

PUBLIC VERSION

17 June 2021

Nelmac
C/- Duncan Cotterill
PO Box 10376
The Terrace
Wellington
New Zealand

Attention: Nick Crang

Dear Nick

RE: Response to Commerce Commission Statement of Unresolved Issues 31 May 2021

Introduction

1. Alice Grace, from Morrison Low and Associates Limited (**Morrison Low**) has been engaged by Duncan Cotterill to provide expert opinion and comment on the Commerce Commission's Statement of Unresolved Issues dated 31 May 2021 in relation to the proposed acquisition of the Nelmac Limited (**Nelmac**) waste collection business (**Betta Bins**) by Can Plan Nelson Limited (**Can Plan**).
2. This advice relates specifically to the collection of general waste, not green waste.
3. Alice Grace is a qualified engineer (Masters of Engineering (Civil)) and a waste industry specialist, with over twenty years of experience working for private industry, local government organisations and consultancies.
4. Alice is a Director at Morrison Low, where she specialises in strategic planning and procurement of waste services contracts for local government organisations in New Zealand.
5. Alice is also a board member for WasteMINZ, which is the waste industry association for New Zealand. A position to which Alice has been elected by the members of the association.

Residential general waste collection service market

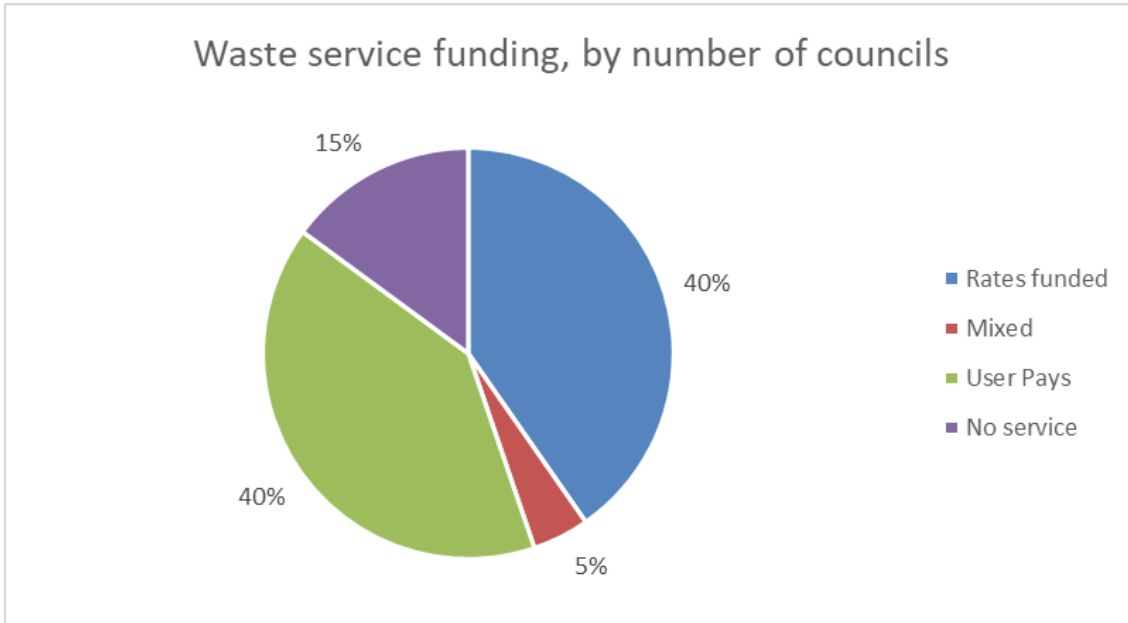
6. Morrison Low data shows that in 2021 40% of councils (27 in total) provided a rates-funded service, while the remaining 60% of councils (40 in total) have services where private residential collection services occur alongside or instead of council services. This includes Nelson City Council which has no service and Tasman District Council which has a user pays service.



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Impact of council decisions on the market

7. Based on the trends observed in other markets, the decisions of Tasman District Council and Nelson City Council will influence the market in the Richmond/Stoke/Nelson area.
8. There is a trend in councils moving to rates-funded services, in most cases this is due to a decision to transition from bag collection services to wheelie bins for both safety reasons and reflecting the fact that council can provide a cost-effective, comprehensive waste collection service that focuses on waste minimisation by restricting the size of the general waste bin whilst also provide recycling and organic waste collection services to divert waste from landfill.
9. The number of councils providing a rates-funded service has increased in the last 12 months from 23 to 27, due to Tauranga, Hutt City, Waimate and Mackenzie deciding to introduce rates-funded collections from 1 July 2021. Dunedin City Council recently voted to introduce a rates-funded collection from 1 July 2023.
10. Tasman District Council and Nelson City Council have said they are not considering a move to fully rates-funded general waste collection services. In their joint 2019 Waste Management and Minimisation Plan¹, Method 7.1.1 states “Tasman District Council will provide a kerbside refuse bag collection through the kerbside collection contract in areas provided within the kerbside service area” and Method 7.1.2 states “Nelson City Council will facilitate refuse collection through use of private service providers”.
11. [REDACTED]. In future the ability to provide a cost-effective, comprehensive waste collection service that focuses on waste minimisation may also factor into their decision making, as it has done for other councils.
12. However, given the national trend towards rates-funded services, it is likely to be an influence for companies such as Smart Environmental and Waste Management when they consider whether to invest in expanding their residential general waste collection services in the Nelson-Tasman market.

¹ Nelson Tasman Waste Management and Minimisation Plan, Nelson City Council and Tasman District Council, September 2019 (<https://www.nelson.govt.nz/assets/Our-council/Downloads/Plans-strategies-policies/2019/Nelson-Tasman-Joint-Waste-Management-and-Minimisation-Plan-Council-approved-19sep2019.pdf>)

Competitive environments that are similar to Richmond/Stoke/Nelson

Influence of adjacent markets and council services

13. The Richmond/Stoke/Nelson market is where Betta Bins provide services and therefore could be viewed as a standalone market under consideration. However, if this is the case, the influence of providers in the adjacent Tasman market still needs to be taken into account. Smart Environmental's ability to compete in the Richmond/Stoke/Nelson market with Betta Bins and Can Plan is influenced by their presence in the adjacent Tasman District market where they are contracted by Tasman District Council to provide general waste and recycling collection services.
14. In areas where private collection services are provided, it is not unusual for residential general waste collection markets to be dominated by one or two providers. This market dominance can be a result of the provider leveraging off their council collection contracts for general waste or recycling. There are other factors such as small market size or the ability of a provider to leverage off their landfill disposal arrangements, however the provision of council services tends to be a consistent driver.
15. Residential waste collection markets tend to align with territorial authority boundaries, because holding a council collection contract for general waste or recycling provides a secured revenue base from which to develop their private collection business. They tend to be able to build their business both within the council area they hold the contract and adjacent council areas.
16. For example, Smart Environmental were awarded the Queenstown Lakes District Council recycling collection service contract in 2004 (noting, the Queenstown Lakes District is a similar size to the Richmond/Stoke/Nelson area). Prior to holding that contract, Smart Environmental did not have a presence in Queenstown, but following award of that contract they were able to build their private waste collection business in both the Queenstown Lakes District and the adjacent Central Otago District (noting Central Otago is approximately one third the size of the Richmond/Stoke/Nelson area).
17. Between 2004 and 2019, AllWaste held the Queenstown Lakes District Council general waste collection contract and also held both the general waste and recycling collection contracts for Central Otago District Council. During this time, AllWaste and Smart Environmental were the dominant private general waste collection service providers in the two districts.

Smart Environmental lost their council contract to Waste Management in 2019 but continue to operate their private waste collection business in Queenstown. Waste Management are now looking to build their private waste collection business in Queenstown as a result of their council contract award.
18. For these reasons, while the Nelson and Tasman markets could be viewed as separate, the activity in one market and the providers in that market, have a strong influence on the other and therefore cannot be considered in isolation. The competitors that exist in one market remain a potential threat to market share in the adjacent market even if their current market share is low. This restricts the ability of the dominant provider to exert their competitive advantage in their market.

New entrants

19. New entrants enter markets when prices offered by one or two existing market players with a high market share have increased and often they use their council contracts as a base from which to expand their market share in adjacent markets and then extend their markets from there. In the Richmond/Stoke/Nelson market [REDACTED] after acquisition of Betta Bins, if clearance is granted for the sale, but others could enter the market if Can Plan increased their pricing from their current low base.
20. Existing providers in a market that already provide commercial services and some residential services, like Smart Environmental, Waste Management or EnviroWaste in the Richmond/Stoke/Nelson market, can also leverage off their existing services to compete in a market when prices are raised by [REDACTED].

21. Northland Waste have also been offering low pricing for residential general waste collection services in other parts of the lower North Island and have successfully increased their market share in Palmerston North, Horowhenua, Kapiti Coast, Porirua and the Hutt Valley as a result. Although they have had a presence in the lower North Island since 2006 from their base in the Hutt Valley, being awarded the Horowhenua District Council general waste and recycling collection contracts in 2018 gave them a platform from which to accelerate their growth in the residential general waste collection market.
22. Whanganui has a similar population to Richmond/Stoke/Nelson and does not provide a council service. The residential collection service market has until recently been dominated by EnviroWaste and Waste Management. Northland Waste, trading as Low Cost Bins, entered the Whanganui market in September 2020 due to Waste Management's decision to withdraw its bag collection service offering in July 2020. Low Cost Bins entered the market with pricing lower than Waste Management²³.

Specific local considerations

Ability of Can Plan to price discriminate if Betta Bins acquired

23. Can Plan are an existing provider [REDACTED] in the Richmond/Stoke/Nelson market and offer a low service price for bags and a reasonably low price for bins when compared to other regions. Their pricing reflects the presence of other existing and potential competitors in the market. With increases in disposal costs due to national levies, Can Plan will more likely than not need to raise their prices. However they will be constrained by the presence of other providers in the Richmond/Stoke/Nelson market, as well as the threat of other existing providers or new entrants. This constraint would exist either with or without the acquisition of Betta Bins.
24. Can Plan offers very low prices for residential general waste collection services using bags compared to pricing in other regions, which are generally in the range \$3.00-\$4.50 per bag. At \$1.99 per 65L bag it is cheaper than Betta Bins at \$2.57 per 65L bag (when sold in a pack of four) and even Tasman District Council's 45L bag price of \$2.29⁴ for residents in Richmond, which is partially subsidised by the council's rates⁵.
25. Smart Environmental currently offers the lowest price for bin collection services, however Can Plan advertise that they will match any price. From their websites (and using 1 Main Road, Stoke as the address where that is required): Can Plan offers \$264/12 month contract for a 120L bin, and \$345/12 months for a 240L bin; Smart offers \$195/12 month contract (for first year) for a 140L bin (slightly larger than Can Plan/Betta Bins smallest bin), and \$255/12 months (for first year) for a 240L bin; and Betta Bins offers \$24/month (\$288/12 months) minimum 6 month term for 120L bin, and \$29/month (\$348/12 months) minimum 6 month term for a 240L bin.
26. This pricing is more aligned to bin pricing for residential general waste collection services in other regions, albeit at the lower end of the range. For example, Northland Waste advertise pricing from \$285/12 month contract for 120L bin in Whanganui or \$245/12 month contract for 120L bin in the Hutt Valley. EnviroWaste advertise pricing of \$324/12 month contract for 120L bin in Whanganui.
27. Note that in the Commerce Commission's Statement of Unresolved Issues, item 25, there is a reference to TDC running a rates-based general waste rubbish bag service, however this is only partially funded by rates with balance funded by the sale of the council's rubbish bags.

² <https://www.nzherald.co.nz/whanganui-chronicle/news/new-business-offers-whanganui-kerbside-waste-collection/GLPVNTBTIMRLVIBA2Y4VQBVMNY/>

³ <https://www.nzherald.co.nz/whanganui-chronicle/news/waste-management-introducing-new-wheellie-bin-only-system-in-whanganui/CY73MAIBRCDN6PPFHONQWVW05IM/>

⁴ Fresh Choice Richmond online shopping 15/06/2021

⁵ <http://www.nelson.govt.nz/assets/Our-council/Downloads/Plans-strategies-policies/2017/Nelson-Tasman-Joint-Waste-Assessment-2017.pdf>

- 28. Pricing increases are expected in 2021 due to landfill disposal costs increasing. This increase is a result of the Waste Disposal Levy increasing from \$10/tonne to \$20/tonne in July 2021⁶ and the cost of purchasing New Zealand Units in the Emissions Trading Scheme also increasing in 2021. The fixed price option for New Zealand Units increased from \$25 per unit to \$35 per unit in January 2021 and auctioning of New Zealand units commencing in June 2021⁷. Both the Waste Disposal Levy and Emission Trading Scheme costs are set to increasing further after 2021. These increases will be on top of any regular increases in operating costs faced by collection service providers, for example due to wage increases.
- 29. The extent to which Can Plan and other providers pass on these cost increases to their customers is unknown. Given Can Plan's pricing is currently very low for bags and reasonably low for bins, an increase would be expected. Depending on how much of the cost increase is passed on by Can Plan relative to other suppliers, this may open the door for others to compete. This will be something Can Plan will need to consider if it were to adjust their price.
- 30. Can Plan do not currently have different bags for different collection areas. Bags purchased in Richmond can be put out for collection in any of Can Plan's collection area. If they were to acquire Betta Bins, they are likely to continue this approach for Betta Bins customers. The effort of creating new bags for different collection areas and communicating this change to customers without also communicating an increase in price, would risk opening the door to increased competition from other suppliers.
- 31. Bin collection services are easier to price discriminate on because the pricing is less visible on a website than on a supermarket shelf, but customers seeking a bin service can research prices offered by different providers using their websites before choosing their provider. Equally, providers can look up each others' pricing from their websites. For the bin customers, it is easier for Can Plan to adjust pricing in response to market changes, but equally their competitors can respond. Like with bag pricing, the potential for Can Plan's competitors to respond will help to constrain Can Plan from price discrimination.

With and without scenarios

- 32. Regardless of whether the sale of Betta Bins to Can Plan proceeds or alternative scenarios where [REDACTED], the presence of Smart Environmental in the market which will remain due to them holding Tasman District Council's collection contracts constrains Can Plan.
- 33. Based on our own research and information provided by Nelmac, in Richmond/Stoke/Nelson, Can Plan appear [REDACTED].
- 34. Smart Environmental's presence as the Tasman District Council contractor means they will continue to have a presence in the wider area. This would likely restrict Can Plan from increasing prices in Richmond/Stoke/Nelson as this would open an opportunity for Smart Environmental to expand.
- 35. In the counterfactual scenario where [REDACTED].
- 36. In another counterfactual where [REDACTED].

⁶ <https://environment.govt.nz/what-government-is-doing/areas-of-work/waste/waste-disposal-levy/about-levy/>

⁷ <https://www.epa.govt.nz/industry-areas/emissions-trading-scheme/changes-to-the-ets/>

Other competitive conditions affecting Smart Environmental Limited

37. While Smart operates in an environment where there is uncertainty over future service and Can Plan pricing is low, other lower-level barriers to market expansion are likely to be a factor in [REDACTED] and include route density, traffic congestion in the central Nelson area, spare capacity in existing fleet and fixed term contracts.
38. If there were greater certainty over future service, these lower-level barriers would be less of an impact on Smart Environmental.
39. In terms of route density, [REDACTED]. Information provided by Nelmac shows there is very little difference in household density between the different parts of Richmond/Stoke/Nelson and therefore overall household density is unlikely to be a factor for Smart Environmental. Household density would be more of a factor if a low household density such as Cable Bay were being considered. For this reason, we have viewed route density as a lower-level barrier to entry.
40. In terms of traffic congestion in the central Nelson area, particularly during peak times, the disposal location for all services within the Nelson-Tasman region is the York Valley Landfill, which requires travel within the congested Nelson City area. Collection within Nelson City would be closer to this end disposal point. For their collections in Richmond, Smart Environmental would already have to travel through Nelson to York Valley Landfill or dispose of material at the Richmond Resource Recovery Centre (RRC), incurring additional cost to consolidate and haul waste from Richmond RRC to the landfill. For this reason, we have viewed traffic congestion as a lower-level barrier to competition.
41. In terms of spare truck capacity, that will depend on when additional trucks are brought on to service the Tasman District Council contract, which could either be new trucks or existing trucks from their national fleet. These trucks could be general waste only or the duo-combi general waste and recycling trucks used by Smart Environmental, which means it could be an increase in general waste or recycling that triggers Smart Environmental purchasing another truck and the degree to which it has spare capacity. The driver to bring in fleet for the Tasman District Council lessens the risk for Smart Environmental to bring on a truck to compete in the Richmond/Stoke/Nelson market. For this reason, we have viewed truck capacity as a lower-level barrier to competition.
42. In terms of fixed term contracts, these exist in markets across New Zealand. The date of commencement is not the same for all customers and not all customers will be on fixed term contracts. Therefore there are opportunities to attract customers at any time. Although it reduces the potential number of customers to some extent, like other considerations we have viewed this as a lower-level barrier.

Summary

43. In the same way that Northland Waste has entered markets in the lower North Island and Waste Management looks to expand in Queenstown, new entrants and expansion are possible in the Richmond/Stoke/Nelson market.
44. However in the immediate future there are competitive conditions which impact on the decision making process that providers have to make as to whether to expand into the market. These include uncertainty regarding the Councils' future plans for rates funding of general waste collection, the cost increases that will be [REDACTED] due to disposal cost increases and the Nelmac sale process. Beyond these, we do not see any other higher-level barriers materially impacting the ability for existing players or new entrants to enter the market.

45. In the current market, Smart Environmental remain Can Plan's greatest competition and are more likely to expand from their current position than other providers such as Waste Management and EnviroWaste. Given the low pricing offered by Can Plan and the fact that Smart Environmental holds the Tasman District Council contracts, other providers will more than likely wait for Smart Environmental to compete with Can Plan before they do. Other players may choose instead to focus on other market opportunities in the area such as commercial collections.
46. Both the higher-level and lower-level barriers to Smart Environmental competing are dynamic and could be different in six to twelve months' time, regardless of whether the Betta Bins sale to Can Plan proceeds (noting uncertainty of this sale process outcome is a barrier in itself).
47. The factors that impact competition are substantively the same in all scenarios, the factual (Betta Bins acquired by Can Plan) and the counterfactual scenarios ([REDACTED]). This is because Smart Environmental's presence in the adjacent Tasman market as the Tasman District Council service provider is a constant under all scenarios.

Yours sincerely

Morrison Low Associates



Alice Grace

Director