

**Notice seeking clearance for Can Plan Nelson Limited
to acquire the assets of Nelmac Limited's refuse
collection business, *Betta Bins***

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COMMERCE ACT 1986: BUSINESS ACQUISITION

SECTION 66: NOTICE SEEKING CLEARANCE

The Registrar
Mergers and Acquisitions
Commerce Commission
PO Box 2351
WELLINGTON

PART 1: APPLICANT

Applicant for clearance

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[CONFIDENTIAL INFORMATION]

PART 2: TRANSACTION OVERVIEW

- 1 Can Plan Nelson Limited (**Can Plan**) seeks clearance to acquire certain assets of Nelmac Limited's (**Nelmac**) waste collection business for \$[] (the **proposed transaction**). That business trades as *Betta Bins*. And Nelmac is a wholly owned subsidiary of Nelson City Council.
- 2 Specifically, the main assets Can wishes to acquire (the **transaction assets**) are:
 - 2.1 two Isuzu Manual Side Loader trucks (registrations GUY865 and HRR515):



- 2.2 one Hino Rear Loader (registration DKB684):



- 2.3 And prepaid wheelie bins (120L and 240L), large bins (660L and 1100L) and pay-as-you bags (65L and bin liners) currently in circulation.



- 3 The proposed transaction does not include Nelmac's recycling operation, or any other part of Nelmac's business.

4 For that reason, this application only concerns the overlap between Can Plan and Betta Bin's general and green waste collection businesses. Nelmac will continue to provide "free" council-funded residential recycling services in Nelson post-transaction under contract with Nelson City Council.

5 In the rest of this Part 2 we describe:

5.1 the Nelson-Tasman waste collection industry;

5.2 the main Nelson-Tasman waste collection companies:

(a) Betta Bins;

(b) Can Plan;

(c) Smart Environmental;

(d) Waste Management;

(e) Envirowaste; and

(f) other local waste collection companies in Motueka and rural Tasman, like Motueka Bin Hire.

Nelson-Tasman's waste collection industry

6 Nelson-Tasman waste collection companies offer waste collection services by:

6.1 selling wheelie bins and rubbish bags for households/businesses to put their waste into;

6.2 collecting that waste at a specified time; and

6.3 disposing that waste at a landfill or refuse centre.

7 For the time being, Nelson-Tasman differs from other New Zealand regions that have rates-based kerbside waste collection. Tasman District Council and Nelson City Council only operate rates-based recycling services. All other waste collection services are operated by private waste collection companies on a user pays basis.

8 The vast majority of those services are provided to households that live in Motueka, urban Richmond, Stoke and Nelson City. While Richmond falls within TDC and Stoke/Nelson City in NCC, that separation is on paper only. Those three urban centres are virtually linked. It is, for instance, just ~5km between Richmond and Stoke, and ~5km between Stoke and Nelson City.




9 And, in any event, that council split will end in a practical sense in 2023 when TDC and NCC are set to merge their recycling collection services. That combined recycling contract will see the two districts' recycling efforts join forces. And, as we explain in this application, the company that wins that joint recycling contract will have a significant competitive advantage in the wider Nelson-Tasman wheelie bin/bag collection market.

10 We now briefly turn to the three basic waste collection steps just mentioned.

Bin delivery (step 1)

11 Nelson-Tasman waste collection companies sell or rent different sized bins depending on customers' needs.

12 The common bin sizes offered in Nelson-Tasman are:



| Size/type | Size | Example |
|--|--|--|
| Pay-as-you go Plastic bags; bin liners; and bin tags | 65L; 120L/240L (bin liners / tags) |  |
| Weekly/ fortnightly collection Wheelie bins | 120L; 240L |  |
| Weekly/ fortnightly/ on-call collection Large bins | 660L; 1100L; 1500L; 3m ³ ; 4.5m ³ |  |




| | | |
|------------------------------|--|---|
| | |  |
| One-off hire Skips | 3m ³ ; 4.5m ³ ; 7.5m ³ ; 9m ³ |  |

13 Beta Bins do not offer metal skips / gantry bins (nor are the transaction assets capable of servicing skips). For that reason this application does not discuss skips again.

Bin collection (step 2)

14 Nelson-Tasman waste collection companies use trucks to collect the bins, like those set out in the following table.

| Name | Size | Bin | Trucks used |
|---|--|---|---|
| Pay-as-you go Plastic bags; bin liners; bin tags | 65L; 120L/240L (bin liners / tags) |  | Any of the trucks below will do. Bags are manually loaded by staff or side loader trucks. |
| Weekly/ Fortnightly collection Plastic wheelie bins | 120L; 140L; 240L |  | Side-load or rear load (either with an automatic lifter or not). |

| | | | |
|--|---|--|--|
| | | |   |
| <p>Weekly/ fortnightly/ on-call collection Large bins</p> | <p>660L; 1100L; 1500L; 3m³; 4.5m³</p> |     | <p>Rear End Lifter (REL) or Front End Lifter (FEL)</p>   |

15 Nelson-Tasman waste collection companies typically collect bins weekly from houses and businesses around the Nelson-Tasman area.

Waste disposal (step 3)

- 16 When a truck is full, waste collection companies dispose the rubbish they've collected straight in the landfill or to "resource recovery centres" (**RRCs**). RRCs filter the waste and then take it to a landfill on the waste collection companies' behalf.
- 17 The main landfills, RRCs and green waste disposal facilities in the Nelson-Tasman are as follows.
- 17.1 **York Valley landfill.** A 50/50 joint venture between TDC and NCC. York Valley is the only operational landfill in the Nelson-Tasman area and is where all Nelson-Tasman waste ends up.¹ Waste collection companies (including all of those discussed in this application) are allowed to dispose waste directly at the York Valley landfill.
- 17.2 TDC's **Mariri RRC** and **Richmond RRC.** Smart Environmental operates and maintains these RRCs under an eight year contract with TDC.² Fulton Hogan then takes waste from the Mariri and Richmond RRCs to the York Valley landfill under contract with TDC.
- 17.3 **Greenwaste to Zero** and **Wholesale Landscapes** are privately owned commercial composting services. These businesses recycle/compost green waste that is disposed of by waste collection companies and Nelson-Tasman residents. Greenwaste to Zero also has a small green waste trailer collection business.
- 18 The owners of those disposal facilities charge a disposal fee that is typically set on a dollar per tonne basis.
- 19 The fee at the York Valley landfill is set jointly by NCC and TDC under their JV agreement that was authorised by the Commission in 2017.³ Can Plan has noticed higher landfill fees after that agreement was put in place, but notes that that fee increase could be because of higher Waste Minimisation Act 2008 levies.
- 20 Around []% of Can Plan's 2020 disposal fees were paid to the York Valley landfill. With Richmond RRC and Mariri RRC accounting for []% and []% respectively.

| Landfill / RRC | 2020 | 2019 | 2018 | 2017 |
|-----------------------|-------------|-------------|-------------|-------------|
| Other | | | | |
| Mariri RRC | | | | |

¹ TDC's Eves Valley landfill has closed until the York Valley landfill is full.

² Smart has held versions of that contract, non-contested, for the last ~19 years.

³ Nelson City Council and Tasman District Council [2017] NZCC 6 (*TDC/NCC authorisation decision*).

| | | | | |
|----------------------------|--|--|--|--|
| Richmond RRC | | | | |
| York Valley landfill | | | | |
| Total landfill fees | | | | |

21 The table above shows that:

21.1 Can Plan has paid an increasing amount of landfill fees over the last four years; and

21.2 as a result of [].

Nelson-Tasman waste collection companies

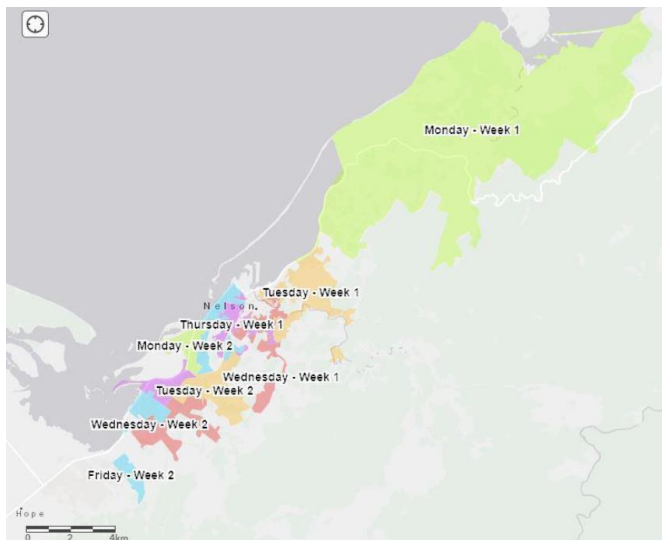
22 This section discusses Nelson-Tasman’s waste collection companies.

Betta Bins

23 Betta Bins is a Nelmac business division. Nelmac is 100% owned by Nelson City Council.

24 Despite that council ownership, Betta Bins operates as a standalone waste collection service and does not receive any subsidies from NCC. Betta Bins, for instance, pays the same landfill rates as Can Plan and other market participants.

25 Betta Bins operates waste collection services throughout Nelson City, Stoke and into urban Richmond with ~[] FTEs.



25.1 Betta Bins primarily supplies customers with “pay-as-you go” bags and bin liners that are sold online and in supermarkets. As set out in the following table, []% of Betta Bins’ residential revenue over the calendar year to September 2020 was from customers using Betta Bins’ bags and bin liners.

| Product | Sub-product | Revenue (CY to Sept 2020) |
|---------|-------------|---------------------------|
|---------|-------------|---------------------------|

| Residential | | |
|--------------------------|---------------------------|--|
| Pay-as-you go | | |
| Bags | 4 packs | |
| | Singles | |
| Bin liners | 120L liners | |
| | 240L liners | |
| Prepaid | | |
| Rental bins | 120L prepaid | |
| | 120L monthly DD | |
| | 240L prepaid | |
| | 240L monthly DD | |
| | Greenwaste | |
| | Refuse & greenwaste combo | |
| Total Residential | | |

25.2 Betta Bins’ weekly prepaid 120L/240L wheelie bin waste collection business is less popular, generating []% (~\$[]) of the Betta Bins’ revenue over the same period.

25.3 Can Plan estimates that Betta Bins services about []% of all Nelson-Tasman households that pay for wheelie bin/bag waste collection services.⁴

25.4 Betta Bins also offers:

25.5 660L and 1100L bin collections for commercial customers, like small businesses, flat blocks, motels and restaurants. That commercial business is []. Betta Bins sold \$[] worth of commercial large bin subscriptions in the last calendar year; and

25.6 a fortnightly green waste collection service.

25.7 Betta Bins’ combined annual turnover has been []:⁵

| | 2019/20 | 2018/19 | 2017/18 | 2016/17 |
|----------------|----------------|----------------|----------------|----------------|
| Revenue | | | | |

26 Betta Bins owns the trucks in the following table. Only the three assets marked with an asterisk are part of the proposed transaction.

| Description | Truck type | Bin lift capacity | Age (years) | Mileage |
|-------------------------------|-------------------|--------------------------|--------------------|----------------|
| Compactor – Hino Ranger FD2J* | REL | 1100L | 22 | 372k |
| | | | | |

⁴ At this point, we mention that the market share estimates in this application are Can Plan’s best estimate. But note that there is limited publicly available information to precisely calculate market shares.

⁵ See **Schedule A** transaction documents.

| | | | | |
|--------------------------------------|----|------|---|------|
| Compactor – Isuzu LEV FSR700 AMT* | SL | 240L | 7 | 114k |
| Compactor – Isuzu LEV FSR600 AMT* | SL | 240L | 6 | 113k |
| | | | | |
| | | | | |

27 Can Plan understands that Nelmac intends to retain the other trucks to use in their street litter contract (i.e., collecting waste from public rubbish bins) and as back-up recycling trucks.

Can Plan

28 Can Plan is a private waste collection company owned and operated by Nelson’s Michael and Charmaine Boocock.

29 Michael founded the business in 1996 with one small truck that collected 240L wheelie bins. He, Charmaine and their team of ~[] staff have built the business up from there.

30 Today, Can Plan owns:

30.1 [];

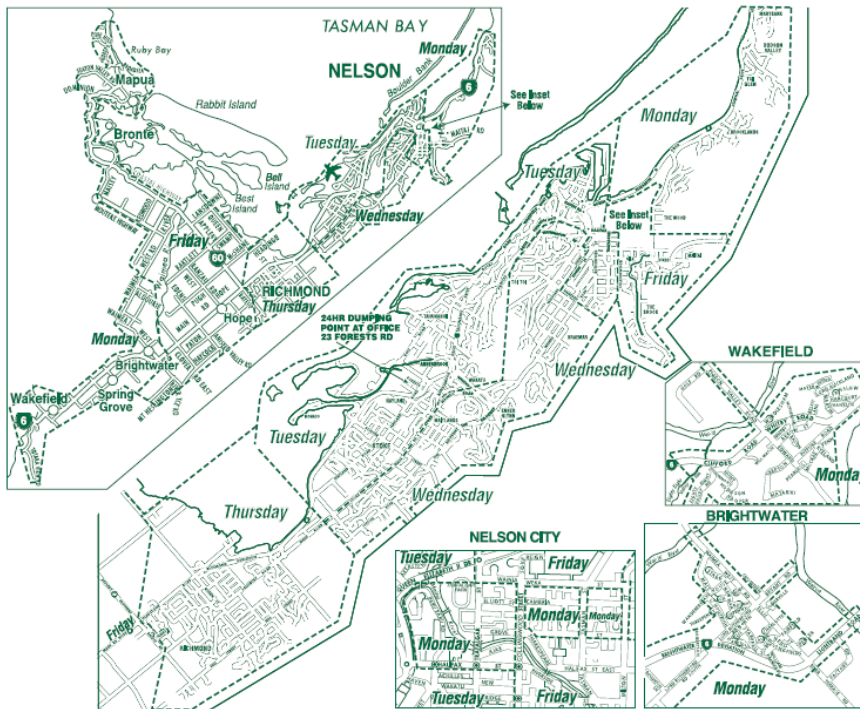
30.2 []; and

30.3 [].⁶

31 Can Plan stores those trucks at its base at 23 Forest Street, Stoke. That office is used to store Can Plan’s trucks and complete everyday back office tasks. The Forest Street site is not directly part of Can Plan’s waste collection operations (i.e., it’s not a RRC).

32 Can Plan’s trucks service most of the Nelson-Tasman area, including Nelson City, Richmond, Mapua, Brightwater, Wakefield and Motueka. See map below.

⁶ Can Plan also owns [] x skip trucks for its skip collection business [].



- 33 Can Plan offers a weekly residential service collecting “pay-as-you go” 65L rubbish bags, bin liners and bin tags, or prepaid 120L or 240L wheelie bins.
- 34 Can Plan’s rubbish bag collection service is []. Can Plan sold ~\$[] of 65L bags in the calendar year to 31 October 2020. That figure was higher than Can Plan’s average annual bag sales of ~\$[] due to increased ad hoc home waste created during Covid. Of that \$[], []% of bag sales were in TDC (Richmond, Wakefield, Brightwater) and []% were in NCC. (We note that Can Plan’s bags are not sold in supermarkets in Motueka; Smart is the sole bag supplier in Motueka).
- 35 Can Plan collects prepaid 120L and 240L wheelie bins from residential homes. At 31 October 2020, Can Plan provides weekly prepaid wheelie bin collection services to [] customers, of which:
- 35.1 ~[]% ([]) are in NCC; and
 - 35.2 ~[]% ([]) are in TDC.
- 36 Can Plan estimates that it services about []% of all Nelson-Tasman households that pay for wheelie bin/bag waste collection services.
- 37 In addition, Can Plan offers:
- 37.1 Commercial customers 660L, 1100L and 3m³ large bins using its REL and FEL trucks. Those bins are priced on enquiry;
 - 37.2 a fortnightly green waste collection service; and

37.3 a skip hire service.

38 Can Plan's financials for all product lines are set out in **Schedule A**.

Smart Environmental

39 Smart Environmental (**Smart**) is New Zealand's largest privately owned waste and recycling company based in Auckland (and the country's third largest waste management business overall, behind Waste Management and Envirowaste). Smart is a key competitor in the Nelson-Tasman waste collection industry.

40 Smart's CEO is Todd McLeay, former CEO of Lotto NZ. And the company's chairman is former Spark CEO, Simon Moutter.

41 Smart is majority-owned by an investment fund of Auckland private equity firm Maui Capital. After Maui took a ~58% stake in Smart in 2017, the company said: "Maui Capital's modus operandi is to partner successful and like-minded management teams, to assist those teams to execute their growth strategies and build great local New Zealand businesses".⁷ A Milford Asset Management investment fund also owns ~16% of Smart, further speaking to Smart's capital backing, growth and expansion plans.

42 Smart operates around New Zealand with a team of 400+ staff and "owner drivers" which are, in essence, contractors. Smart provides owner drivers a guaranteed contract, a kerbside collection truck, scheduled daily waste collection routes and group discounts on fuel and servicing.⁸

43 Smart has, in its words, "strong relationships" with 18 Councils (~30% of New Zealand's Territorial Authorities) across 25 council contracts, including with TDC.⁹ Those contracts typically involve Smart providing council contracted waste and/or recycling collection services, operating council-owned RRCs and material recovery facilities,¹⁰ and maintaining public parks and reserves.¹¹

44 On top of those council contracts, Smart offers private residential wheelie bin collection services, just like Can Plan, Betta Bins, Waste Management, Motueka Bin Hire and others.

⁷ <https://www.smartenvironmental.co.nz/our-story/>.

⁸ Smart, for instance, recently offered a guaranteed 7-year owner driver contract in the Hawke's Bay to collect waste and recycling.

⁹ <https://www.smartenvironmental.co.nz/our-story/>

¹⁰ MRFs recover recyclable materials from waste.

¹¹ <https://www.smartenvironmental.co.nz/council-services/>

45 Smart also serves commercial customers that want larger bins.¹²

Smart/Tasman District Council contact 1020

46 In 2014, Smart signed a new eight year contract extension with Tasman District Council to provide various waste collection services in Tasman until 2023 (“**contract 1020**”). Smart has held iterations of that contract for ~19 years and has a very close relationship with TDC.

47 Under contract 1020, Smart:¹³

47.1 collects TDC rubbish bags as part of a weekly waste collection service from around 18,600 Tasman properties (households pay for the bags from supermarkets, council offices and some diaries);

47.2 collects mixed recycling and glass fortnightly (that service is “free” as it’s included in TDC households’ council rates);

47.3 operates TDC’s five RRCs at Richmond, Mariri, Takaka, Collingwood and Murchison;

47.4 established and operates the Richmond MRF (in 2019, Smart made an additional \$350,000 investment in a new recycling sorting machine to service the Nelson-Tasman area with help from a 50% subsidy granted by the Ministry for the Environment’s Waste Minimisation fund)¹⁴; and

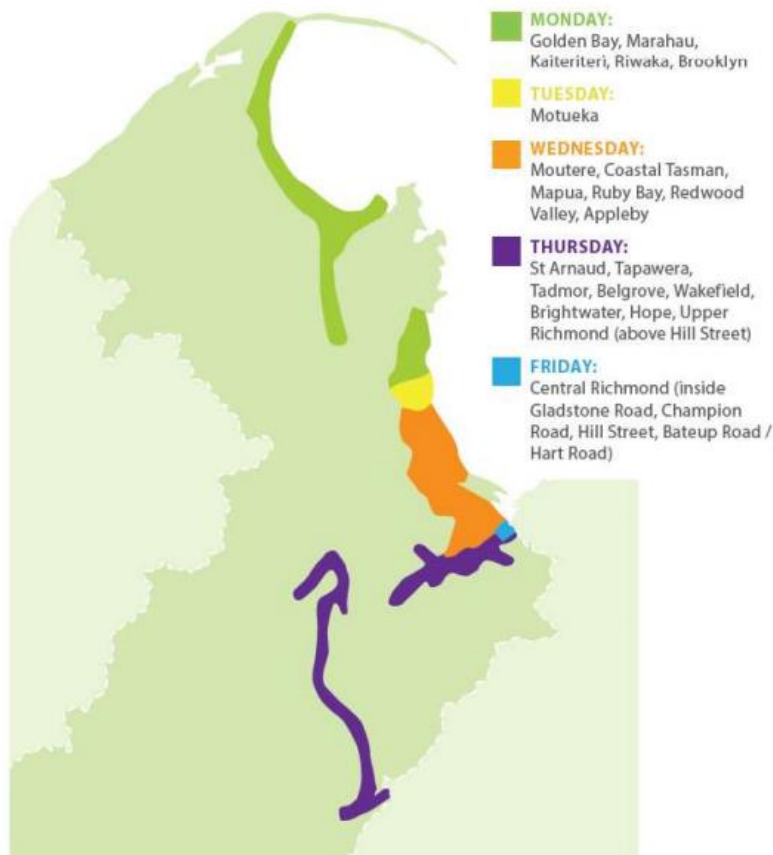
47.5 manages the sale of all recyclable material collected kerbside and at the RRC.

48 Smart’s TDC-contracted weekly waste bag collection and fortnightly recycling service operates throughout the Tasman district, including all of Richmond. See map below.

¹² Can Plan understands that Smart stopped its Nelson-Tasman skip business earlier this month (December 2020).

¹³ Tasman District Council’s 2018 Waste Management Plan.

¹⁴ <https://www.stuff.co.nz/environment/118104297/new-faster-automated-sorting-system-installed-for-nelsontasman-recycling>



49 Smart also sells TDC rubbish bags in Countdowns and New Worlds throughout Nelson and Stoke. And, indeed, Can Plan understands that Smart will collect those bags from NCC addresses.

50 As part of that TDC council-backed service, Smart is responsible for the sale, supply, distribution and marketing of TDC rubbish bags in Tasman and Nelson. Smart also owns all trucks and driver contracts used to service contract 1020.

51 Smart services that contract with dual-compartment side-lifter trucks that have separate space for recycling and waste collection.

52 Those dual-compartment trucks give Smart a key competitive advantage: Smart's council-backed recycling services essentially spread the cost of Smart's private wheelie bin collection service, which we turn to next.

Smart private wheelie bin collection services in Richmond and Nelson

53 In addition to collecting rubbish bags under contract 1020, Smart also provides waste collection service for 120L and 240L wheelie bins like Can Plan, Betta Bins, Waste Management and others.

- 54 Smart's "private" waste collection business covers Richmond, Stoke and Nelson.¹⁵ (Richmond is just a ~15 minute drive from Nelson).
- 55 Can Plan estimates that Smart accounts for ~[]% of wheelie bins/bag revenue in the Nelson-Tasman market.
- 56 While the majority of Smart's wheelie bin collection service is in Richmond given its exposure to Tasman households under contract 1020, Can Plan expects Smart to continue growing in Stoke and Nelson given:
- 56.1 the immediate proximity of those areas to Richmond;
 - 56.2 Smart and Maui's growth strategy referenced above;
 - 56.3 Smart's expected strategy to expand into NCC to best position itself to win the 2023 Nelson-Tasman joint recycling contract; and
 - 56.4 the reality that Smart is very likely to win that contract given Smart has been TDC's recycling company for ~19 years, has a very strong relationship with TDC and other councils around New Zealand, and has recently invested in new recycling machinery for the region.
- 57 Smart also collects large 660L and 1100L bins in competition with Can Plan, Betta Bins, Waste Management, Envirowaste and others.

Waste Management

- 58 Waste Management is a national waste collection business owned by Beijing Capital Group, a Chinese SOE with assets in excess of US\$30bn. It has a 50% share of the New Zealand's total waste market.¹⁶
- 59 Waste Management offers a weekly waste service collecting 140L or 240L wheelie bins in Nelson-Tasman. Customers buy that service in advanced payments or on a "pay per pick up" basis.
- 60 Can Plan estimates that Waste Management accounts for ~[]% of all revenue earned from Nelson-Tasman wheelie bin/bag collections.
- 61 In addition to wheelie bins, Waste Management offers:

¹⁵ Smart began branching into the NCC area in 2018.

¹⁶ IBIS World Waste Collection Services in New Zealand industry report, August 2020.

61.1 a light-weight 3m² green waste “flexibin” at Bunnings, Mitre 10, the Warehouse and PlaceMakers.¹⁷ With buyers able to conveniently arrange Waste Management collection on <https://www.flexibin.co.nz/>;

61.2 a range of large bin collection services: 660L; 1100L; 1500L; 3m²; and 4.5m²; and

61.3 skip hire.

Envirowaste

62 Envirowaste offers residential and commercial waste collection services across New Zealand. It is the country’s second largest waste management company, behind Waste Management.

63 Envirowaste is owned by global infrastructure company, CK Infrastructure Holdings Limited. CKL is the largest publicly listed company in Hong Kong with a market capitalisation of ~\$20bn.

64 In Nelson-Tasman, Envirowaste offers waste collection services (wheelie bins, large bins and skips) to commercial customers and a select few residential customers. But Envirowaste could, if the opportunity presented itself, quickly and easily expand into servicing a significant proportion of Nelson-Tasman households with wheelie bin/bag waste collection services, like it does in Dunedin, Whanganui and other areas of the country.

Others

65 There are other small waste collection businesses in the more rural areas of Nelson-Tasman, like Moteuka Bin Hire,¹⁸ BinGo Bins;¹⁹ and Scott’s Hir-A-Bin.²⁰

66 Moteuka Bin Hire, for example, offers a weekly wheelie bin/bag collection service in competition with Can Plan and Smart in Motueka (population ~8,000).

PART 3: CONTEXT AND COMMERCIAL RATIONALE

67 Nelmac put out a tender for the Betta Bins business in October 2020.

68 Can Plan understands that Nelmac is selling Betta Bins because:

¹⁷ https://www.flexibin.co.nz/?_ga=2.241915270.547358331.1604476513-1763873288.1597551775

¹⁸ <https://motuekabinhire.business.site/>

¹⁹ <https://bingo-bins.business.site/>;

²⁰ <https://yellow.co.nz/y/scotts-hir-a-motueka>

- 68.1 kerbside waste collection no longer fits with Nelmac’s vision and strategy;
- 68.2 Nelmac is likely looking to reduce its total Carbon Emissions as it moves its focus to environmental-focused programmes, like Kumanu Environmental;²¹
- 68.3 Betta Bins is outside of Nelmac’s core expertise; and
- 68.4 Betta Bins comprises just ~[]% of Nelmac’s annual turnover.
- 69 Can Plan understands that Nelson City Council supports Can Plan’s acquisition of the Betta Bins assets.
- 70 For Can Plan’s part, it wants to acquire Betta Bins to increase its scale so that it’s in the best position to compete with national/international waste collection companies like Smart, Waste Management, Envirowaste that control over 75% of waste collection services in this country.²²
- 71 Moreover, whichever one of those companies is awarded the joint NCC/TDC recycling contract in 2023 will have a significant competitive advantage in the Nelson-Tasman area, much like Smart does in TDC today. So, by acquiring Betta Bins now, Can Plan will best placed to continue offering locally-owned competition now and into the future.

Previous NZCC cases

Transpacific / EnviroWaste South Island assets

- 72 In 2007, the Commission granted Transpacific (now Waste Management) clearance to acquire, among other South Island assets, EnviroWaste’s wheelie bin waste collection assets in Nelson and Christchurch.²³
- 73 In making that decision, the Commission defined local/regional markets for the provision of:
- 73.1 privately contracted collection of solid non-hazardous waste in wheelie bins (including bags and drums) from households and small commercial customers;
- 73.2 privately contracted collection of solid non-hazardous waste in front-end-loaded (FEL) bins from commercial customers;

²¹ <https://www.nelmac.co.nz/kumanu-link>.

²² IBIS World Waste Collection Services in New Zealand industry report, August 2020.

²³ Commerce Commission Decisions 622, 623, 624 and 625 (*NZCC Decisions 622-5*).

- 73.3 privately contracted collection of solid non-hazardous waste by gantry [skips];
and
- 73.4 waste management services to multiregional customers.
- 74 Relevantly to this application, the Commission cleared Transpacific’s acquisition of EnviroWastes’ Nelson wheelie bin business in a narrowly-defined Nelson market. The Commission reached that decision because:²⁴
- 74.1 “there would be a reasonably strong third competitor” (pointing to both Can Plan and Nelmac); and
- 74.2 “barriers to entry and expansion arising from economies of density and scale are not likely to be high in [Nelson]”.
- 75 Similarly, despite a merged Transpacific/EnviroWaste having a ~75% share of Christchurch’s wheelie bin market,²⁵ the Commission held that that Christchurch merger would not substantially lessen competition because of:²⁶
- 75.1 “a reasonably strong third competitor” (Mastagard);
- 75.2 the existence of another small competitor (Waste-Away bins) and other “one or two person wheelie bin collection businesses”; and
- 75.3 EnviroWaste’s ability to re-enter the market and establish a “small wheelie bin operation”.
- 76 Notably, the Commission cleared that Christchurch market consolidation despite not finding that Christchurch’s barriers to entry were low, unlike the Commission’s findings about the Nelson market.
- 77 Given that Nelson alone faced strong competition with low entry barriers, the Commission didn’t have to consider competition from Tasman. Or whether Nelson-Tasman should be appropriately defined as one wheelie bin/bag market.

NCC / TDC authorisation

- 78 In 2017, the Commission granted Tasman District Council and Nelson City Council conditional authorisation to – in effect – merge their respective Eves Valley and York Valley landfill. That approval saw TDC mothball the Eves Valley landfill, with all solid waste now disposed to Nelson’s York Valley landfill at a price set jointly by the two councils.

²⁴ *NZCC Decisions 622-5*, [80].

²⁵ *NZCC Decisions 622-5*, p13.

²⁶ *NZCC Decisions 622-5*, [81]-82].

- 79 The Commission gave authorisation on the condition that operating surpluses from that joint arrangement (for example, from increased landfill fees) would be applied solely for “funding any [Nelson-Tasman] waste management and minimisation service, facility or activity”.²⁷ As we understand it those funds could be, for instance, used to build a better recycling facility or otherwise meet the Council’s requirements under the Waste Minimisation Act 2008.
- 80 In making that decision, the Commission considered that the relevant competition law market was “the regional Nelson-Tasman market for the disposal of solid waste at landfills”. The Commission reached that view because of the close proximity of Tasman and Nelson and the two landfills, including because “TDC’s largest ward is Richmond, which is situated immediately to the south-southwest of Nelson City”.²⁸
- 81 The Commission also gave conditional approval for the deal despite finding that the increased operational surpluses from the arrangement may indirectly increase the price of rubbish bags and, it follows, waste collection services.²⁹
- 82 So the Commission was, it seems, willing to accept potential waste collection price increases provided that that money was funnelled into waste management and waste minimisation initiatives, including better recycling services.
- 83 That decision was consistent with the Waste Minimisation Act’s core goal of reducing the amount of waste that is created and disposed of around New Zealand. And is consistent with the view that recycling services place constraint on waste collection services, as we discuss later in this application.

Local New Zealand-owned wheelie bin companies

- 84 Consistent with the Commission’s 2007 *Transpacific* decision about Nelson’s low entry barriers, we note that smaller regions in New Zealand have seen local waste collection companies enter and expand in markets. For instance:

84.1 From November 2020, **Low Cost Bins** will enter Whanganui and compete against Waste Management and EnviroWaste.^{30 31} Low Cost Bins was formed in 2006 and serves Wellington to Manawatu;

²⁷ *TDC/NCC authorisation determination*, at [124]

²⁸ *TDC/NCC authorisation determination*, at [51].

²⁹ *TDC/NCC authorisation determination*, at n14.

³⁰ <https://www.lowcostbins.co.nz/whanganui/>

³¹ <https://www.whanganui.govt.nz/Services-Amenities/Rubbish-Recycling/Urban-rubbish-collection>

84.2 **Coastal bins** began in June 2018 and has already amassed 1,700 wheelie bin clients in Thames, with two trucks and four drivers.³² Coastal Bins competes directly with Smart in Thames;

84.3 **Northland Waste** started in ~2009 in partnership with local councils to provide waste collection services for Northland.³³ Northland Waste has expanded considerably over the last ten years into a 350-person company; and

84.4 **Motueka Bin Hire** offers a weekly wheelie bin collection service in Tasman with rear-load trucks.

PART 4: FACTUAL AND COUNTERFACTUAL

Factual

85 With the transaction, Can Plan will add Betta Bins' three trucks to its fleet [].

86 Nelmac will cease operating residential and commercial waste collection services. But Nelmac will continue to provide residential recycling services under contract with Nelson City Council.

Counterfactual

87 Can Plan anticipates that Nelmac would sell the Betta Bins assets to the next preferred tenderer in the counterfactual. But that is, of course, a commercial decision for Nelmac that Can Plan is not privy to.

PART 5: NO SLC

88 In this section we explain why the proposed transaction will not substantially lessen competition for waste collection services in Nelson-Tasman.

Relevant market of overlap

89 The markets relevant to this transaction are the Nelson-Tasman market for:

89.1 weekly wheelie bin/bag collection services, including general waste and green waste; and

89.2 large bin waste collection services, including large rear-loaded bins (660L and 1100L) and "front-end-load" bins (typically in 1,500L, 3m³ and 4.5m³).

³² <https://coastalbins.co.nz/#!/about>

³³ <https://www.northlandwaste.co.nz/about-us/about-us/>

90 We discuss each of those geographic, product and customer dimensions in turn.

Geographic dimension: the Nelson-Tasman market

91 Can Plan considers it appropriate to assess this transaction within the Nelson-Tasman region.

92 Consumers commonly buy residential and commercial waste services from suppliers that are based outside of their district council. For instance: Nelson-based Can Plan, Waste Management, Betta Bins and Envirowaste serve customers in Richmond; and Tasman-based Smart services customers in Stoke and Nelson.

93 Indeed, it's only a short ~8.5km drive between from Smart's offices at the Richmond RRC to Can Plan's Forest Street site in the heart of Nelson City. Which is the same distance between the Commission's Terraces offices and Wellington domestic airport.

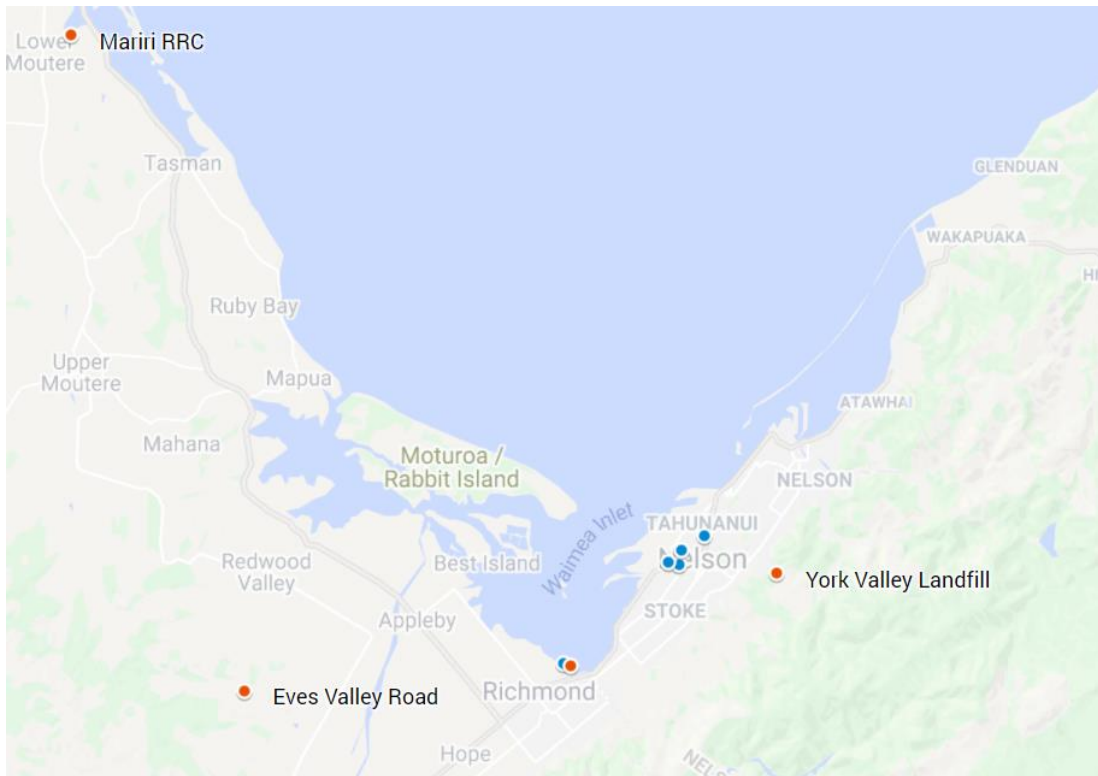
94 And, for further comparison of how close Richmond is to Nelson, we note that:

94.1 Can Plan serves homes in: Mapua (a 25km drive from its Forest Street offices); Motueka (a 50km drive); Wakefield (a 22km drive); and Brightwater (a 15km drive);

94.2 Betta Bins serves homes in: Cable Bay (a 27km drive from Betta Bins' Nelson offices); and north Richmond (a 8km drive); and

94.3 as we discuss above, over the course of a week, Smart serves customers from Collingwood in Golden Bay to St Arnaud in south Tasman (a ~180km area). And then Smart travels west into Stoke and Nelson too.

95 The map below shows the close proximity of Nelson-Tasman's waste collection companies – Can Plan, Betta Bins, Waste Management, Envirowaste and Smart Environmental (blue dots) – and the four main landfills/RRCs in the area that Can Plan uses (orange dots).



96 From the supply-side, waste collection companies can – and evidently do – serve customers in both Tasman and Nelson. Around []% of Can Plan’s wheelie bin customers are TDC-based. There are no barriers or restrictions to any commercial waste collection company expanding into any part of either of the two regions. Smart has, for instance, started making inroads into Stoke and Nelson since 2018.

97 And, consistently, all waste collected by Tasman-based collection companies now ends up in NCC’s York Valley landfill, given TDC’s Eves Valley landfill has closed.

98 Assessing the transaction against a Nelson-Tasman market is also consistent with the Commission’s 2017 TDC/NCC landfill authorisation decision. In that decision, the Commission found a market for “the disposal of solid waste at landfills, either directly or indirectly, in the Nelson-Tasman region”. The Commission reached that decision because:³⁴

98.1 that commercial customers had the choice of dumping their waste at the TDC or NCC landfill;

98.2 both landfills were able to, and did, accept waste from other unitary authorities; and

³⁴ *TDC/NCC authorisation determination*, at [51].

98.3 the Commission noted that even when RRCs are used, the price of those RRCs will be affected to some degree by competition between the Eves Valley and York Valley landfills.

Product dimension #1: waste collection services

- 99 Can Plan believes it appropriate to define waste collection services as a separate product market to recycling. That view is consistent with the Commission's TDC/NCC authorisation decision which held: "solid waste and solid waste disposal is quite separate from the disposal of recyclable waste and other types of waste".³⁵
- 100 That said, council-funded recycling services place an "outside the market" constraint on waste collection services. Homes and businesses can substitute much of their household waste from wheelie bins/bags to "free" council recycling bin with considered recycling practices. That ability, in turn, reduces household demand for waste collection services. We expand on the constraint from recycling services later in this application.
- 101 In terms of green waste, Can Plan considers that the close supply-side substitutability between green waste and solid waste means that the two collection services can be appropriately assessed within the same market. Green waste collection is virtually identical to other solid waste collection, the only difference being that green waste is taken to a commercial composter rather than a landfill or RRC. That said, we deal with green waste separately below in case the Commission is minded to view green waste collection as a separate product market.

Product dimension #2: wheelie bins/rubbish bags and large bins

- 102 Can Plan considers it is appropriate to define separate product markets for customers wanting:
- 102.1 wheelie bins/bags (the **Nelson-Tasman wheelie bin/bag market**); and
- 102.2 larger bins, such as: 660L, 1100L, 660L, 1100L, 1500L, 3m² and 4.5m³ (the **Nelson-Tasman large bin market**).
- 103 That split is largely consistent with the Commission's 2007 *Transpacific* decision which held that wheelie bins and bags were in the same market. And that FCL bins (i.e., the majority of larger bins) were in a separate market.
- 104 Wheelie bins/bags will usually only be suitable for customers that create a small amount of waste. Those customers are, typically, residential homes. But some

³⁵ TDC/NCC authorisation determination, at [51.1].

smaller businesses might, too, require wheelie bins and/or bags. Or larger businesses might use wheelie bins to supplement larger bins.

- 105 Large bins are, by contrast, suitable for commercial customers that create large amounts of waste. There are a variety of large bin sizes depending on how much waste a customer creates. And those bin sizes can be easily mixed-and-matched to suit a customers' precise needs. For instance, a customer wanting ~2,000L of waste collection bins could buy two 1100L rear-end loaded bins or a 1500L FEL bin and a couple of wheelie bins.
- 106 In the *Transpacific/Envirowaste* decision, the Commission defined separate markets depending on whether a FEL or REL was used. Can Plan respectfully considers that definition does not match the commercial realities of the market: large bin customers aren't typically bothered by what truck is used to collect their waste, but just that it is collected.³⁶
- 107 The table below sets out, to the best of Can Plan's knowledge, the different size bins offered by Nelson-Tasman waste collection companies. Betta Bins does not own any FEL trucks. By comparison, all major players in Nelson-Tasman have REL trucks that can lift 660L and 1100L large bins.

| | Bin size | Truck required | Betta Bins | Can Plan | Waste Mgmt | Smart | Enviro Waste |
|-------|-------------------|----------------|------------|----------|------------|-------|--------------|
| Small | Bags | Any | Y | Y | N | Y | N |
| | 120L/140L | Any | Y | Y | Y | Y | Y |
| | 240L | Any | Y | Y | Y | Y | Y |
| Large | 660L | REL | Y | Y | Y | Y | Y |
| | 1100L | REL | Y | Y | Y | Y | Y |
| | 1500L | FEL | N | Y | Y | N | Y |
| | 3m ² | FEL | N | Y | Y | N | Y |
| | 4.5m ² | FEL | N | Y | Y | N | Y |

Customer dimension

- 108 Consistently with the *Transpacific* decision, Can Plan doesn't consider it appropriate to define separate markets for commercial or residential customers.
- 109 Ultimately those customers make the exact same buying decisions: how much waste do I create? And, with that in mind, do I need a wheelie bin/bag or a large bin?

Market definition summary

- 110 In summary, Can Plan considers the relevant markets to be the:

³⁶ But any difference is academic. If the Commission is minded to include 660L and 1100L REL bins in the "wheelie bin/bag" market then the analysis is the same, as all Tasman-Nelson waste collection companies also offer 660L and 1100L bins. See table above.

110.1 Nelson-Tasman wheelie bin/bag market; and

110.2 Nelson-Tasman large bin market.

111 We explain why the transaction will not substantially lessen competition in either of those markets in the following sections.

Competition in the Nelson-Tasman market wheelie bin/bag market

112 In a 2018 Tasman District Council waste management document, TDC accurately noted that:³⁷

"The private solid waste collection services are extremely competitive in the urban areas of the district and the majority of services contracted wheelie bin collections. Private contractors generally focus on offering a 'lowest cost mixed solid waste' service and this may discourage recycling in favour of convenience"

113 That "extreme" competition will remain post-merger.

114 Can Plan will continue to face significant competition across the Nelson-Tasman region from:

114.1 existing competitors, Smart and Waste Management, that provide wheelie bins and/or bag collection services in Nelson-Tasman;

114.2 new entry or expansion from:

- (a) Envirowaste, which already operates in "Nelson Tasman large bin market" and serves wheelie bin markets in other regions around New Zealand; and
- (b) new local entrants given the low barriers to entry in Nelson that the Commission has previously acknowledged;

114.3 the ability for the public to reduce demand for waste collection services by recycling more, being a constraint that the Government and local councils actively promote through the Waste Minimisation Act; and

114.4 the ability for Nelson-Tasman district councils (now and once the recycling contract is merged in 2023) to wield their substantial countervailing buying power by contracting recycling and/or waste collection services.

³⁷ TDC *Waste Management and Minimisation Activity Management Plan 2018*, at p10.

115 Against those constraints (and/or threat of those constraints), Can Plan submits that the proposed transaction will not, and will not be likely to, substantially lessen competition.

116 We expand on each of those points.

Current and future competition from existing competitors

117 In the 2007 *Transpacific* decision, the Commission found that a “reasonably strong third presence” was enough to provide significant constraint in regional wheelie bin markets. Mastagard’s presumably ~20% presence in Christchurch was, for instance, a significant reason why the Commission cleared Transpacific’s 75% market share in Christchurch.

118 In the Nelson-Tasman wheelie bin/bag market, Can Plan will continue to face significant competition from two *existing* competitors: Smart and Waste Management.

Smart

119 Smart is Can Plan’s closest competitor in the Nelson-Tasman wheelie bin/bag market. Can Plan considers that Smart’s market presence alone would constrain a substantial lessening of competition in this market.

120 Smart actively targets Can Plan’s customers and is looking to increase its market share across the region. (Can Plan estimates that Smart’s current market share is around []% at the moment).

121 Can Plan notes, for instance, that over the last four or so years:

121.1 Can Plan has lost [] customers to Smart (and they’re only the customers that told Can Plan of the switch); and

121.2 Can Plan has matched Smart’s quoted prices for another ~[] Can Plan customers, to avoid losing further business to Smart.³⁸

122 Those figures alone show that *at least* ~[]% of Can Plan’s customers (based on Can Plan’s current client base of []) have, or have threatened to, switch to Smart. And that’s only the customers that Can Plan can account for. That figure doesn’t, of course, include:

122.1 customers that leave Can Plan without telling the company why; or

³⁸ At this point we note that this non-transparent pricing is why there can be no coordination concerns with the proposed transaction.

122.2 new customers that choose Smart over Can Plan (which is expected to continue as the Nelson-Tasman population grows).

- 123 Moreover, Can Plan understands that Smart has sufficient assets on the ground in Nelson-Tasman to continue to target Can Plan's customers and grow its market share. Smart's close ties to the Tasman District Council, strong financial backing, stated growth strategy, coverage across the entire Tasman district and low entry/expansion barriers in Nelson will mean that Smart continues to place significant constraint on Can Plan post-transaction.
- 124 If Smart needs to bring new trucks to expand further, Smart can do that quickly and easily by driving in one or two new trucks from its fleet across New Zealand (including excess trucks that might come available from Smart's unsuccessful council bids in other districts). Or, by Smart asking its private equity shareholders to make that relatively minor capex investment in new trucks. And, on that note, Can Plan observes that Smart faces much less investment risk than local-only players because Smart can repurpose any new trucks in different areas of the country should the investment not work out. (That said, local companies also have an incentive to invest in new trucks where opportunities arise, such as Coastal Bins and Motueka Bin Hire).
- 125 Indeed, with or without the transaction, Can Plan expects Smart to continue expanding into all corners of the Nelson-Tasman market in the lead-up to the 2023 joint TDC/NCC recycling contract tender. Smart is expected to be the frontrunner to win that merged council's recycling contract across the region, which, in turn, see its private waste collection business grow too with its "duel-compartment" trucks.
- 126 The proposed transaction is Can Plan's strategy to put itself in the best position to continue to compete with the scale of national waste collection services like Smart, Waste Management and EnviroWaste. Those companies are expected to be increasingly attracted to the Nelson-Tasman market as the population grows and bigger contracts are tendered by TDC/NCC.

Waste Management

- 127 Waste Management is another significant competitor in the Nelson-Tasman wheelie bin/bag market.
- 128 Can Plan estimates that Waste Management has a [%] share of the Nelson-Tasman wheelie bin/bag market.
- 129 Waste Management could quickly and easily expand its waste collection services in Nelson-Tasman. Waste Management has the systems, trucks and staff across the country to immediately scale up in the region. Waste Management could, for

example, drive its trucks from Timaru where Waste Management has just lost out to Envirowaste for Timaru District Councils' \$112m waste collection contract.³⁹

130 Waste Management's presence as a "fourth" competitor in Nelson-Tasman already makes the market significantly more competitive than the Christchurch wheelie bin/bag market that the Commission granted Transpacific clearance to acquire Envirowaste. In that case the fourth competitor the Commission pointed to was "Waste-Away bins"; an apparently small local player.

131 Furthermore, the Commission did not expressly find that Christchurch's entry barriers were low (unlike the Commission's Nelson findings that we discuss next). Further adding to the conclusion that the presence of a "reasonably strong third competitor", like Smart and/or Waste Management here, acts as material competitive constraint in regional wheelie bin/bag markets.

132 And, as such, an assessment of existing competitors alone leads to the conclusion that this proposed acquisition will not be likely to substantially lessen competition in the Nelson-Tasman wheelie bin/bag market.

Entry and Expansion

133 In *Transpacific/Envirowaste*, the Commission identified that barriers to entry and expansion for new wheelie bin companies in Nelson was "not likely to be high".

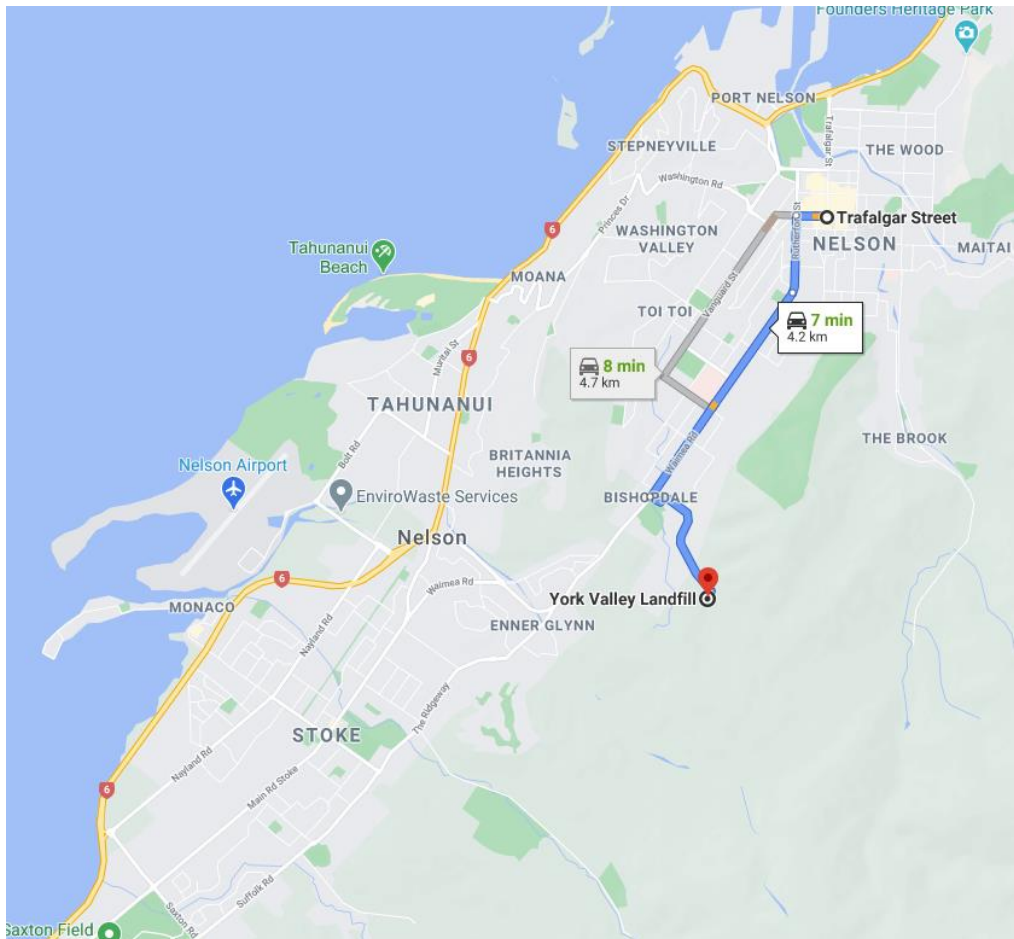
134 Specifically, the Commission found that:⁴⁰

Can Plan Ltd has been in existence for 11 years and was able to obtain, in the absence of strong competition, a large share of the Nelson region wheelie bin/refuse bag market when the local authorities in the area abandoned rates-based kerbside collection about 6 years ago. Nelmac, the Nelson City Council LATE, is another strong existing competitor in private wheelie bin markets in Nelson. Given the even spread of market shares, barriers to entry and expansion arising from economies of density and scale are not likely to be high in this area.

135 Nelson's population and geographic layout underpinning the Commission 2007 findings has not changed since 2007. The vast majority of Nelson-Tasman people continue to live in Nelson's compact city centre and directly surrounding areas like Stoke. And Nelson's York Valley landfill – now the only landfill in the area – remains perfectly placed to service Nelson. See, for instance, the map below showing the 7min drive (4.2 km) from Nelson's main street to the York Valley landfill. With Stoke also just a short drive to the landfill.

³⁹ <https://www.timarucourier.co.nz/news/winners-losers-in-112m-waste-shake-up/>

⁴⁰ *NZCC Decisions 622-5*, at [80].



- 136 It follows that the barriers to new wheelie bin entry in Nelson are still low in 2020.
- 137 And so if, hypothetically, there was an “absence of competition” in Nelson post-transaction (which there will not be given Smart and Waste Management are already present), then new entry would be likely to occur in short order. Just as Can Plan quickly entered and expanded in Nelson (and beyond) when the commercial opportunity arose. And just as the Commission predicted that the threat of new entry would constrain Transpacific/Envirowaste back in 2007.
- 138 Moreover, given that Betta Bins operates almost exclusively in Stoke and Nelson City it is not necessary to assess whether the same entry/expansion conditions apply equally across the entire Nelson-Tasman market.⁴¹ The key point is that new entrants could quickly and easily replace Betta Bins’ position in the Nelson-Tasman wheelie bin/bag market if the commercial opportunity arose, such as an attempted 5-10% price increase.

⁴¹ Although given the close proximity of Richmond to Stoke and Nelson, it’s logical to conclude that Richmond has equally low entry barriers.

139 In addition to Smart and Waste Management, Can Plan considers that the following competitors would be best placed to quickly and easily enter and/or expand in Nelson post-transaction:

139.1 Envirowaste;

139.2 new local competitors; and/or

139.3 Nelmac and/or new council-owned departments.

140 We explain each of those identified new entrants in turn.

Envirowaste

141 At present, Envirowaste chooses to only service the Nelson-Tasman large bin/bag market.

142 But Envirowaste's existing presence in Nelson-Tasman puts it right on the fringe of entering the Nelson-Tasman wheelie bin/bag market.

143 Envirowaste could quickly and easily establish itself in the wheelie bin/bag market by:

143.1 bringing new REL and/or side-lifter trucks from other areas of New Zealand or investing in those trucks;

143.2 contracting additional Nelson-Tasman drivers; and

143.3 advertising and selling its wheelie bin services on Envirowaste's already established online systems:

<https://www.envirowaste.co.nz/services/household-services/wheelie-bin-collections/>

144 The ease in which Envirowaste can enter and expand in regions is demonstrated by the company's recent expansion in Timaru.⁴² In that case, Envirowaste beat Waste Management for Timaru District Council's waste collection contract and was able to quickly and easily set up shop in that Mid-Canterbury area.

145 Moreover, Envirowaste operates private (i.e., non-council contracted) wheelie bin collection services in other regions around New Zealand too, like Whanganui and Dunedin. With that reality further demonstrating Envirowaste's willingness to enter the Nelson-Tasman wheelie bin market if the commercial opportunity were to arise.

⁴² <https://www.timarucourier.co.nz/news/winners-losers-in-112m-waste-shake-up/>

New competitors

- 146 Furthermore, new local competitors can, and would, enter the Nelson-Tasman area to constrain any price increases by Can Plan post-merger.
- 147 Low Cost Bins' recent entry in Whanganui is a compelling case study that demonstrates the ability and incentive for new entrants to enter regional wheelie bin markets. In that case, Low Cost Bins (which is owned by Northland Waste) entered Whanganui's wheelie bin market in direct competition with Envirowaste and Waste Management. Low Cost Bins did so because: "*Given the prices that consumers are paying, the Whanganui market was attractive for us to enter*".⁴³
- 148 Whanganui's population (~48,100) is similar to Nelson (~52,900). And in both regions, the vast majority of people live in the very similarly sized urban centres of Whanganui (40km²) and Nelson (54km²).
- 149 Moreover, Low Cost Bins is similar to Smart. Both are multi-regional New Zealand waste collection companies. Low Cost Bins is a subsidiary of Northland Waste and operates across the Wellington and Manawatu area. Whereas, Smart operates across multiple regions in the North and South Islands.
- 150 On a smaller entry scale, we note that Coastal Bins entered the Thames' wheelie bin market in 2018 in competition with Smart. And in just two years Coastal Bins has amassed 1,700 wheelie bin clients with two trucks and four drivers. Thames' population is ~7,300.
- 151 In terms of specific new entrants in Nelson-Tasman, those could be:
- 151.1 a multi-regional company like Low Cost Bins;
 - 151.2 another local entrepreneur like Coastal Bins or Michael Boocock; and/or
 - 151.3 re-entry by Nelmac or another council-owned subsidiary.
- 152 In the next section we turn to the countervailing power of councils to reduce the need for waste collection services through council-funded recycling services, like those that will be offered by Nelmac and Smart with and without the merger.

Competitive constraint from the recycling market

- 153 As set out in the market definition section, Can Plan acknowledges that recycling services are in a separate market from waste collection markets.

⁴³ <https://www.nzherald.co.nz/whanganui-chronicle/news/new-business-offers-whanganui-kerbside-waste-collection/GLPVNTBTIMRLVIBA2Y4VQBVMY/>

- 154 That said, the ability for households and businesses to substitute a significant portion of their waste to the recycling bin, does constrain the amount/size of waste collection services they need. Households could, for instance, substitute from a 120L wheelie bin to cheaper 65L bags in the event of an attempted price increase. Or swap prepaid wheelie bin services for a “pay-as-you go” option in favour of recycling more.
- 155 Indeed, New Zealand’s Waste Minimisation Act 2008 actively encourages local councils around the country to nudge households toward those types of recycling practices. The Waste Minimisation Act achieves that aim through, among other strategies:
- 155.1 levies that are imposed on all waste disposed of in landfills;
 - 155.2 government accreditations that recognise businesses and organisations to produce recyclable products; and
 - 155.3 a Waste Advisory Board that gives independent advice to the Minister for the Environment.
- 156 In accordance with that Act, the Tasman District Council and Nelson City Council have implemented a joint waste minimisation plan. The most recent iteration of that plan has three goals, two of which are: **Goal 1:** “avoid the creation of waste”; and **Goal 2:** “improve the efficiency of resource use”.⁴⁴
- 157 The councils specifically look to meet those goals by:
- 157.1 ensuring that “[the Nelson-Tasman] community can easily use a wide range of services to divert material away from the landfill”; and
 - 157.2 “maintain[ing] a charging system for waste collection and disposal that provides cost recovery, and incentives and disincentives to achieve the goals of the Plan”.
- 158 Those council levies and initiatives are designed to push businesses and homes toward recycling more, creating less waste and, it follows, buying less waste collection services. The 2019 Nelson-Tasman Waste Management and Minimisation Plan includes a target of reducing landfill waste in the region by 10% per person by 2030. That target looks achievable given that between 2010 and 2016 waste sent

⁴⁴ Nelson Tasman Waste Management and Minimisation Plan, August 2018.

to landfill per Nelson Tasman resident decreased 6.85% from 642kg to 598kg per person.⁴⁵

159 With Nelson-Tasman residents and businesses already substituting waste collection services for recycling services, an attempted 5-10% non-transitory price increase by Can Plan would only see an acceleration of that trend.⁴⁶

160 Consistently, that link between increased waste prices and increased use of recycling services can be seen in:

160.1 the Waste Minimisation Act's use of increased landfill levies to incentivise recycling;⁴⁷ and

160.2 the Tasman District Council's note that Tasman's "extremely competitive" wheelie bin market might "discourage recycling in favour of convenience".

161 In the result, the risk of Nelson-Tasman residences switching from waste to recycling services acts as a significant constraint on Can Plan's pricing now, and that constraint will continue, and probably increase as environmental awareness grows post-transaction.

TDC/NCC's ability to wield their substantial countervailing power

162 Furthermore, the risk of Tasman District Council or Nelson City Council (or the 2023 merged council contract) tendering waste collection services, also constrains the market from pricing too high and/or inefficiently.

163 Those councils could, for instance, join forces to contract all of Nelson-Tasman's waste and recycling services. Much like the Timaru, Waimate and Mackenzie District Council's combined to tender South Canterbury's waste management services. In making the decision to jointly tender those services, Waimate District mayor said the amalgamation of the contracts is "about getting the best bang for our ratepayers' dollar, and we have found in the past that joint contracts provide more efficiencies". The Mackenzie District mayor added, "[the tender] means we can join in to deliver a competitive price for our ratepayers".⁴⁸

⁴⁵ Nelson Tasman Waste Management and Minimisation Plan 2019, p5.

⁴⁶ We note, of course, that wheelie bin prices have had to increase in recent times because of council's waste minimisation levies.

⁴⁷ See for instance: <https://www.stuff.co.nz/environment/climate-news/117730772/landfill-levies-could-rise-in-govt-bid-to-urge-people-to-recycle>; and <https://www.recycle.co.nz/problemsize.php>.

⁴⁸ <https://www.stuff.co.nz/timaru-herald/news/122565464/district-councils-join-forces-for-waste-contract-but-no-moves-for-further-amalgamation#:~:text=Timaru%2C%20Waimate%20and%20Mackenzie%20district,and%20October%202021%20for%20Mackenzie>.

164 Indeed, this joint tendering approach might be a particularly attractive option for the Nelson-Tasman region when the two councils merge their recycling contract in 2023.

165 And, in any event, the winner of that merged 2023 recycling contract will have a significant competitive advantage in the Nelson-Tasman wheelie bin market, as we explain above.

Summary on competitive constraints in the Nelson-Tasman wheelie bin/bag market

166 In the round, Can Plan is, and will continue to be, significantly constrained post-merger by:

166.1 existing competition from Waste Management and Smart;

166.2 the threat of Envirowaste using its existing base in Nelson-Tasman to expand into the wheelie bin market, as it has recently done elsewhere in New Zealand;

166.3 the threat of new entry by other local players, mimicking the likes of Michael Boocock, Moteuka Bin Hire, Low Cost Bins and Coastal bins;

166.4 increasing "outside the market" competition from recycling services funded through Government waste minimisation levies and; and

166.5 the ability for TDC and NCC (individually or once they merge recycling forces in 2023) to tender the regions' right to service the wheelie bin market to facilitate competition, like in South Canterbury.

167 With these constraints, the proposed transaction will not, and will not be likely to, substantially lessen competition the Nelson-Tasman wheelie bin/bag market.

168 That view is consistent with the Commission's 2007 Transpacific decision which, we understand, allowed 75% market consolidation in Christchurch on the main ground that there was "a reasonably strong third competitor". Here, there's plainly more competition than there was in Christchurch at that time.

169 We now turn separately to green waste competition in the event the Commission considers that green waste services form their own wheelie bin product market.

Green waste

170 As discussed above, green waste wheelie bin collection services are almost identical to general wheelie bin collection services.

171 The only difference is that the green waste (garden trimmings, shrubs etc.) is taken to a commercial composting facility rather than a RRC or landfill. The two main

Nelson-Tasman commercial composters are Green Waste to Zero in Richmond and Wholesale Landscapes in Stoke.

172 The infrequent need for green waste collection services, and the lack of smell created by garden waste, means that Can Plan and Betta Bins' only offer fortnightly green waste services. Those services are very small comprising just:

172.1 ~[]% (or ~\$[]) of Betta Bins' 2020 revenue; and

172.2 ~[]% (or ~\$[]) of Can Plan's 2020 revenue.

173 Those figures are due to the wide range of green waste disposal options available for home gardeners, including:

173.1 Waste Management's garden waste FlexiBin service;

173.2 Green Waste to Zero's green waste trailer delivery service; and

173.3 residents' ability to take green waste directly to a commercial composter using their own bags or wheelie bins, for instance:

(a) Green Waste to Zero offers an \$8 car boot drop-off service; and

(b) Wholesale Landscapes offers a \$22/m³ drop off service.

174 Moreover, new green waste collection services would face very low barriers to replace Betta Bins' place in the market if the market opportunity arose. Such new entrant could collect green waste bags/wheelie bins around Nelson using a trailer or small rear-end truck.

175 Indeed, there are speciality green waste collection services in other parts of New Zealand such as:

175.1 Earthcare Environmental, which is based in neighbouring Blenheim (<http://www.earthcarenz.co.nz/household/household/>);

175.2 Crew Cut (<https://www.crewcut.co.nz/garden-bags>);

175.3 Green Fingers (<https://www.greenfingers.co.nz/>);

175.4 Green Gorilla (<https://www.greengorilla.co.nz/>); and

175.5 Express Lawn Mowing (<https://www.expresslawnmowing.co.nz/our-services/green-waste-removal/>).

176 For those reasons, the proposed transaction would not be likely to substantially lessen competition in any separate “green waste” market if the Commission considers that product forms its own market at all.

Competition in the Nelson-Tasman large bin market

177 The proposed transaction does not involve material overlap in the Nelson-Tasman large bin market.

178 The majority of customers in this market are commercial customers.

179 And in the last calendar year, Betta Bins sold \$[] worth of commercial subscriptions.

180 Betta Bins’ limited presence in this market appears to be due to it not having an FCL truck. Which means that Betta Bins is limited to just offering 660L and 1100L bins.

181 By comparison, the Nelson-Tasman large bin market is dominated by Waste Management, Envirowaste and Smart that collectively offer the full array of large bin collection services. Can Plan also has REL and FCL trucks.

182 Given Betta Bins’ limited presence in this market, the proposed transaction will not, and will not be likely to, substantially lessen competition.

183 While Can Plan doesn’t have precise market share data, it expects that the proposed transaction would fall well within the Commission’s published “safe harbours” in this market.

184 And, post-transaction, customers wanting large bins will be able to continue to turn to:

184.1 Waste Management;

184.2 Smart Environmental;

184.3 Envirowaste; and

184.4 Can Plan.

185 On top of those existing competitors, the barriers to entry in the Nelson market are low for the same reasons we give in the wheelie bin market. And large bin customers will also be incentivised to recycle more, further constraining the merged entity.

186 For those reasons, the proposed transaction does not, and is not likely to, substantially lessen competition in the Nelson-Tasman large bin market.

CLEARANCE CONCLUSION

187 In conclusion, the proposed transaction will not substantially lessen competition in any market.

CONFIDENTIALITY

- 1 Can Plan seeks confidentiality over the information in this application and documents attached at Schedule A that is contained within square brackets and highlighted yellow (Confidential Information).
- 2 Can Plan asks that the Commission notify it of any requests for Confidential Information made under the Official Information Act 1982. Can Plan respectfully asks that, in those circumstances, the Commission provide it with an opportunity to submit its views on why the information should not be disclosed.
- 3 For the purposes of s9(2)(b) of the OIA, Can Plan considers that the Confidential Information is:
 - 3.1 commercially sensitive and valuable information which is confidential to it and/or Nelmac; and
 - 3.2 public disclosure of the Confidential Information would be likely to unreasonably prejudice either parties commercial position.

SCHEDULE A: TRANSACTION DOCUMENTS

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