



## Client News

Thorburn Consultants provides Civil, Structural and Environmental engineering services, as well as specialised Aquarium and Zoological exhibit design consultancy. Recently they worked on the latest big cat exhibits at the Auckland Zoo.

They were involved from conceptual stage through to completion on a themed tiger enclosure, including sprayed concrete rock formations, water features and arched mesh roof as well as a new Cheetah exhibit and public viewing area.

These open designs provide up close and personal viewing experiences - a far cry from the zoo cages of old.

One of the main challenges was in providing the greatest possible sense of open space involving large glass panelled viewing areas, within a structurally robust and safe environment.

[www.thorburn.co.nz](http://www.thorburn.co.nz)

## Auckland Cup Week

Janice Urlich, Partner at Cairns Slane is a Director of the Auckland Trotting Club.

Last year the Auckland Trotting Club, the Auckland Racing Club and Auckland Greyhounds combined to create a week of great racing in Auckland. Early in March each year, the three racing codes hold their 'Auckland Cup' event in a single week of premier race meetings. The aim is to make Auckland's Cup Week the best week's racing in New Zealand!

Cup Week at Alexandra Park begins on Friday 2 March with the \$200,000 Woodlands Northern Derby – the glamour race for three-year old pacers, the up-and-coming champions of harness racing. This is now the richest pacing derby in Australasia, and is sure to attract a great field.



The second major night of racing features the \$400,000 Auckland Trotting Cup on Friday 9 March. This is the Auckland Trotting Club's pre-eminent pacing event, and dates back to the Club's inception in 1890. Past winners include such great pacers as Caduceus, Cardigan Bay, Delightful Lady and Elsu, and this year's race is sure to feature some of the best horses in Australasia.

Visit [www.catwalk.org.nz](http://www.catwalk.org.nz) to purchase tickets

## Legal Update

### LAND TRANSACTIONS NOW ELECTRONIC

The so-called 'paperless environment' continues its advance with the introduction of e-Dealing.

While it sounds rather like illicit drug trading, it simply refers to the online registering of property transactions. A few years ago paper titles were abolished and the land title register is now held electronically. Now Lawyers must process straightforward land transactions online.

Currently approximately 70% of all conveyancing transactions can be done using e-Dealing. These online transactions include registration of mortgage discharges, transfers, and



mortgages with lodgement online providing instantaneous registration. There is no need to provide any paperwork to Land Information.

#### What this means for you?

Lawyers registering e-Dealings now must have clients complete and sign an Authority and Instruction Form (A & I Form) and provide photographic identification of all parties.

The information must be retained by the firm and strict audit procedures put in place. These procedures are designed to limit the chances of fraud in the context of land dealings. So whilst it might be slightly annoying for you to provide photographic identification (especially as we may have acted for you for many years!) – the upside of the new system from a client's perspective is that registration takes place instantaneously. No more weeks' delay as the documents are sent to LINZ for processing. In addition registration fees have more than halved. Now we can settle a purchase and email a client a copy of the new online title showing them registered as owner within minutes of settling the purchase. The downside is the electronic system doesn't seem to produce less paper!

## SHOULD I HAVE A SHAREHOLDERS AGREEMENT?

When you go into business with other people, have you contemplated what might happen in hard times as well as the good times? Any time more than one person is involved in running a company, the possibility for a dispute arises. Having a framework to work within protects the value of the company and can avoid misunderstandings. An effective method of achieving this framework is through a shareholders agreement.

### What is a shareholders agreement?

A shareholders agreement is a legally binding and confidential contract between the shareholders of a company. It creates additional rules and obligations beyond those of a company's constitution and the Companies Act 1993. The agreement can be tailored to your business and be as simple or in-depth as you need.

### Who needs a shareholders agreement?

Shareholders agreements are most appropriate for companies owned by a small number of owners, whether those owners are friends, family or independent investors.



### Benefits

- Controlling who shareholders are, by including pre-emptive provisions – that may give all existing shareholders the first right to purchase the shares of an exiting shareholder.
- Recording an agreed set of business decisions – such as the issue of new

shares, the buying or selling of a major asset or a material change in the company's business direction.

- Providing for a dispute resolution process and a mechanism to deal with deadlock situations.

Although best prepared at the outset of the business relationship, a shareholders agreement to protect your business can be prepared at any time.

Call us if you would like to discuss whether a shareholders agreement is right for your business.

## GST Traps

### BUYING OR SELLING A BUSINESS OR COMMERCIAL PROPERTY? BE CAREFUL WITH GST AND NOMINEES

Although GST is now 'old hat' and we are all familiar with it, buyers and sellers of businesses or commercial properties are sometimes too casual when it comes to settling the GST aspects of a transaction.

For tax purposes, the supply of a taxable activity as a going concern (eg. a business or leased commercial property) is zero-rated for GST.

In order to qualify for the zero-rate, it is essential that at the 'time of supply' (which is considered to be the earlier of the agreement for sale and purchase going unconditional or the acceptance of the deposit by the vendor) both parties are GST registered. This is because GST must be calculated at the 'time of supply'.

It is also essential that both parties to the sale agree, in writing, that the sale is to be treated as a going concern. Further, it must be capable of being shown that the taxable supply carried on by the vendor is capable of being carried on when the purchaser takes over.

#### Seller:

As a seller, you are expected to account for GST at the 'time of supply'. If you and the purchaser agree to zero-rate the GST component of the sale, it is essential that the purchaser is GST registered. If it is discovered that the purchaser was not GST registered at the 'time of supply' then you, as seller, may find yourself liable for

the GST component of the sale price. While it is usually possible to recover this from the purchaser by invoking special conditions in the contract (and possibly under the GST Act), it is a situation easy enough to avoid.

#### Purchaser:

Entering into an agreement to purchase a business or commercial property with the intention of electing a nominee before settlement day is a common enough practice. It can however be a dangerous one. The Inland Revenue Department, expects GST to be calculated at the 'time of supply' and not settlement and failure to have a registered GST entity as your nominee before 'time of supply' will mean that the transaction cannot be zero-rated for GST. Purchasers in this situation will find the vendors knocking on their doors for the 12.5%. For a commercial property worth \$2,000,000 that's another \$250,000.

So be careful when entering into contracts for the sale and purchase of GST affected assets. A quick discussion with us before you sign may save you the grief of 12.5%



## IS IT TIME TO REVISE YOUR WILL?

It is difficult to know when to revise your Will. Remember that when you make a Will, it is expressing your wishes at a specific point in time. As your circumstances change, the Will may no longer reflect your wishes.

There are certain changes that should prompt you to consider revising your Will. Some of these include:

- Buying or selling assets ( a house, business, boat etc).
- The death of your spouse.
- Getting married.
- Separation or divorce.
- Starting a de-facto relationship.
- The birth of children or grandchildren.
- Your children marry, separate or divorce or enter into a de-facto relationship.
- Your proposed executor has become ill or died.
- You are contemplating retirement.
- Beneficiary named in your Will has died.
- A beneficiary is in financial difficulty.

We recommend that you review your Will regularly. If you think that it might be time to review your circumstances with an independent person, do contact us and we will help ensure that your Will does accurately reflect your current wishes.

## Cairns Slane Areas of Expertise

In each issue of our newsletter we will feature a specific area of law for which our clients come to us for specialist advice.

The 4 main areas in which we work are:

- Business Law
- Property Law
- Trusts & Estate Planning
- Wills & Estate Administration

### BUSINESS LAW

We aim to execute every assignment with the utmost professionalism and efficiency, and to resolve every case to our clients' best possible advantage.

By investing time in getting to know our clients and their aspirations, their business and their business culture, we can give the right advice in every situation, always with a view to the future.

We want what is best for you and your business, so we think widely and proactively, looking beyond the

immediate issue to any other potential areas of risk.

The Cairns Slane team has an invaluable breadth and depth of knowledge and experience. No legal situation exists in isolation, and with the easy communication within the firm we can ensure that our advice addresses each situation fully.

We pride ourselves on being business pragmatists. We work to fully understand what our client wants and the reality of the law in each particular situation, and then working with these two elements to obtain the best possible outcome for our clients.

Because we focus on professionalism and a long-term approach, we are proactive and bring new ideas and solutions to our clients wherever possible.

### Specific Areas Of Expertise

- Leases
- Franchises
- Commercial agreements (distribution, supply agreements, terms of trade)
- Fair Trading
- Compliance
- Intellectual Property
- Shareholder and joint venture agreements and disputes
- Business and personal finance
- Banking
- Business and asset structures
- Sale of Goods Act
- Consumer Guarantees Act
- Employment Law
- Insolvency
- Mortgagee sales
- Corporate governance (director and shareholder issues)
- Succession planning
- Sale and purchase of businesses
- Personal Properties Securities Act
- Construction Contracts

## OUR PEOPLE



Susan Tracy  
Solicitor

In January Susan Tracy joined the Cairns Slane legal team as a Solicitor with over 20 years experience. She brings with her a wealth of knowledge in the commercial, property, financing, leasing, estate administration, wills & trusts fields. Sue has 2 children currently at University.

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Harshad Shiba  
Solicitor

Harshad Shiba joined us in September 2006 as a Solicitor. After being admitted in 2005 he worked in finance in Tauranga. His areas of practice are conveyancing, commercial and asset management. He has a keen interest in finance and commercial matters and enjoys spending his weekends playing cricket.

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## Disclaimer

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