 metres on an average Lot size of 1417 metre². The biggest development in recent history is a 126 metres² residential storage shed on a Lot size of 2500 metre². Given that the proposed development is 240 metre², 10 metres wide, with three quarters of the length being 5.5 metres high to the eaves on a Lot size of 885 metre², the bulk and scale of the proposed development is assessed as being of a larger than newly approved structures.</p> <p>Due to the bulk and scale of the proposed development being assessed as larger than the existing built form in the area, particularly along Sandy Lane and compared to recently approved development in the Shire for carports, garaged and residential storage sheds, the proposal would not meet the objectives for creating an aesthetically pleasing residential neighbourhood.</p>
<p>2.2 Streetscape</p> <p>The objective of this section is that residential design should make a positive contribution to the streetscape. The</p>	<p>A development needs to be assessed against its unique location and surrounding environment and in this case there are some situations that affect the assessment of the proposal.</p>

control guidelines state that bulk and scale should be kept of a compatible size with the existing or likely development in the residential precinct. Varying the pitch of the roof and angles of eaves and inserting parapet features is encouraged. High quality materials and finishes should be used for residential building exteriors and to retain existing trees in the streetscape.

Town Beach Road - In regards to the impacts on the streetscape of Town Beach Road, given that the proposal is assessed as being a large structure (as discussed above) and that would be located approximately 25 metres from Town Beach Road, there could be possible impacts on the streetscape. Town Beach Road is a local road that provides a link between the town of Tocumwal and the Town Beach. It has a unique streetscape as a majority of the streetscape includes a large vacant land that is vegetated with native vegetation abutting the Murray River and provides views to the Murray River. There is a number of pedestrian and vehicle use for this road both to access the 'Town Beach', a location of an official camp place on the Murray, to take in the amenity particularly of the vegetation and the Murray River or for recreational purposes along the Murray River.

However, due to the undulating terrain, there are a number of existing buildings along Town Beach Road that are built on a sand hill or are raised (to gain views over the levee bank for the Murray River), that the proposed development would be difficult to see from Town Beach Road. Furthermore, there is substantial vegetation on the subject site in the northern section, including a large tree that would buffer the proposed development from Town Beach Road. It has been assessed that the proposed development, would not generally adversely impacting the streetscape of Town Beach Road.

Sandy Lane - Sandy Lane has morphed more towards a secondary road that could be viewed as having its own unique streetscape. As discussed above, the bulk and scale

	<p>of the proposal has been assessed as large and would not therefore be of a compatible size with the existing or likely development in the residential precinct. As the proposal will gain access to Sandy Lane, there are minimal opportunities for any type of vegetation buffer. Given that there are lower ground level that the subject site along Sandy Lane, the proposal would be substantially larger than existing development along Sandy Lane. The potential impacts on the Streetscape for Sandy Lane by the submitter is noted. The proposal is therefore assessed as having a potential impact on Sandy Lane.</p> <p>The proposed development does have a pitched roof and will use high quality materials and finishes on the exterior.</p> <p>Overall, the proposal has been assessed as generally not meeting the objectives for making a positive contribution to the Sandy Lane streetscape and a proposed development should be kept to a compatible size with the existing and likely development in the residential precinct.</p>
<p>2.5 Building Setbacks The objective of this section is to maintain the existing character in residential areas. The relevant control guidelines for side and rear boundaries from adjoining properties should comply with the standards detailed in the Building Code of Australia.</p>	<p>The building setback comply with the standards detailed in the Building Code of Australia. The setback to Sandy Lane is similar to the setback of other outbuildings along the lane.</p>
<p>2.10 Energy Efficiency The objective of this section is that a building design is to promote energy efficiency. The control guidelines state that buildings should be oriented to make appropriate use of solar energy, be sited and designed to ensure energy</p>	<p>An assessment of proposal against the provisions in this section is that the potential overshadowing from the proposed development, being on the eastern side of the Lot, and given the existing land uses, will have a minimal impact on the existing energy efficiency of the neighbouring dwelling to the east. Whilst the overshadowing</p>

<p>efficiency of existing dwellings is not unreasonable reduced. Living areas and private open space should be located on the norther side of development where practicable, where solar access to north facing windows is maximised to have at least three hours direct sunlight between 9am and 3pm at the Winter Solstice.</p>	<p>issues raised from the submitter regarding the proposal with an increased height and bulk in comparison from the original size carport occurring from 2:30pm onwards by has been noted however the proposed structure will not have an impact on solar access to the adjoining dwelling.</p>
<p>2.11 Outbuildings</p> <p>The objective of this section is that outbuildings are not to be detrimental to residential amenity and to be in proportion with the size of the Lot they are placed (see below, definition for residential amenity). The control guidelines state that outbuildings are to be clad in factory pre-coloured metal, timber brick or masonry material. The colour of cladding used on outbuildings is to be low-reflective. The total floor area and height of an outbuilding in the R5 and RU5 zones shall be considered on its merit and against the objectives of this section.</p> <p>Residential Amenity definition – The term ‘amenity’ relates to the qualities, characteristics and attributes people value about a place which contributes to their experience of high quality life. The pleasant or normally satisfactory aspects of a location which contribute to its overall character and the enjoyment of residents or visitors (the Planning Academy, www.theplanningacadamy.com.au 9/7/2018).</p>	<p><u>Residential amenity</u> – due to the bulk and size of the proposal, on a Lot of this size and in this location, it has been assessed as having a possible impact on the residential amenity of the neighbouring environment. The proposal has been assessed against the size of the Lot being 885 metre² and not be compatible to this size Lot in this neighbourhood environment. The bulk and scale impacts on residential amenity from the submitter has been noted. The submitters comments on the large amount of closed in areas to the east of the site along the ‘front area’ to Sandy lane have been noted. This also taking into consideration the existing development along Sandy Lane and the use of Sandy Lane morphing more into a secondary road with its own unique streetscape, with some developments even fronting onto the laneway.</p> <p><u>External Materials</u> - The proposal will replace an existing carport with a new structure that will utilise high quality materials and finishes on the exteriors of the building. The proposed carport will use existing rights to gain access from Sandy Lane.</p> <p>In summary, the proposal would generally not meet the objectives for outbuildings, even though the proposed structure will be replacing an old building with new materials, the proposal would generally not be in proportion with the size of the Lot and has been assessed as generally having an impact on the residential amenity of the neighbouring environment, particularly along Sandy Lane.</p>

Appendix B - Summary of Formal Submission

SUBMISSION	RESPONSE TO SUBMISSION
<p>Category of development? The submitter questions the category of the proposed development being a 'carport' when it has a second storey mezzanine and 25% of the structure being enclosed. For example that a carport is exempt development in the <i>SEPP (Exempt and Complying Development Codes) 2008</i>, when it is higher than 3 metres.</p>	<p>The <i>SEPP (Exempt and Complying Development Codes) 2008</i> is used as a guide to determine when a proposed development can be determined as a Complying Development, needs a Development Application with Council or that it can be developed as Exempt Development. A carport is a structure used to store vehicles and as there are open sides on both sides for a majority of the development it meets this description (the enclosed area is for the last 25% of the structure). When development doesn't meet this code then it is assessed using other legislation and Regulations and Councils Development Control Plan.</p>
<p>Reduced setback to boundary, height and size The submitter objects to the reduced setbacks stating that the proposed building is too close to the boundary, is too high and is overlarge. The impacts of the boundary proximity, height and scale of the building is reflected in all other points in the submitters submission. The development does not meet the control guidelines of the Berrigan Development Control Plan chapter 2.2 Streetscape where the bulk and scale should be kept of a compatible size with the existing or likely development in the residential precinct. The building will cover 25% of the Lot and extends almost the entire eastern boundary. For a "village" zoned neighbourhood it has the visual bulk and height of an outbuilding one might expect on a rural property or on the outskirts of town. The building is set in the 'front' of their dwelling (in regards to the submitters residential dwelling being orientated to Sandy Lane).</p>	<p>Discussion points noted – except for the second paragraph in regards to fire separation regulations, the proposed development in this regard has been assessed and the proposed development addresses the guidelines for fire separation.</p>

<p>Fire Separation - In order to meet the fire separation standards of the Building Code of Australia the boundaries would have to be setback to 900 mm to comply. The reduced setback would cause overshadowing as discussed below. Would footings fit into the proposed 200mm setback? Would a 200 mm setback enable the construction of a boundary fence along the eastern boundary? Is there going to be heating and cooling in the workshop and mezzanine and would the reduced setback affect this?</p>	
<p>Energy Efficiency The submitter purchased their dwelling due to the north facing windows. They believe the following will be affected by the proposed carport:</p> <ol style="list-style-type: none"> a. Solar Access - the submitter believes that the proposed development will cause overshadowing on their dwelling during Winter Solstice from 12:00pm onwards. Their dwelling has been positioned for optimal position for controlled solar access with a northern exposure to allow winter sun into their living area during the day. At the start of winter they traditionally cut back some vegetation on the northwest corner of their Lot to gain more afternoon sun and on the northeast corner for morning sun. Figure xx shows the living areas on the northern aspect of the dwelling and winter sun projecting onto the north facing windows at 2:00pm on 4 June 2018. Figure xx is a shadow diagram drafted by the submitter indicating potential impacts from the proposed carport. The submitter believes that the shading cast by the upper storey by 2:30pm will 	<p>The issues of solar access to the neighbouring property have been assessed against relevant planning policy and legislation and given that there is solar amenity enjoyed by the neighbouring property during the hours of 9am to 3pm, the proposed development will have only a minor effect on solar amenity to the northern outdoor and living areas on the neighbouring dwelling from 2:30pm onwards.</p> <p>As evidenced during the site visit undertaken by Councillors and Council staff the dwelling was receiving effective solar access at 2.30pm and the erection of the proposed carport would not reduce this amenity.</p>

overshadow half the internal space in the northern section of their dwelling (into the kitchen area, western living room and both back bedrooms) and northern outdoor area. It will cast a shadow into the southern outdoor patio area. The full length window on the west will be overshadowed in the afternoon. The submitter is requesting that a study be completed to provide an accurate assessment of the shadowing on their submitters Lot due to the proposed development.

- b. Solar energy potential - The submitter had previously considered solar panels and was advised optimum positioning on their dwelling would be on the north/western end of the roof. The prospect of installing solar panels would be affected by overshadowing by the proposed development.
- c. What can be done to improve solar access – the eastern boundary setback of 200 mm for the structure could have a greater setback, for a building of this height it appears that the setback i.e. 3 metres from a secondary boundary and greater than the normal 900 mm setback. If it was setback 3 metres the shading would be reduced.
- d. Do the current side and rear setbacks comply with the National Construction Code standards, given that this is an extraordinary large “carport”? Both the height and length of the second storey could be reduced to reduce overshadowing effects on the submitters Lot.

<p>Amenity of the Neighbourhood</p> <p>a. Chapter 2 Section 2.11 of the Berrigan Development Control Plan says that “outbuildings should not be detrimental to the residential amenity”. It also says that outbuildings should be in proportion to the size of the Lot on which they are placed.</p> <p>b. Section 2.5 refers to “attractive streetscapes”.</p> <p>i. Sandy Lane is the submitters street. The proposed building contravenes all of these points. It occupies approximately 25% of the applicant’s Lot and its height towers over the neighbourhood. It will be a visual eyesore.</p> <p>ii. Coming from the Main Street of Tocumwal along Town Beach Road, the long block-shaped of the proposed carport will dominate the streetscape. A fellow engineer and architect described the proposed development as a ‘monstrosity’, an ‘Industrial Age steel mill’ and as a ‘Grail Silo’. It is a building that belongs on the outskirts of town or on a rural Lot. It is not sympathetic to the established form of the area or respectful of the natural beauty and character of the area. The applicants Lot is immediately adjacent to the Foreshore and river front land. Being so close to the foreshore, a development of this nature may not pass scrutiny of the National Construction Code.</p>	<p>Arguments noted – except for the point on the potential impacts on the “attractive streetscape” from the Town of Tocumwal and Town Beach Road, In regards to the impacts on the streetscape of Town Beach Road, due to the undulating terrain, there are a number of existing buildings along Town Beach Road that are built up (either by the natural sand hill or to gain views over the levee bank for the Murray River), the proposed development has been assessed as not adversely impacting on the streetscape of Town Beach Road. Furthermore, there is substantial vegetation on the subject site in the northern section, including a large tree, that would adequately buffer the proposed development from Town Beach Road.</p>
<p>Southern section</p> <p>The submitter questions what the use of the southern section of the proposed carport as it is a double storey fully enclosed area. This southern section is directly adjacent to the</p>	<p>Argument noted - except for the point on the possible impacts of the development including noise and fumes, due to the proposed use for the carport for general storage associated with residential use, it has been</p>

<p>submitters existing dwelling, less than 3 metres from a full length west-facing window. The submitter questions what impacts this type of development have on them, including noise and fumes?</p>	<p>assess that there would be no impact in regards to noise and fumes. In addition it should be noted that there is significant vegetation consisting of large trees and shrubs located along the western boundary of complainants property which effectively screens the development site at present.</p>
<p>Further questions The submitter questions, are there going to be windows in the proposed carport enclosed area as there are window frames sitting in the existing carport? Will this building be a site of a backyard business generating noise, traffic and parking congestion?</p>	<p>There are no proposed windows in the enclosed area of the proposed carport. The proposed use of the carport is for garden machinery, two vehicles, collectable motorcycles and boats. Furthermore, any approval conditions would include that the proposed carport be used for storage associated with residential purposes.</p>
<p>Suggestions/possible compromises</p> <ul style="list-style-type: none"> • Have the carport minus the mezzanine • Have greater setback from the side boundary, a minimum of the regulation 900 mm but preferably 2 metres or 3 metres. • If there is a mezzanine of 6.4 metres high, it extends no further than the north/west corner of the submitters house, i.e. a total of 6 metres of mezzanine from the southern boundary). Otherwise, reduce the overall height and scale of the structure to be more in keeping with the neighbourhood. 	<p>Suggestions noted</p>