

## **CAN PLAN/NELMAC: SPA VARIATION**

**16 July 2021**

### **The variation**

- 1 As set out in Can Plan and Nelmac's respective 22 June 2021 submissions on the Commerce Commission's "statement of unresolved issues", the parties have agreed to vary their 4 December 2020 sale and purchase agreement covering Can Plan's proposed acquisition of Nelmac's refuse waste business (known as "Betta Bins").
- 2 That variation was agreed by the parties in their 15 June 2021 Variation of Agreement for Sale and Purchase of Business.
- 3 Now, in accordance with the parties' 4 December 2020 SPA (as varied by the parties' 15 June 2021 SPA variation agreement):
  - 3.1 Nelmac will retain ownership of its business contracts with green waste-only customers (which generate an annual revenue of ~\$[]) and the green waste wheelie bins rented by those green waste-only customers; and
  - 3.2 Can Plan will acquire the rest of Nelmac's refuse waste business as set out in the 4 December 2020 SPA and described in Can Plan's 18 December 2020 clearance application, including Nelmac's business contracts with customers that bundle refuse and green waste collection (with the green waste part of those bundled contracts generating an annual revenue of ~\$[]) and the green waste wheelie bins rented by those [] bundled green/refuse waste customers.
- 4 Can Plan continues to seek clearance under s66 Commerce Act 1986 to acquire Nelmac's business assets set out in the 4 December 2020 SPA (as varied by the parties' 15 June 2021 SPA variation agreement).

### **Effect of the variation**

- 5 Nelmac will retain all of Betta Bins' green waste-only customer contracts which comprise the vast majority ([]% by annual revenue) of Betta Bins' residential green waste collection business.
- 6 Nelmac will service those existing and any new green waste-only customers independent of, and in competition with, Can Plan.
- 7 Can Plan submits that its acquisition of Nelmac's existing bundled green/refuse waste customer contracts (which generate just ~\$[] in annual green waste revenues and is only [] customers) will not substantially lessen competition in any Nelson-Tasman residential green waste collection market.

- 8 Post-acquisition, Can Plan will continue to be constrained in any green waste market by:
- 8.1 Nelmac's green waste-only business;
  - 8.2 the very real threat of entry into residential green waste collection from:
    - (a) the three Nelson-Tasman incumbent waste management companies: Smart, Waste Management and Envirowaste;<sup>1</sup>
    - (b) new green waste collection players given the very low barriers to offering green waste collection services;<sup>2</sup> and
  - 8.3 competition from alternative green waste disposal methods available to consumers which, as recorded in the Commission's 22 March 2021 "statement of issues" paper, includes green waste customers' ability to:
    - (a) drop off their own green waste at either of the two composting facilities in the Nelson-Tasman region or to the Tahunanui resource recovery centre;
    - (b) compost their own green waste; or
    - (c) hire a green waste skip from Envirowaste or Waste Management.

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<sup>1</sup> [].

<sup>2</sup> See Can Plan's 7 April 2021 response to the Commission's "statement of issues" for further detail.