

Before the Hearing Panel  
Appointed by the Timaru District  
Council

Under                                      the Resource Management Act 1991 (**RMA**)  
  
In the matter of                      the Proposed Timaru District Plan

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**Memorandum of Counsel on behalf of Timaru District Council**

**Bidwill Trust Hospital – scope of submission**

**7 August 2024**

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## **May it please the Hearing Panel:**

### **Introduction**

- 1 This memorandum is filed by counsel for the Timaru District Council (Council) in relation to the Proposed Timaru District Plan (PDP) and in response to the legal advice (dated 1 August 2024) filed on behalf of the Bidwill Trust Hospital (submitter #225) (Bidwill).<sup>1</sup>
- 2 The Council seeks direction from the Panel as to whether the relief now being sought by Bidwill is within the scope of its original submission. That direction is sought in order to assist the parties to develop appropriate amendments (by agreement, if possible) which would avoid potential natural justice issues that might arise if the amendment being sought was not fairly and reasonably raised in the submission.

### **Background**

- 3 The Bidwill submission sought the following relief:
  - (a) Rezoning of its site to Special Purpose Hospital Zone, along with objectives, policies and rules for the zone;<sup>2</sup>
  - (b) In the alternative, a new rule providing for existing hospitals as a permitted activity in the Medium Density Residential Zone (MRZ)<sup>3</sup> along with two new policies to provide for the continued use and development of existing hospitals, and the future expansion of the hospital within the zone;<sup>4</sup>
  - (c) A new definition of 'hospital'.<sup>5</sup>
- 4 The section 42A officer recommended that a Bidwill Hospital Precinct be included over the site, along with permitted activity status for healthcare facilities excluding the construction of new buildings, and restricted discretionary status for new buildings.<sup>6</sup>

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<sup>1</sup> Potential issues relating to scope were raised in the Legal submissions of Counsel on behalf of Timaru District Council – Hearing B (B1 Rural and B2 Urban Zones), at [19(a)].

<sup>2</sup> Bidwill Hospital Trust submission, section 2.2, page 4.

<sup>3</sup> Bidwill Hospital Trust submission, section 3.2, page 5.

<sup>4</sup> Bidwill Hospital Trust submission, section 3.4, page 6.

<sup>5</sup> Bidwill Hospital Trust submission, section 4.2, page 6.

<sup>6</sup> Section 6.12, pages 61 – 64.

- 5 Bidwill now seeks that health facilities and activities<sup>7</sup> (including the construction of new buildings) be permitted anywhere in the MRZ, provided they are operated by Bidwill or its successor, along with a policy that seeks to provide for existing facilities at the existing hospital.<sup>8</sup>

### **Relevant law**

- 6 The relevant law on the scope of submissions is set out in legal submissions and memoranda of counsel previously filed with the Panel.<sup>9</sup>
- 7 The Council acknowledges that determining whether the amendment was reasonably and fairly raised in the course of submissions should be approached in a realistic and workable fashion.
- 8 However, it seeks confirmation that, when read as a whole, potential submitters might have anticipated amendments that provide for new healthcare facilities and activities and associated buildings anywhere in the MRZ.

### **Analysis**

- 9 The Bidwill Hospital Trust submission is attached at **Appendix A**, for ease of reference.
- 10 The legal advice submitted by Bidwill highlights the language in the submission that identifies the desire to grow, develop and re-develop the existing hospital to support the conclusion that an interested person reading the submission as a whole would understand the intention to expand the hospital onto adjacent properties.
- 11 The Council does not share that confidence, and considers that those terms could reasonably be interpreted as referring to growth, development and re-development of the existing site (rather than adjacent sites, adjoining sites, or sites elsewhere in the MRZ), for the following reasons.
- 12 In general, the submission clearly relates to the existing Bidwill Trust Hospital or other "existing hospitals" (Timaru Hospital is the only other

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<sup>7</sup> It is assumed this means "healthcare facilities" as defined in the PDP.

<sup>8</sup> Statement of evidence of Mark William Geddes in relation to the Bidwill Trust Hospital submission, 5 July 2024, at [19].

<sup>9</sup> Legal submissions of Counsel on behalf of Timaru District Council (30 April 2024), at [28] to [30]; Memorandum of Counsel on behalf of Timaru District Council – Response to Minute 10 (1 July 2024), at [9] to [12].

existing hospital). There is no reference to other healthcare facilities or activities, including those that might be operated by Bidwill.

13 In terms of the primary relief sought:

- (a) The rezoning sought by the primary relief is expressed various ways in the submission and refers to "encompassing the BTH lands and facilities",<sup>10</sup> "rezoning of the site",<sup>11</sup> and "to cover the area of their site located at 53 Elizabeth Street, Timaru".<sup>12</sup> While "the site" is not expressly defined in the submission, the context suggests that the site being referred to is 53 Elizabeth Street, Timaru. No other "site" is identified in the submission, nor does the submission expressly refer to expansion of the hospital onto adjacent, adjoining or nearby sites.
- (b) The grounds stated for the relief sought refer to the application of the zone to "existing facilities and infrastructure associated with the hospital", the purpose of the zone being to enable the "existing facilities" to develop and the zone facilitating "the development of the hospital site".
- (c) In order to apply a zone, the zone must be spatially identified in the plan. Bidwill have not suggested that the zone should encompass any area beyond the existing hospital. While the submission seeks a policy that would "support the future growth of the zone", any future growth of the zone itself could only occur via a future plan change (not as part of the current process). It is noted in that regard that the submission was prepared by a professional planning consultant, not a lay person.
- (d) While it is accepted that the grounds for seeking this relief address the future development aspirations of the hospital, including growth and meeting evolving demands, there is nothing in the submission relating to the primary relief that suggests that the future growth and development of the hospital referred to includes development of land beyond the existing site as opposed to within the existing site.

14 In terms of the secondary relief sought, the introduction and summary sections of the submission contain broad statements seeking a new rule

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<sup>10</sup> Bidwill Hospital Trust submission, section 1.1, page 3.

<sup>11</sup> Bidwill Hospital Trust submission, section 2.2, page 4.

<sup>12</sup> Bidwill Hospital Trust submission, section 6, page 7.

and policy in the Medium Density Zone "providing for hospital buildings and activities".<sup>13</sup> However:

- (a) the specific rule sought is limited to a new rule providing for "existing hospitals" as a permitted activity in the MRZ;<sup>14</sup>
- (b) the justification for permitting the activity is based on the way the existing hospital operates in its current location;<sup>15</sup> and
- (c) the new policy MRZ-P8 sought is to "provide for the continued use and development of existing hospitals..."<sup>16</sup>.

15 Bidwill Trust Hospital and Timaru Hospital are the only existing hospitals in the district.

16 The only suggestion that the alternative relief sought might relate to expanding the existing hospital beyond its current site is contained in the proposed new policy MRZ-09. That proposed policy seeks to "support the future expansion of the hospital within this zone".<sup>17</sup> The term "expansion" could include either spatial expansion or expansion of facilities within the site – this is not specifically discussed in the submission. However, it is acknowledged that the proposed policy does not refer specifically to the existing site. It is also noted that, while the proposed policy is not limited to the site, the associated proposed rule is limited to existing hospitals.

17 In light of the above, the Council's concern is that, when the submission is read as a whole, a rule enabling a range of healthcare facilities and activities anywhere in the MRZ may not be fairly and reasonably raised in the submission such that potential submitters could have anticipated that as an outcome.

### **Directions sought**

18 The Council therefore seeks direction from the Panel as to whether the Bidwill submission contains scope for amendments that would provide for the expansion of Bidwill Trust Hospital, or other new healthcare

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<sup>13</sup> Bidwill Hospital Trust submission, section 1.1, page 3 and section 5, page 7.

<sup>14</sup> Bidwill Hospital Trust submission, section 3.2, page 5.

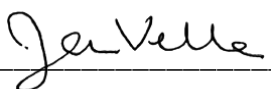
<sup>15</sup> Bidwill Hospital Trust submission, section 3.2, page 5.

<sup>16</sup> Bidwill Hospital Trust submission, section 3.3, page 6.

<sup>17</sup> Bidwill Hospital Trust submission, section 3.4, page 6.

facilities (including buildings), beyond the existing hospital site at 53 Elizabeth Street, Timaru.

- 19 The Council respectfully submits that direction on these matters will enhance the efficiency and effectiveness of the hearing process by providing confidence to the Council that potential amendments discussed with Bidwill are within the scope of its submission.
- 20 For completeness, it is noted that the section 42A officer does not agree with the provisions now being proposed by Bidwill, particularly in terms of:
  - (a) A rule that relates to the party operating the facility is not appropriate because it is not effects based;
  - (b) Built form standards are not sufficient to ensure compatibility of a new or expanded activity with the surrounding residential environment;
  - (c) The ability to refuse consent for a new facility based on amenity effects is appropriate, even where the building is providing district, regional and nationally significant healthcare services;
  - (d) The effects of the existing activity do not justify permitting additional activities and buildings, as new or expanded facilities may not be established on the same “sympathetic” basis.
- 21 However, the Council is open to discussing provisions which would address the matters raised in the submission, provided they are within the scope of the original submission.
- 22 The Council is grateful for the Panel's attention to these matters.



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