

# ROAD DISCONTINUANCE

## COUNCIL POLICY NO. 151

### 1. POLICY PURPOSE

This policy outlines the process to ensure consistent, transparent, and lawful discontinuance of roads in accordance with the applicable statute. This policy aims to support long-term planning actions across the Shire's rural and urban communities and ensures that decisions to discontinue roads:

- Are made in the best interest of the community and reflect sound asset and land management practices.
- Support the effective and sustainable use of Council-managed land.
- Follow a clear process that balances community needs, legal requirements, and operational considerations.
- Maintain access to essential services and protect existing public infrastructure.
- Facilitate the appropriate disposal, retention, or repurposing of land following road discontinuance.
- Promote responsible governance, community engagement, and alignment with Council's strategic objectives.

### 2. SCOPE

This policy applies to Gannawarra Shire Councillors, employees, developers, and community members who initiate or consider formal requests for road discontinuance of Council-owned / Council-managed roads within the Gannawarra Shire.

This policy covers:

- The process for assessing and determining the discontinuance of unused, unconstructed, or unrequired roads under Council's management.
- The legislative and statutory requirements for road discontinuance, including notification, consultation, and decision-making in accordance with the Local Government Act 1989, Local Government Act 2020, and other relevant legislation.
- The identification and protection of existing infrastructure or utility services located within road reserves.
- The potential outcomes of road discontinuance, including retention of land by Council, sale or transfer to adjoining landowners, or use for future public purposes.
- The responsibilities of applicants, including developers or adjoining property owners, in preparing and supporting a request for road discontinuance.
- The role of public submissions and community engagement in the decision-making process.
- The criteria used to assess whether a road is no longer reasonably required for public access or use.

## 3. DEFINITIONS

In this Policy the following definitions apply:

- **Adjoining Landowner:** A person or entity that owns land which shares a common boundary with the road or road reserve proposed for discontinuance.
- **Council:** Means the Gannawarra Shire Council.
- **Discontinuance:** The exercise of power under Clause 3 of Schedule 10 of the Local Government Act 1989 in relation to a Road which is effected by a notice published in the Government Gazette and / or the removal of reserve status in relation to a Reserve under section 24A of the Subdivision Act 1988.
- **Landlocked Land:** A parcel of land that, following the discontinuance of an adjoining road, no longer has legal or practical access to a public road.
- **Road:** is as defined in Section 3 of the Local Government Act 1989 (LGA 1989). The term “road” includes, but is not limited to, a right of way, laneway, street or footpath, either used for vehicular or pedestrian access, or both.
- **Reserve:** Land legally set aside for the purpose of a road, drainage or other strategic purpose, irrespective of whether the road is physically constructed or currently in use. Does not include reserves set aside for recreational or open space purposes.
- **Unauthorised Occupation:** The unauthorised use or possession of Council land.
- **Valuation:** An independent assessment of the market value of land prepared in accordance with the Valuation of Land Act 1960 by a qualified valuer approved by Council.
- **Vesting:** The legal transfer of ownership or management responsibility of land, such as from Council to the Crown, or vice versa, as part of a discontinuance or land administration process.

## 4. POLICY

Council is committed to the effective management of its road network and land assets. This policy establishes a framework for the discontinuance of roads that are no longer required for public use, ensuring that such processes align with legislative requirements and serve the best interests of the community.

### 3.1 General Principles Applicable to Road Discontinuance

Council will adhere to the following principles when considering road discontinuance:

- Council will encourage the Discontinuance and sale of Roads or Reserves that are not being used for pedestrian or vehicular access or are no longer required by Authorities or for other strategic and public use.
- Discontinuance may also be supported if the outcome will address the need for elimination of a known traffic hazard, or the bypassing of some topographic obstacle, or if it may facilitate better environmental management, or enable the development of a new subdivision.
- Council strongly discourages the unauthorised occupation of Roads or Road Reserves and may take steps to enforce removal or remove all buildings and obstructions.
- Council will only sell Discontinued Roads or Reserves to abutting property owners.
- In most cases, the applicant will be required to consolidate the discontinued road with their adjoining property.
- Council will not proceed with a Road Discontinuance and sale that creates landlocked land titles.
- Council and / or its Solicitors shall recover all costs incurred in the application of the Policy.
- Council reserves the right to retain any Discontinued Road or Reserve. This land may be retained to meet a strategic need or sold at some point in the future in accordance with the Policy.
- Council has the right to place an easement or covenant on or over Discontinued Roads or Reserves to protect existing rights or future requirements.

### 3.2 Assessing Whether a Road is Reasonably Required for Public Use

In determining whether a road is no longer reasonably required for public access or use, Council will apply a range of criteria to ensure the decision is informed, consistent, and aligned with the public interest. The assessment will consider both current and future needs of the community, in accordance with legislative obligations and strategic planning goals.

Key criteria include (but not limited to):

- **Current Usage:** Evidence that the road is unused, underused, or no longer functions as a practical means of access for vehicles or pedestrians.
- **Alternative Access:** The availability of suitable and legal alternative access to all affected properties, ensuring that road discontinuance does not result in land being landlocked or access compromised.
- **Public Benefit:** Evaluation of whether retaining the road continues to serve a public function, including access to community facilities, open space, or local infrastructure.
- **Planning and Development Context:** Consideration of the current zoning, approved planning permits, and whether the road is required to support future development or infrastructure.
- **Infrastructure and Services:** Whether the road reserve contains essential services (such as drainage, electricity, water, or telecommunications), and whether these services can be adequately protected via easements or alternative arrangements if the road is discontinued.
- **Strategic Alignment:** Alignment with Council's adopted strategic plans, including asset management plans, transport strategies, and the Gannawarra Planning Scheme.
- **Environmental and Heritage Factors:** Any known environmental, cultural, or heritage values that may be impacted by the road's discontinuance, including impacts on vegetation, watercourses, or Indigenous heritage.
- **Community and Stakeholder Input:** Views and submissions received through public consultation, including from adjoining landowners, service providers, and relevant authorities.

If a road fails to meet the threshold of ongoing public benefit or necessity under these criteria, it may be deemed suitable for discontinuance. However, Council will make final determinations on a case-by-case basis, with consideration given to the broader implications of each proposal.

### 3.3 Requesting Road Discontinuance

Any request for road discontinuance and subsequent purchase by landowners, developers or the community must be submitted in writing, addressed to Manager Council Assets and include:

- A plan clearly outlining the extents of the road to be discontinued.
- Current copies of titles and deeds (from Land Use Victoria/Registrar General's Office) of the road and all lands abutting the road, including any other land which may have a benefit to the road.
- Evidence that the owners and occupiers of land abutting or immediately adjacent to the road have been consulted in relation to the proposed discontinuance and disposal.

Council officers will review all discontinuance requests and provide the initial feedback highlighting merits and deficiencies. The applicant must pay the initial fees (legal costs / land surveyor desktop assessment) and must commit to enter into a binding conditional Contract of Sale of the Land between the Council and the prospective purchaser.

### 3.4 Road Discontinuance Process

All discontinuance requests and associated documentation will be reviewed by Council. Upon Council's approval to proceed, satisfactory receipt of the required information and the security deposit from the applicant, Council will advertise its intent to discontinue the road to all potentially affected persons and to the public in accordance with the Section 223 of the Local Government Act 1989.

If objections are received, Council must determine on the discontinuance after having considered the submissions received pursuant to Section 223 of the Act. If following the Section 223 process Council determines that discontinuation should proceed, then it will formalise a decision to that effect under Section 206 and Clause 3 of Schedule 10 of the Local Government Act 1989.

Following road discontinuance, the land will be sold in accordance with the requirements under Section 114 of the Local Government Act 2020. The sale price will be determined via a valuation of the land in the road which must be obtained from a person who holds the qualifications or experience specified under Section 13DA(2) of the Valuation of Land Act 1960. The valuation, which must reflect the market value of the land, must not be more than six months old prior to the proposed sale and must be undertaken on a “highest and best use” basis.

### **3.5 Costs**

All costs incurred in association with the discontinuance process are to be borne by the applicant, regardless of the outcome. Council reserves the right to pause or stop discontinuance process at any stage.

#### **3.5.1 Initial Costs**

The applicant will be required to pay for the initial legal work and the land surveyor assessment prior to the approval to proceed with discontinuance.

#### **3.5.2 Discontinuance Process Costs**

Costs associated with the Discontinuance and sale of the Roads or Reserves are to be borne by the applicant. Applicant’s deposit must cover in full all financial risks to Council. The costs will include:

- Legal fees and duties
- Public notice
- Government Gazette notice
- Survey costs
- Title registration costs
- Valuation fees.

#### **3.5.3 Sale of Land**

Any land resulting from the discontinuance of a Council road is to be sold at market value, which will be determined by Council’s nominated valuers. Council will not accept any valuations prepared by applicant or applicant nominated third parties.

On some occasions, it may be appropriate for an estimated sale price of the proposed land to be sold, to be provided to the applicant to decide if they wish to proceed with the process. Such estimate is not a guaranteed price and will not substitute a market valuation.

#### **3.5.4 Associated Costs**

The identification, relocation or replacement of any assets within a section of road proposed for discontinuance, will be the responsibility of the purchaser. Examples of these include the following:

- Utility or Telecommunications authority assets (e.g. Water Authority, Powercor, Telstra).
- Replacement drainage or relocation of drainage, if required.

### **3.6 Discontinuing Government Roads on Crown Land**

Roads located on Crown land (Government Roads) are subject to additional considerations:

- **Consent Requirement:** Written Approval in Principle / Consent from Department of Energy, Environment and Climate Action (DEECA) will be required before proceeding with any road closure or discontinuance actions.
- **Land Vesting:** Upon discontinuance, the land may vest back to the Crown, and Council may not have authority to sell or transfer the land.
- **Financial and Legal Implications:** Council may additionally evaluate and reject the application on the grounds of financial viability of the proposed discontinuance, following the considerations of cost associated with the process and potential revenue from land sale while considering legal liabilities and responsibilities.

## 5. POLICY REVIEW

Council will review this policy as required but always within four years after a general election of the Council.

At the time it was developed, this policy was compliant with the Victorian Charter of Human Rights and Responsibilities Act 2006.

## 6. FURTHER INFORMATION

Members of the public may inspect all Council policies at Gannawarra Shire Council's Kerang and Cohuna Offices, or online at [www.gannawarra.vic.gov.au](http://www.gannawarra.vic.gov.au).

Any enquiries in relation to this policy should be directed to the Director Infrastructure and Development on (03) 5450 9333.