

Liability limited by a scheme approved under Professional Standards Legislation

27 November 2015

Mr Andrew Laughton  
11B Keble Heights  
Bunbury  
WA 6230

Dear Mr Laughton

**RE: Retaining Wall**

Please find enclosed Sharyl Marsh's affidavit and documents numbered 5-49 filed at the Bunbury Court House today.

Kind regards



Ian Morison

MAGISTRATES COURT of WESTERN AUSTRALIA  
(CIVIL JURISDICTION)  
**GENERAL FORM OF AFFIDAVIT**  
FORM 2

Registry: Bunbury		Case number: BUN/GCLM/316/2015
Phone: 9781 4200		
Fax: 9721 8180		
Claimant	Andrew Laughton	
Defendant	Sharyl Marsh	

I Sharyl Marsh of 14 Trinity Rise College Grove

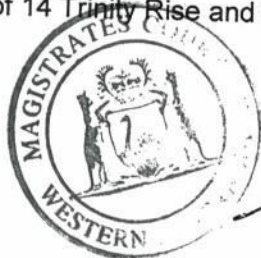
(full name and address) Administrator (occupation)

(\* Delete as applicable)

having been duly sworn say on oath the following:



1. I am the Defendant (*description of party*) in this case.
2. I believe I have a good defence to the claim. In his form 3 the Claimant claims:
  - (1) 700mm of sand was stacked against a fence which runs along our common boundary.
  - (2) on 4 September 2012 the fence collapsed and a bulge appeared in the top course of retaining wall bricks.
  - (3) an engineer's report shows that the extra loading of 700 mm of sand could cause the retaining wall to collapse.
  - (4) I am liable for the replacement of the boundary fence, the cost of reinforcement of the retaining wall and removal of the extra overburden loading.
3. In his form 19 the Claimant claims:
  - (1) the alleged 700mm of sand was the major cause of the fence breaking and the boundary retaining wall cracking and bulging.
  - (2) I am liable for the costs of reinforcing the section of boundary retaining wall that is damaged and to suit a new ground level at 14 Trinity Rise.
4. I admit that the boundary fence was damaged around September 2012. I do not admit the retaining wall suffered any damage at the time the fence was damaged.
5. My defences include:
  - (1) any damage to the retaining wall was caused by:
    - (i) its defective state; and/or
    - (ii) the movement of a tree on the Claimant's property which had been anchored to the retaining wall.
  - (2) the retaining wall was built below the soil level at the common boundary at the time it was built;
  - (3) the retaining wall along our common boundary is a section of wall which runs along the length of 11A and 11B Keble Heights and the Claimant is claiming from me the cost of reconstructing the whole wall.
  - (4) My husband is co-owner of 14 Trinity Rise and is not a party.



*[Handwritten signature]*  
L. Morton



6. The evidence as to the defective state of the retaining wall is as follows:
- (1) 11A and 11B Keble Heights were already built when we bought our property at 14 Trinity Rise.
  - (2) My husband James Marsh and I are the registered proprietors of 14 Trinity Rise College Grove being lot 26 on plan 18152 ("14 Trinity Rise"). Annexed hereto and marked "SM-1" is a Landgate search of our property. This shows that 14 Trinity Rise was transferred to us on 14 April 2003.
  - (3) Annexed hereto and marked "SM-2" is a Landgate search of the Claimant's property at 11B Keble Heights, College Grove which is lot 2 on Strata Plan 29201 ("11B Keble Heights"). This records that 11B Keble Heights was transferred to the Claimant on 11 March 2011.
  - (4) Annexed hereto and marked "SM-3" is a Landgate search of strata plan 29201 which shows it is the strata plan in which 11 Keble Heights is a lot and that it was registered on 24 January 1996.
  - (5) My husband James and I constructed two retaining walls on our property in 2012.
  - (6) As the Claimant concedes 14 Trinity Rise is uphill of 11B Keble Heights.
  - (7) 11A and 11B Keble Heights are level.
  - (8) Therefore the developer of 11A and 11B Keble Heights excavated the natural ground level at the boundary to build the retaining wall, so that 11A and 11B Keble Heights would be level blocks.
  - (9) The Claimant in his form 3 states that an engineer's report shows that the extra loading of 700 mm of sand could cause the retaining wall to collapse. He must be referring to a letter to the Claimant by Structerre Consulting Engineers dated 6 November 2012 which is annexed hereto and marked "SM-4". The letter also states the retaining wall had no backing blocks to a depth of 1000 mm and below that depth it was not possible to ascertain the use of backing blocks.
  - (10) Annexed hereto and marked "SM-5" is an email from the Claimant to Gary Bruhn of the City of Bunbury dated 20 April 2014 stating that the probing conducted by Structerre indicated that there were no backing blocks behind the wall and that the wall was not built to standard.
  - (11) Annexed hereto and marked "SM-6" is an email from the Claimant to BC Info dated 28 May 2014 noting that it was possible or probable that the retaining wall did not meet building standards when it was built and that it might not meet current standards either and that a one metre probe failed to find any backing block.
  - (12) Annexed hereto and marked "SM-7" are plans prepared by WML for a new retaining wall.
  - (13) The retaining wall was built without Council approval or a building permit. The evidence for that allegation is:
    - (a) Annexed hereto and marked "SM-8" is an email from the City of Bunbury to me dated 28 May 2015 stating that the City's records for the adjoining property (the Claimant's property at 11B Keble Heights) show the only retaining wall approved by the Council is for a retaining wall the subject of a building permit issued on 2 December 2014 which "is located on Unit 2, 11 Keeble Rise [sic] property (owner Mr Andrew Laughton) and runs along your western boundary and continues across your southern neighbour's block (15 Keeble Rise, Lot 50) rear property".
    - (b) The existing retaining wall was built well before 2 December 2014; the approval of 2 December 2014 is for a new wall.
7. For evidence that the damage to the retaining wall was caused or contributed to by the movement of a tree on the Claimant's property anchored to the retaining wall, I refer to annexure "SM-6" in which the Claimant admits a tree on his property was anchored to the retaining wall (while minimizing the role of the tree).
8. Evidence that the soil against the fence on our side of the boundary was at the same level as the ground level at the boundary at the time the developer of 11A and 11B Keble Heights excavated at the boundary and built the retaining wall, is as follows:
- (1) As the Claimant concedes 14 Trinity Rise is uphill of 11B Keble Heights.
  - (2) The property now occupied by 11A and 11B Keble Heights was a sloping block but was made level by the developer of 11A and 11B Keble Heights excavating the ground at the boundary and building a retaining wall.
  - (3) There is a sewer main through our property running parallel to and near the common boundary.



*[Handwritten signature]* L. Morrison



(1) The Claimant is incorrect in suggesting in paragraph 4 that the basis for our opposition to his claim was unclear at the pre-trial conference. In any event the statement of defence was not required at the time of the two pre-trial conferences and the statement of general procedure claim had not been delivered.

(2) As to the Claimant's statement in paragraph 5 that we offered approximately one quarter of the cost to replace the boundary fence, annexed hereto and marked "SM-14" is a quotation from T&V Fencing dated 23 October 2012 which we obtained. The quote relates to the full 10 metres of the fence – five on our boundary with the Claimant and five on the neighbour's boundary with the Claimant. Annexed hereto and marked "SM15" is an email chain in which I confirm that we obtained the quote and agreed to pay one half of our section of the fence (ie one quarter of the quote).

(3) The Claimant's reference to \$50,000 in costs and damages may relate to the whole retaining wall and the whole fence, including the fence and wall along our southern neighbour's boundary.

(4) As to paragraph 42 the Claimant is incorrect in suggesting that we were unprepared for the pre-trial conferences. We were prepared for the pre-trial conference on 18 June, we had briefed a lawyer (Mr Morison) to appear for us and he did so. I will not refer to anything discussed at that conference or arising from it. The second pre-trial conference was on 30 July 2015. At the suggestion of my lawyer Mr Morison there was a meeting between the Claimant and Mr Morison and my husband James and me at site in the afternoon of the previous day. We then attended the pre-trial conference the next day with Mr Morison. I will not refer to anything discussed at that conference or arising from it.

(5) My forms 35 and 36 were filed on 24 November 2015. The first schedule part 1 to the form 36 lists 75 documents.

12. Annexed hereto and marked "SM-16" is a proposed Statement of Defence (annexure "IAM1" to the affidavit of Mr Morison sworn 2 November 2015). I verify the facts alleged in it save as to [15] of the summary of facts, in that the subdivision of 11A and 11B Keble Heights occurred on 24 January 1996 (see "SM-3"); and save as to [11] in that I cannot see the easement on our title "SM-1"; and save that reference throughout to the natural ground level should be to the natural ground level alternatively the ground level at the time the sewer main was installed.



Lynette Joy Morton JP  
Justice of the Peace

Western Australian Reg. No: 26409

SWORN

At *24<sup>th</sup>* this *26<sup>th</sup>* day

of *Nov 2015* in the presence of

*L. Morton*

Registrar/Justice of the Peace/~~other authorised witness~~

*[Signature]*  
Deponent

Each page is to be dated and signed by the person making the affidavit and the witness.

Tick [✓] appropriate box

Lodged by	<input type="checkbox"/> Claimant or claimant's lawyer <input checked="" type="checkbox"/> Defendant or defendant's lawyer <input type="checkbox"/> Other			
Address for service	Morison Legal 24 Arthur Street BUNBURY WA 6230			
Contact details	Telephone: 9792 4693	Lawyer's ref: Ian Morison	Fax: 9791 7493	E mail: ian@morisonlegal.com.au

as at 01/09/2008

*[Signature]* *L. Morton*



"SMI"

5

WESTERN



AUSTRALIA

REGISTER NUMBER <b>26/P18152</b>	
DUPLICATE EDITION <b>1</b>	DATE DUPLICATE ISSUED <b>30/4/2003</b>

**RECORD OF CERTIFICATE OF TITLE**  
UNDER THE TRANSFER OF LAND ACT 1893

VOLUME **1912**      FOLIO **374**

The person described in the first schedule is the registered proprietor of an estate in fee simple in the land described below subject to the reservations, conditions and depth limit contained in the original grant (if a grant issued) and to the limitations, interests, encumbrances and notifications shown in the second schedule.

*[Handwritten Signature]*



REGISTRAR OF TITLES

**LAND DESCRIPTION:**

LOT 26 ON PLAN 18152

**REGISTERED PROPRIETOR:**  
(FIRST SCHEDULE)

JAMES GLYNN MARSH  
SHARYL FAY MARSH  
BOTH OF 14 TRINITY RISE, COLLEGE GROVE  
AS JOINT TENANTS

(T I446260 ) REGISTERED 14 APRIL 2003

**LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS:**  
(SECOND SCHEDULE)

- 1. I446261 MORTGAGE TO BANK OF WESTERN AUSTRALIA LTD REGISTERED 14.4.2003.

Warning: A current search of the sketch of the land should be obtained where detail of position, dimensions or area of the lot is required.  
\* Any entries preceded by an asterisk may not appear on the current edition of the duplicate certificate of title.  
Lot as described in the land description may be a lot or location.

-----END OF CERTIFICATE OF TITLE-----

**STATEMENTS:**

The statements set out below are not intended to be nor should they be relied on as substitutes for inspection of the land and the relevant documents or for local government, legal, surveying or other professional advice.

SKETCH OF LAND:                    1912-374 (26/P18152).  
PREVIOUS TITLE:                    1843-362.  
PROPERTY STREET ADDRESS:      14 TRINITY RISE, COLLEGE GROVE.  
LOCAL GOVERNMENT AREA:        CITY OF BUNBURY.

*[Handwritten Signature]* L. Morton

Application E670029  
Volume 1843 Folio 362

WESTERN



AUSTRALIA



1912 374

# CERTIFICATE OF TITLE

UNDER THE "TRANSFER OF LAND ACT, 1893" AS AMENDED



I certify that the person described in the First Schedule hereto is the registered proprietor of the undermentioned estate in the undermentioned land subject to the easements and encumbrances shown in the Second Schedule hereto.

Dated 20th August, 1991

*J. Mulcahy*

REGISTRAR OF TITLES



### ESTATE AND LAND REFERRED TO

estate in fee simple in portion of Bunbury Lot 714 and being Lot 26, on Plan 18152, delineated on the map in the Third Schedule hereto, limited however to the natural surface and therefrom to a depth of 12.19 metres.

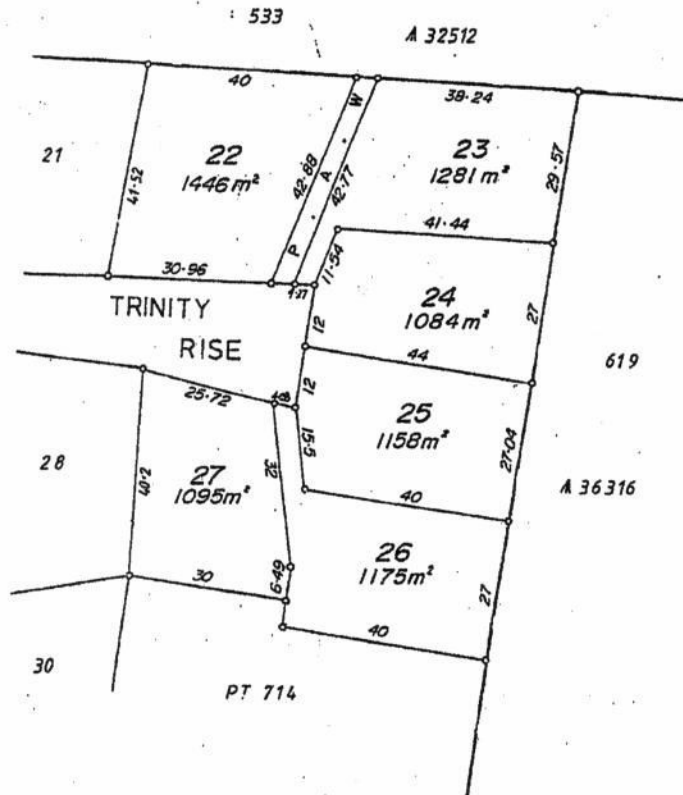
### FIRST SCHEDULE (continued overleaf)

City of Bunbury of Stephen Street, Bunbury

### SECOND SCHEDULE (continued overleaf)

NIL

### THIRD SCHEDULE



NOTE: ENTRIES MAY BE AFFECTED BY SUBSEQUENT ENDORSEMENTS.

Superseded - Copy for Sketch Only

PERSONS ARE CAUTIONED AGAINST ALTERING OR ADDING TO THIS CERTIFICATE OR ANY NOTIFICATION HEREON

Page 1 (of 2 pages)

VOL 1912 FOL 374

SCALE 1:1000

E67590/1/89-206-L/4664

*L. Morton*

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FIRST SCHEDULE (continued)

NOTE: ENTRIES MAY BE AFFECTED BY SUBSEQUENT ENDORSEMENTS

LT. 37

Superseded - Copy for Sketch Only

REGISTERED PROPRIETOR		INSTRUMENT		REGISTERED	TIME	SEAL	CERT. OFFICER
NATURE	NUMBER	NATURE	NUMBER				
John Sydney Barkin and Susan Barkin both of 64 Vickery Crescent, Bunbury, as joint tenants.		Transfer	E693865	10.9.91	14.12		<i>[Signature]</i>
Rodney James Melville and Cheryl Melville both of 28 Winthrop Avenue, Bunbury, as joint tenants		Transfer	F934210	21.7.95	15.53		<i>[Signature]</i>
The correct address of the registered proprietors is now 3 Hertford Elbow, Bunbury.		By	G358382	20.12.96	16.16		<i>[Signature]</i>

SECOND SCHEDULE (continued)

NOTE: ENTRIES MAY BE AFFECTED BY SUBSEQUENT ENDORSEMENTS

INSTRUMENT		PARTICULARS	REGISTERED	TIME	SEAL	CERT. OFFICER	CANCELLATION	NUMBER	REGISTERED OR LODGED	SEAL	CERT. OFFICER
NATURE	NUMBER										
Mortgage	E693866	to Commonwealth Savings Bank of Australia.	10.9.91	14.12		<i>[Signature]</i>					
Mortgage	F934211	to Australia & New Zealand Banking Group Ltd	21.7.95	15.53		<i>[Signature]</i>	Discharged	F934209	21.7.95		<i>[Signature]</i>
Mortgage	G358382	to Australia & New Zealand Banking Group Ltd.	20.12.96	16.16		<i>[Signature]</i>	Discharged	G358381	20.12.96		<i>[Signature]</i>

CERTIFICATE OF TITLE VOL 1912 FO 374

*[Signature]* L. Morton

LANDGATE COPY OF ORIGINAL NOT TO SCALE Sun Oct 11 17:23:15 2015 JOB 49096829

7

"SM-2"

8

WESTERN




AUSTRALIA

REGISTER NUMBER <b>2/SP29201</b>	
DUPLICATE EDITION <b>3</b>	DATE DUPLICATE ISSUED <b>22/3/2011</b>

**RECORD OF CERTIFICATE OF TITLE**  
 UNDER THE TRANSFER OF LAND ACT 1893 AND THE  
**STRATA TITLES ACT 1985**

VOLUME 2064 FOLIO 162

The person described in the first schedule is the registered proprietor of an estate in fee simple in the land described below subject to the reservations, conditions and depth limit contained in the original grant (if a grant issued) and to the limitations, interests, encumbrances and notifications shown in the second schedule.

  
 REGISTRAR OF TITLES



**LAND DESCRIPTION:**

LOT 2 ON STRATA PLAN 29201  
 TOGETHER WITH A SHARE IN ANY COMMON PROPERTY AS SET OUT ON THE STRATA PLAN

**REGISTERED PROPRIETOR:**  
 (FIRST SCHEDULE)

ANDREW PETER LAUGHTON OF PO BOX 1014, NARROGIN  
 (T L573580 ) REGISTERED 11 MARCH 2011

**LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS:**  
 (SECOND SCHEDULE)

- INTERESTS NOTIFIED ON THE STRATA PLAN AND ANY AMENDMENTS TO LOTS OR COMMON PROPERTY NOTIFIED THEREON BY VIRTUE OF THE PROVISIONS OF THE STRATA TITLES ACT NO.33 OF 1985 AS AMENDED.
- \*L643368 MORTGAGE TO NATIONAL AUSTRALIA BANK LTD REGISTERED 2.6.2011.

Warning: A current search of the sketch of the land should be obtained where detail of position, dimensions or area of the lot is required.  
 \* Any entries preceded by an asterisk may not appear on the current edition of the duplicate certificate of title.

-----END OF CERTIFICATE OF TITLE-----

**STATEMENTS:**

The statements set out below are not intended to be nor should they be relied on as substitutes for inspection of the land and the relevant documents or for local government, legal, surveying or other professional advice.

SKETCH OF LAND: SP29201.  
 PREVIOUS TITLE: SP29201.  
 PROPERTY STREET ADDRESS: UNIT 2, 11 KEBLE HTS, COLLEGE GROVE.  
 LOCAL GOVERNMENT AREA: CITY OF BUNBURY.

NOTE 1: DUPLICATE CERTIFICATE OF TITLE NOT ISSUED AS REQUESTED BY DEALING L643368





PLAN OF PORTION OF BUNBURY LOT 714 AND BEING  
 LOT 48 ON PLAN 18631  
 CERTIFICATE OF TITLE VOL 1959 FOL 412  
 LOCAL AUTHORITY CITY OF BUNBURY  
 LOCALITY COLLEGE GROVE INDEX PLAN BG 30 (10) 1.6  
 NAME OF BUILDING 11 KEBLE HEIGHTS COLLEGE GROVE  
 NAME OF BODY CORPORATE  
 (IF STRATA PLAN OF SUBDIVISION  
 OR CONSOLIDATION)  
 ADDRESS FOR SERVING OF 11 KEBLE HEIGHTS COLLEGE GROVE  
 NOTICES ON COMPANY BUNBURY 6230  
 PURPOSE

STRATA PLAN 29201



OFFICE USE ONLY

LODGED 6.6.95 91974

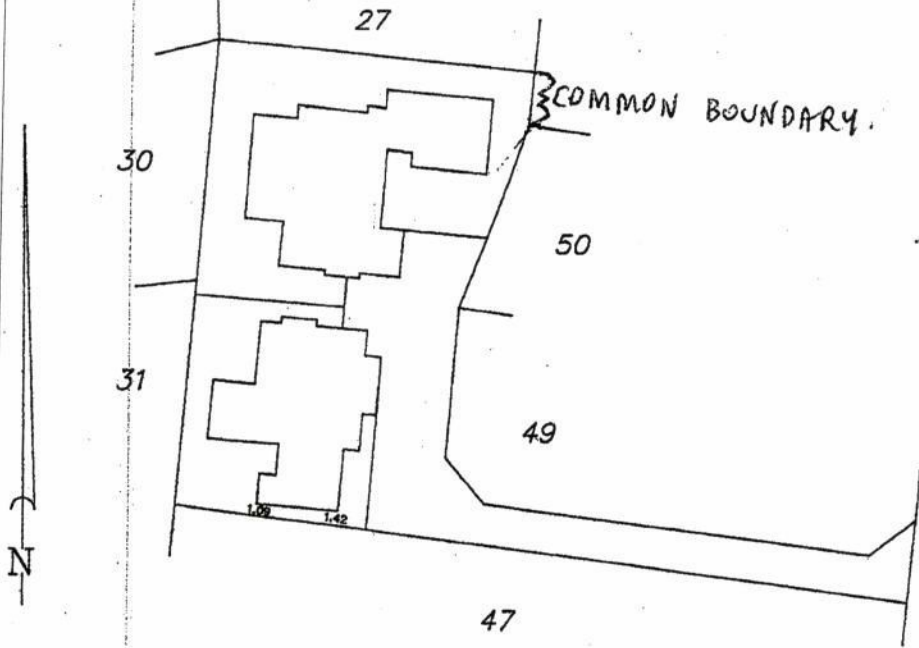
EXAMINED 15.6.95

REGISTERED 24.1.96 App 673819



*A Sach* 9  
 REGISTRAR OF TITLES

LIMITED TO A DEPTH OF 12.19 METRES



Scale 1 : 500

SCHEDULE OF UNIT ENTITLEMENT		OFFICE USE ONLY	
LOT No.	UNIT ENTITLEMENT	CURRENT Cs. of TITLE	
		VOL.	FOL.
1	45	2064	161
2	55	2064	162
AGGREGATE	100		

CERTIFICATE OF LICENSED VALUER

I, DON EFTOS being a Licensed Valuer licensed under the Land Valuers Licensing Act 1978 do hereby certify that the unit entitlement of each Lot, as stated in the schedule bears in relation to the aggregate unit entitlement of all Lots delineated on the strata plan a proportion not greater than 5 per cent more or 5 per cent less than the proportion that the capital value of that Lot bears to the aggregate capital value of all the Lots delineated on the plan.

24.1.96 *[Signature]*  
 13/12/94 *[Signature]*  
 Date signed

02181/5/91-2M-S/7652

*[Signature]* L. Morton

DESCRIPTION OF PARCEL AND BUILDING

PORTION OF BUNBURY LOT 714 AND BEING LOT 48 ON PLAN 18631

BRICK AND TILE DUPLEX

CERTIFICATE OF SURVEYOR

I, Dennys William Hayes, being a licensed surveyor registered under the Licensed Surveyors Act 1909, as amended, hereby certify that:—

- (a) each lot that is not wholly within a building shown on the plan is within the external surface boundaries of the parcel; and either
- (b) each building referred to above is within the external surface boundaries of the parcel; or
- (c) ~~in a case where a part of a wall or building, or material attached thereto, encroaches beyond the external surface boundaries of the parcel—~~
  - (i) all lots shown on the plan are within the external surface boundaries of the parcel;
  - (ii) the plan clearly indicates the existence of the encroachment and its nature and extent; and
  - (iii) ~~where the encroachment is not on to a public road, street or way, that an appropriate easement has been granted and registered as an appurtenance of the parcel.~~

*DWH*

13/12/94

*Dennys William Hayes*  
Licensed Surveyor

Date  
Delete whichever is inapplicable

CERTIFICATE OF LOCAL AUTHORITY

CITY OF BUNBURY, the local authority hereby certifies that—

- (1) (a) the building and the parcel referred to above has been inspected and that it is consistent with the building plans and specifications in respect of the building thereof that have been approved by the local authority; or
- (b) the building has been inspected and the modification is consistent with the approved building plans and specifications relating to the modification;
- (2) the building, in the opinion of the local authority, is of sufficient standard and suitable to be divided into lots pursuant to the Strata Titles Act 1985;
- (3) ~~where a part of a wall or building or material attached thereto encroaches beyond the external surface boundaries of the parcel on to a public road, street or way the Local authority is of the opinion that retention of the encroachment in its existing state will not endanger public safety or unreasonably interfere with the amenity of the neighbourhood and the local authority does not object to the encroachment;~~
- (4) (a) ~~any conditions imposed by the State Planning Commission have been complied with;~~
- (b) the within strata scheme is exempt from the requirement of approval by the State Planning Commission.

AUTHORISED DELEGATED  
AUTHORITY SECTION 23 (5)  
STRATA TITLE ACT.

*Sheena*  
Town/Shire Clerk

12. 4. 95  
Date  
Delete whichever is inapplicable

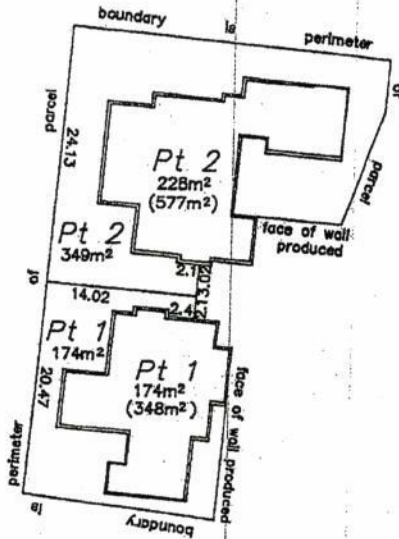
E76327/6/90-2M-S/7654

*L. Morton*



STRATA PLAN No. 29201  
FLOOR

GROUND



As at 20th July 1997 unless a notice of resolution under section 21H or an objection under 21G has been recorded on the strata plan -

The boundaries of the lots or parts of the lots which are buildings shown on the strata plan are the external surfaces of those buildings, as provided by section 3AB of the Strata Titles Act 1985;

The scheme may not be a single tier scheme, as defined in section 3(1) of the Strata Titles Act 1985;

The areas of the lots shown on the strata plan may have changed;

Where 2 lots have a common or party wall, or have buildings on them which are joined, the centre plane of that wall or the plane at which they are joined, is the boundary;

The horizontal boundaries of the lots or parts of the lots which are not buildings shown on the plan (if any) remain as provided on this strata plan.

WITHOUT ALTERING THE BOUNDARIES IMPOSED BY SECTION 3 SUBSECTION 2(a) (i) AND (ii) OF THE STRATA TITLES ACT 1985, STRATUM OF LOTS EXTENDS 10 METRES ABOVE AND 3 METRES BELOW THE UPPER SURFACE OF THE FLOOR SLAB ON LOT ONE.

Scale 1 : 500

41445/8/85-1M-S/7656

*[Handwritten Signature]* L. Morton





S29201

Lot Number	Part	Register Number	Unit Entitlement	Lot Number	Part	Register Number	Unit Entitlement
1		2064/161	45	2		2064/162	55



*[Handwritten signature]* *L. Morton*

6 November 2012

Structerre reference number: S598518/DG

Andrew Laughton  
11b Keble Heights  
COLLEGE GROVE WA 6230

Attn: Andrew Laughton

Dear Andrew

**RETAINING WALL**  
at  
**#11B KEBLE HEIGHTS COLLEGE GROVE**

*Structerre*  
*bunbury@structerre.com.au*  
*No permit found by City of Bunbury*

In response to your recent request, a representative from this Office visited the abovementioned site on 26 October 2012.

**1. PURPOSE**

The purpose of the visit was to inspect and comment upon the retaining wall built along the left side of the property.

**2. OBSERVATIONS**

It was observed that the boundary retaining wall in question had moved forward a minimum 20mm along its entire length. The profile revealed that the wall had no backing blocks to a depth of 1000mm and was constructed of 270mm wide limestone blocks. Below this depth of 1000mm, it was not possible to ascertain the use of backing blocks, as the 700mm high stack of sand precluded this investigation.

At the retaining walls maximum height of 1800mm, an additional 700mm of sand was stacked behind the now broken fence and then further sloped upwards to a height of 1500mm above the top of wall to a new retaining wall on the neighbour's property.

This new wall was built 2600mm from the face of the boundary retaining wall and another higher wall, a further 1100mm away had also been constructed. Both these walls retained 1050mm and were embedded to a depth of 350mm.

It was also noted that a suckling tree, on the lower side, has been secured via I-bolt directly to the top block of the boundary wall.

**3. COMMENTS**

The locations and height of the retaining walls on the neighbouring property will be directly surcharging the boundary wall and hence be partially causing the failure and movement of this wall. Furthermore, the stacked sand behind the now broken fence will be adding load to this surcharge and hence further enhancing the problem.

*L. Morton*



It is evident also that the boundary wall has not been constructed with enough backing blocks to meet the Structerre minimum detail as shown in attached HOR Detail. Had it been built to this minimum detail, it still would not guarantee no overturn or failure, as the surcharge loads are in excess of those this detail is capable of restraining. Therefore, partial cause of failure needs to be attributed to this under-design of the wall.

Finally, the tightly secured tree, due to growth restraint and wind loading, would likely contribute to the movement and cracking of the boundary wall.

**4. RECOMMENDATIONS**

As each wall is now reliant upon the stability of the boundary wall, it is our recommendation that the ground behind the wall be stabilized via cement injection grouting to a depth and width yet to be formalised by more prudent design and detail.

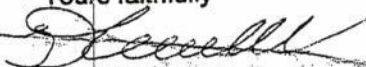
This office should be engaged to formalize a quote to carry out a more detailed design and investigation. As it affects both neighbours, it is suggested a meeting be held between both parties to formulate a planned rectification process.

**5. CONCLUSION**

We trust this report clarifies the extend of the problem and assists with resolution of this issue.

Thank you for the opportunity to assist you in this matter. If this Office can be of further assistance, please do not hesitate to contact us again.

Yours faithfully

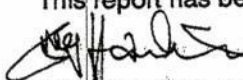


Daniel Goodall  
Engineer's Assistant

Enclosed:  
HOR Detail

Authorisation

This report has been reviewed and authorised for release



Greg Hamilton  
Bunbury Manager

**Disclaimer:**

*This report is at the request of the addressee and no liability is accepted by Structerre Consulting Engineers to any third person reading or relying upon the report, not withstanding any rule of law and/or equity to the contrary and that this report is strictly confidential and intended to be read and relied upon only by the addressee.*

Job #	Revision	Authored	Reviewed	Authorised
S598518	0	DG	GRH	GRH

JOB No: S598518/DG/  
CLIENT: Andrew Laughton  
SITE: #11B KEBLE HTS COLLEGE GROVE



**Sharyl Marsh**

---

**From:** Andrew Laughton <laughton.andrew@gmail.com>  
**Sent:** Sunday, 20 April 2014 9:24 PM  
**To:** Gary Bruhn; Murray Borthwick; Sharyl Marsh  
**Subject:** Retaining wall between 11b Keble heights and 14 Trinity rise, College Grove.

To the Bunbury council and Sharyl Marsh from 14 Trinity Rise, College Grove.  
I also CC'ed the owner of 11a Keble heights.  
I might print this off and deliver it to other people that share this wall, just to keep them in the picture.

As you may be aware, Structerre came to visit on Friday 11th of April 2014 at 3:00pm to try to work out the best way of fixing the retaining wall issue.

I believe they are doing the calculations to place an additional retaining wall uphill of the original retaining wall, with posts extending deeper than the base of the original retaining wall, and extending approx 700mm higher than the original retaining wall, to allow the new retaining walls on 14 Trinity rise to remain where they are.

Hopefully with enough clearance that work can be done on the sewer line if need be.

However working out the cost of this new retaining wall has not been considered, and is why I am writing this letter.

From my point of view, I have done nothing wrong with the possible slight exception of having a tree tied to the retaining wall. It happened before I bought the house however I believe it would be my responsibility. I claim no expertise in this field, however, based on a guesstimate of the breaking strain of the twine holding the tree to the wall, the fact that the tree is sheltered by the house and was sheltered by the fence it was tied to, and the close proximity of retaining walls uphill of the tree, I would expect the loading on the wall to be less than 100kg at the highest peak of any gust.

The crack in the wall is not near where the tree was tied to the wall.

Assuming sand weighs 1500 kg per m<sup>3</sup>, the weight of sand 1 meter long by 700mm deep by 1700mm wide would be 1.19 m<sup>3</sup> x 1500 kg = 1,785 kg, assuming the sand is dry, during a rain storm it would be much heavier.

I would guess that quarter of this weight would be additional weight on the wall, about 446 kg per meter over what the wall should of held.

This section of wall is about 5 meters long, for a total of 2,230 kg of extra weight placed on the wall by the extra sand.

Therefore, 100 kg / 2,230 kg, or about 0.45% of the extra weight on the wall is my problem, and at my cost. These numbers are very rough, I am just guesstimating, but hopefully enough to show how much effect I believe the tree had.



L. MORTON

"SMS"

16



From what I think would be my neighbours point of view, it is conceivable that they believe they have done very little wrong. They did all the right things, got all the right permits, and employed professionals to do this work for them. The sewerage gatic cover has for some reason been placed approx 700mm higher than it should have been, and this has been taken as a reference point for the new retaining walls.

Why they would think that any existing retaining wall would not already be filled in to the height of the retaining wall is a bit of a mystery, but things tend to be a lot clearer in hindsight.

Expecting the fence to hold so much sand is a bit silly, but not everybody would realise that.

From both my and I would expect my neighbours point of view, we would expect the original retaining wall to be designed and built to the appropriate standards. Structerre had a probe about a meter long, and placed it immediately behind the original retaining wall bricks, and I believe there was less resistance to the probe here than there was further back where the sand was 700mm deeper.

This would indicate that there were no backing blocks behind the wall and that the wall was not built to standards.

There is evidence further along the original retaining wall that iron rods have been used to support the wall, and it also has bracing pillars, but not in this section.

Based on the assumption that this wall has not been built to standards, I would expect the council to be liable for at least some of the cost of works to fix the problem as they allowed it to be built like it is.

From at least my point of view, the people that built the new retaining walls should have known better.

The fact that the gutter on the roof of my house and both neighbours houses was well below the level of the top of the fence line would of made it painfully obvious that a retaining wall existed between the properties.

The fact that a home made retaining wall on the adjoining property existed, by itself would have been reason to check the height of the original retaining wall. I am unsure of what the landscaping was like before the new retaining walls went in, but because the damage to the original retaining wall and fence happened so shortly after the new retaining wall was built, it is reasonable to assume that the 700mm of extra sand was placed there during or shortly after this build. If the builders thought the existing boundary retaining wall was higher, why did they not notice the lack of any exposed backing blocks before they added the extra sand?

Why would they think the original retaining wall was not back filled when it was built?

It would have been very simple to check the height of the original retaining wall by simply looking over the fence.

I personally believe that whoever supervised building the new retaining wall is responsible for the vast majority of the cost of fixing up their stuff up.

At this point in time I am not even aware of who that is.

While I am writing this I will try to explain what my concerns are;

The original retaining wall has developed a crack. A crack in the top layer of bricks was first noticed when examining the wall after the fence collapsed.

 L. Morton



That crack has since extended to the bottom of the retaining wall..

If this retaining wall should collapse, there is a danger that the sewer behind it will rupture.

If that sewer ruptures I will have raw sewerage flowing into my property, and it would be reasonable to assume that any house connected up stream from that point would have their water supply cut off to prevent any toilet, shower, sink water going into the sewer until it is fixed.

~~These people would have the inconvenience, and possibly the cost of living somewhere else while the sewer is fixed.~~

If the sewer ruptures it would also destabilise any retaining walls built uphill of the sewer, and there would be a very real danger that they would fall, or at the very least, deform.

The inconvenience to myself would be relatively minor compared to other house holds if it was not for the fact that I am trying to sell the house.

Also I should clear up a misconception on my part, and possibly others.

The original report that I commissioned from Structerre stated that the entire length of the retaining wall had moved.

This retaining wall extends from Trinity rise to the drive way of 11 Keble heights, part of which has already been replaced because of a collapse.

It turns out they were only referring to a 5 meter section where the fence was broken.

At this point in time I feel that I need to pay up to 5% of the cost to get things fixed, because this would be cheaper than feeding lawyers.

I also feel that my neighbours need to pay up to 5%, for being silly enough to put so much sand against the fence, and to avoid feeding lawyers.

I feel that the council should pay between 5% and 10%, for apparently allowing the original retaining wall to be built below standard.

I feel that the people that caused this problem, namely whoever built the new retaining wall base 700mm higher than it should have been, should be responsible for fixing the damage they have caused, and pay at least the bulk of the cost, if not the entire cost of getting work done to fix the retaining wall.

I feel that whoever placed so much sand against the fence should pay for the replacement of that fence, probably the same people that built the retaining wall.

I feel that whoever that is deserves to be notified so that they in turn can notify their public liability insurance people, who in turn would probably want to inspect the wall themselves before it is fixed.

If they agree to pay for a reasonable amount, well and good, if not we may need to feed the lawyers.

Either way it would be good to get the ball rolling.

If everybody could email everybody else stating what their opinion is, and how much they think they should be expected to pay to fix this problem it would be a good start.

If the Bunbury Council could also please let us know, who was it that authorised this wall, and who approved it when it was finished ?

Regards Andrew Laughton from 11b Keble Heights.

 3 



BC Info

**From:** Andrew Laughton [mailto:[laughton.andrew@gmail.com](mailto:laughton.andrew@gmail.com)]  
**Sent:** Wednesday, 28 May 2014 12:13 PM  
**To:** BC Info  
**Cc:** [garyb@bunbury.wa.gov.au](mailto:garyb@bunbury.wa.gov.au); sharyl  
**Subject:** Re: Boundary retaining wall between 11 Keble Heights and 14 Trinity Rise.

To the Department of commerce, Western Australia.

I / We require the services of an Adjudicator for determining who pays the costs of repairing / replacing or supplementing a boundary retaining wall that is failing, a section of boundary fence, and possibly determine the best way to do it.

The original boundary retaining wall is 1.665 meters high, measured from the current surface, with about 200 mm below the surface, and appears to be sitting on a concrete foundation.

The bricks measure 360 mm - 370 mm high including mortar.

If an extra row of bricks was added the retaining wall would of been just over 2 meters high.

Approval had originally been given for a retaining wall 1.750 meters high in 1994, and it was built that same year.

It is possible / probable this original retaining wall did not meet building standards when it was built, and it may not meet currant standards either as a one meter probe failed to find any backing blocks. This point is unclear as the retaining wall also has posts which are not shown on the plans, and backing blocks may of interfered with the sewer pipe.

 H. Morton

"SM6"

19

The original approval drawings show a reference point at 10.00 meters, I am guessing this is above sea level and I have not been corrected by anybody yet.

The original contour survey shows 10.14 meters and 10.15 meters at points near the retaining wall failure.

The top of the original retaining wall appears to be approx 400 mm lower than the original contour survey at this point.

The ground around this original retaining wall would have been removed while the wall was built.

It is unknown how much ground was back-filled, but it is hard to imagine the original inspector approving it if it was higher than the top of the retaining wall.

There is also a sewerage pipe running in an easement approx 1.8 meters from the face of the original retaining wall. The size and depth of the sewer is unknown at the moment, but the bottom of it is about 500 mm above the bottom of the original retaining wall.

There is a sewer access point and an inspection point close to the damaged retaining wall.

Sharyl has recently requested more information from the Water Corp but has yet to get a response.

Sitting on top of this retaining wall has been a super six, corrugated cement sheeting fence.

Over a period of years sand has built up behind this fence along the length of the fence.

How high and when is unknown, but at the time the fence broke it was 700 mm high.

Recently my neighbours at 14 Trinity Rise have recently had two additional retaining walls added, with the face of the closest one being about 2.93 meters from the face of the original retaining wall.

The base of this new retaining wall is about 700 mm higher than the top of the original retaining wall.

All required approval was sought and approved for the erecting of these new retaining walls.

 L. Morton



During the first decent storm we had since the new retaining wall was built, **3rd September 2012**, the super six fence broke and fell down into 11 Keble heights, along with a large quantity of sand.

Spare roofing tiles that were sitting on top of the retaining wall were also pushed down and smashed.

I was concerned about a slight bulge / crack in the original retaining wall.

To ease my concerns I commissioned Structerre to do a report on the retaining wall, which is attached.

It is not known why the height of the retaining wall in the report is stated as 1.800 meters, when it is 1.67 meters high. I do not think the embedded measurement for the new walls is accurate either.

Between the fence breaking and Structerre doing their report I removed enough sand from the edge to stop it from falling into my own property.

The 700 mm is accurate, the 1.5 meters in the report is simply where the sand ended up after I moved it back from the edge.

The date on this report is **6 November 2012**. A copy of this report had been given to my neighbours to highlight why the sand adding extra load to the failing retaining wall needed to be removed.

Since this date myself, Bunbury council and Structerre have requested that this over-burden sand be removed on different occasions.

Sand that I dug away from the fence line has been removed, but sand to a depth of 700 mm is still adding burden to the original retaining wall at the time of writing this.

As it turns out, removing the overburden from the original retaining wall would also undermine the new retaining wall due to the 700 mm height difference.

After much time it was agreed to commission Structerre as a neutral party with the task of coming up with a way to stop the original retaining wall collapsing, and to preferably do it in a way to stop the new retaining wall on my neighbor's property from being undermined.

An appointment was made and kept for Structerre to visit the site on 3 pm on Friday **11th of April, 2014**.

 L. Morton

Daniel from Structerre at the meeting had ideas of putting posts down beyond the depth of the base of the original retaining wall, and high enough to support the extra 700 mm of sand.

Barriers were going to be installed between the height of the original retaining wall and the new level 700 mm higher.

This would remove the bulk of the loading from the original retaining wall and also support the new retaining wall.

I believed that progress had finally started to happen and Structerre were making drawings so that this could be done.

On the 8th of May Gary Bruhn from the Bunbury council emailed Greg Hamilton from Structerre to see how progress was going.

Greg's response was that the Marsh's had no further issues and you were going to require the services of an engineer to work with you to come up with a suitable design to overcome your problem.

I emailed Greg from Structerre and then had a phone call from him. Apparently Greg was under the impression that the inspection was to check the foundation of the new retaining wall, and decided that it was OK. Greg was also under the impression that the extra overburden had already been removed. There is obviously a very large misunderstanding between Daniel from Structerre and Greg from Structerre.

Gary from the Bunbury city council also had a totally different impression from Greg.

=====

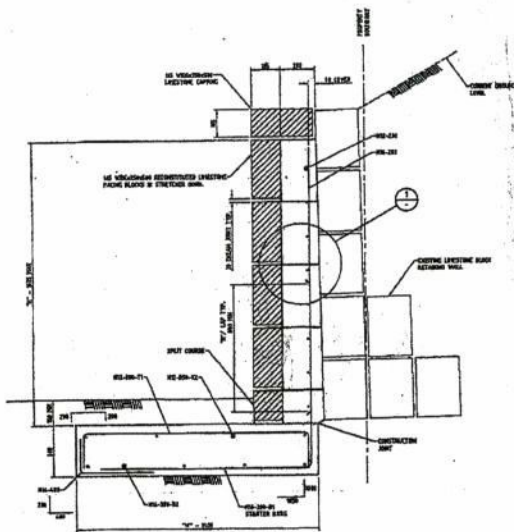
I am not including photos or emails at this point as I do not think they are needed, and also it might prevent the delivery of this email because of its size.

Contact details of people involved are;

L. Norton P

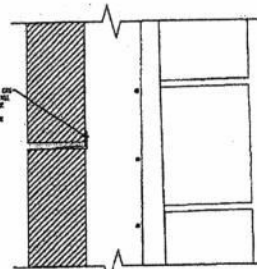




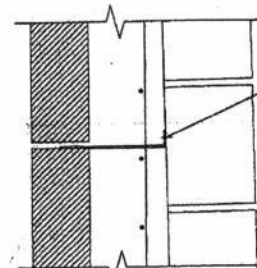


SECTION A-A

STAINLESS STEEL WALL TIES AT 900mm ON CENTER BETWEEN CONCRETE AND WALL. TO BE INSTALLED AFTER FORMWORK IS REMOVED AND BEFORE BACKFILL IS PLACED. SEE SECTION B-B FOR TIE TO ADJ. LIVINGSTONE WALL.



DETAIL OPTION 1



DETAIL OPTION 2

STAINLESS STEEL WALL TIES AT 900mm ON CENTER BETWEEN CONCRETE AND WALL. TO BE INSTALLED AFTER FORMWORK IS REMOVED AND BEFORE BACKFILL IS PLACED. SEE SECTION B-B FOR TIE TO ADJ. LIVINGSTONE WALL.



NO.	DESCRIPTION	APPROVED	DATE	DESIGN

DATE PREPARED BY: S. THOMPSON  
 DATE: 11/11/11  
 DRAWN BY: S. THOMPSON  
 CHECKED BY: S. THOMPSON  
 APPROVED BY: S. THOMPSON

PROJECT: 11 KIDDE HEIGHTS, COLLEGE GROVE  
 PROPOSED RETAINING WALL

SECTION AND DETAILS

5859-S-002 0

*[Handwritten Signature]*  
 L. Morton



25

Sharyl Marsh

**From:** David Brightwell <dbrightwell@bunbury.wa.gov.au>  
**Sent:** Thursday, 28 May 2015 3:43 PM  
**To:** Sharyl Marsh  
**Subject:** Retaining Wall Enquiry Eastern (rear) Boundary of 14 Trinity Rise

James/Sharyl

James, I am just following up from our recent meeting at the City of Bunbury offices and your request to be informed if a building permit/licence has been issued by the City on your rear (western) adjoining property boundary with Unit 2, 11a Keeble Heights.

At the time of the meeting I was not up to speed with previous correspondence you had had with my colleague Gary Bruhn, who is no longer working at the City. I have inherited projects that are ongoing at the time of Gary's departure from the City and on a case by case basis I'm familiarising myself with previous circumstances to date. After checking the City of Bunbury building records for the adjoining property Unit 2, 11a Keeble Heights, the only retaining wall approval shown is for a recently issued retaining wall.

This Building Permit was issued on the 2-12-2014. As a note the approved works did not require neighbour consultation, prior to issuing the Building Permit, as the works are to be located wholly within the adjoining property boundaries.

The approved retaining wall is located on Unit 2 11 Keeble Rise property (owner Mr Andrew Laughton) and runs along your western boundary and continues across your southern neighbours block (15 Keeble Rise Lot 50) rear property.

I hope this assists in clarifying the issued approvals on your properties western corner adjoining rear boundary.

Regards

David Brightwell  
Building Certification  
Team Leader  
City of Bunbury



Phone: (08) 9792 7058  
Fax: (08) 9792 7184  
Email: [dbrightwell@bunbury.wa.gov.au](mailto:dbrightwell@bunbury.wa.gov.au)  
P O Box 21 BUNBURY WA 6231  
[www.bunbury.wa.gov.au](http://www.bunbury.wa.gov.au)

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*[Handwritten signature]*  
L. Morton

25

25

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 L. Morton



27



*Shl* L. Morton P



28



Soil removed on boundary.

sewer pipe

25/03/2014 08:05 AM

Not removed neighbours boundary

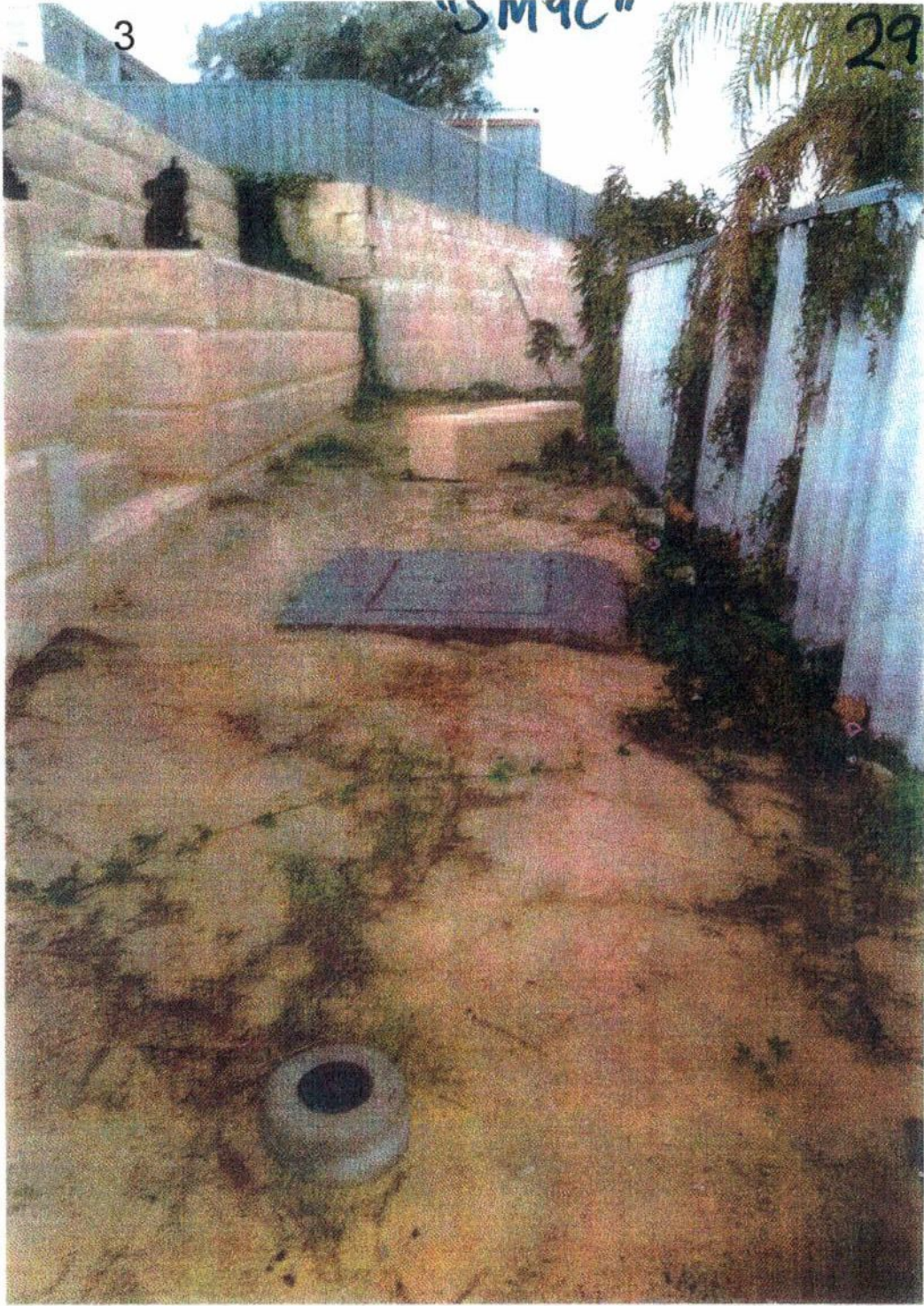
SMRB

28

*Phil L. Morton*



29



*Richard*  
L. Morrison



Sent: Friday, 11 September 2015 11:23 AM  
To: 'marshiez@bigpond.com'  
Subject: FW: 14 Trinity Rise

SMIO

30

As requested.

Regards,

**Dave Taylor**

Civil Team Leader

South West Region

**Water Corporation**

T: (08) 9725 5113

Dave.Taylor@watercorporation.com.au

[www.watercorporation.com.au](http://www.watercorporation.com.au)



Please consider the environment before printing this email.

---

**From:** Dave Taylor

**Sent:** Friday, 11 September 2015 11:13 AM

**To:** 'laughton.andrew@gmail.com'

**Cc:** Peter Hampton; Peter Buckley

**Subject:** 14 Trinity Rise

Mr Laughton,

We have checked our infrastructure on the easement at 14 Trinity Rise and are confident that it has not moved or been raised since 1991.

This also reflects the information on Buildernet and the fact there are no updated ascons. When installed, the top of the man hole was 39.94 AHD, should you wish to survey the height, you are welcome do so.

Regards,

**Dave Taylor**

Civil Team Leader

South West Region

**Water Corporation**

T: (08) 9725 5113

Dave.Taylor@watercorporation.com.au

[www.watercorporation.com.au](http://www.watercorporation.com.au)



Please consider the environment before printing this email.

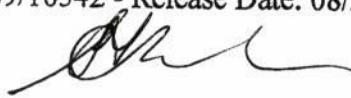
This Electronic Mail Message and its attachments are confidential. If you are not the intended recipient, you may not disclose or use the information contained in it. If you have received this Electronic Mail Message in error, please advise the sender immediately by replying to this email and delete the message and any associated attachments. While every care is taken, it is recommended that you scan the attachments for viruses. This message has been scanned for malware by Websense. [www.websense.com](http://www.websense.com)

No virus found in this message.

Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 2015.0.5961 / Virus Database: 4409/10542 - Release Date: 08/30/15

Internal Virus Database is out of date.

 L. Morton



"SM11"

31

7 May 2015

James Marsh  
14 Trinity Rise  
College Grove, Bunbury

**RE: 14 Trinity Rise, College Grove.  
Retaining Construction - Limestone Block Retaining Wall**

This letter is to certify that the above described retaining wall was adequately designed and subsequently constructed in accordance with the design requirements.

This is to certify that the above retaining wall has been constructed in accordance to the wall designed as per structural engineers and with all the applicable standards and regulations.

Prior to and upon completion there was no requirements to replace, fill or remove soil from the neighbouring ground level area to the boundary retaining. Also no increased loads were imposed upon the neighbouring area to the boundary retaining wall structure of opposing property.

Should you have any further questions or requirements, please call.

*Sincerely,*

**M&A Papas Stone Constructions**

**Argiris Papas - Director  
0418931621**

 L. Morton

"SM12"

32

# PERMIT

FORM BA4

## Building Permit

Western Australian Building Act 2011, s.25  
Building Regulations 2012, Regulation 21

OFFICE USE ONLY

Permit number

BP: 6. 2012.30022.1

### 1. Building contractor details

Builder name Sharyl Fay Marsh

Postal address 14 Trinity Rise  
COLLEGE GROVE WA 6230

Registration number or owner-builder approval number (if applicable) N/A

### 2. Details of building work

Property street address (street number, lot number, street name, suburb, postcode) 14 Trinity Rise COLLEGE GROVE  
LOT: 26

Nature of building work New retaining walls

Stage/s of work Details  
N/A

BCA class of the building Main BCA class 10b

Secondary BCA class (if applicable)  
N/A

Use/s of building Retaining walls

Each restriction on use (if applicable)  
N/A

Estimated value of building work (as determined by Permit Authority) \$19,985.00

### 3. Applicable Certificate of Design Compliance

Certificate of design compliance issued by

Name Gary Bruhn

Contact number

Reference No: 30022

Date: 08/05/2012

(08) 9792 7120

Email address records@bunbury.wa.gov.au

Building Commissioner - date approved: 09 Mar 2012 Building Act 2011

 L. Morton



**4. Permit Details**

All building work permitted by this permit -

- 1. Must be carried out in accordance with the plans and specifications specified in the applicable certificate of design compliance for this building permit;
- 2. Must be carried out in accordance with any conditions set out below;

3. Conditions

Building permit is subject to compliance with the Building Code of Australia Volume 2, as amended (BCA), the Australian Standards, as amended (AS) and referenced in the BCA, the Western Australian Building Act 2011 and the Building Regulations' 2012.

- 4. Must be tested and inspected as set out below;
  - o Refer to information within Certificate of Design Compliance BA03

5. Notice of Completion BA07

The responsible person in relation to a Permit must, within 7 days of completion of the work, or stage of the work, for which the Permit was granted, give Notice of Completion (BA07) to the Permit Authority.

*Penalty a fine of \$10,000 Building Act 33*

A permit granted to do one or more stages of building work does not automatically entitle a person to be granted a further building permit for any other stage of the building work.

This permit is valid for *24 Months*.

Name: (print)  
 Issuing officer **David Brightwell**  
 Title **Delegated Officer**  
 Permit authority **CITY OF BUNBURY**

Signature:   
 Date: *9-5-12*

 L. Horton

DATE: 08 MAY 2012 No: 30022

CERTIFICATE

FORM BA3

APPROVED

Building Act 2011 Building Regulations 2012

Certificate of Design Compliance

Western Australian Building Act 2011, s.19  
Building Regulations 2012, r. 17

OFFICE USE ONLY

2012.30022  
Application number  
CDC 6.2012.1

1. Property details

Property street address **14 Trinity Rise COLLEGE GROVE**  
*(Street number, lot number, street name, suburb, postcode)*

Local government area **City of Bunbury**

Main use of building/s **Class 10B - Retaining Wall**

BCA class of the building/s  
Main BCA class **10b**  
Secondary BCA classes (for multi-purpose buildings) **N/A**

2. Declaration


1. I certify that this building or incidental structure, if completed in accordance with the plans and specifications specified in this certificate will comply with each building standard that applies to the building or incidental structure; and
2. I certify that the building work, if done in accordance with the plans and specifications that are specified in this certificate, will comply with each authority under a written law listed in building regulation r.18(2) that applies to the building work; and
3. I certify that this certificate only relates to the components of the plans and specifications which demonstrate compliance with each building standard that applies to the building or incidental structure; and
4. In making this declaration, I rely on the plans, specifications and technical documents specified in this certificate; and
5. I certify that any alternative solution that is relied upon to establish compliance with a building standard, is shown on the plans and specifications specified in this certificate.
6. The building work associated with this building or incidental structure, is **not** reasonably likely to adversely affect other land, under s77 of the *Building Act 2011*; and
7. I **have not** obtained a declaration to not apply or modify a building standard from the Building Commissioner under s.39 of the *Building Act 2011*; and
8. *(Class 2 – 9 buildings only)* I confirm that plans and specifications in sufficient detail to allow assessment of compliance with FESA operational requirements were provided to FESA at least 15 business days prior to the date of this certificate, and that FESA has been advised of any decision not to follow advice given by FESA in respect of the plans and specifications and the reasons for that decision; and
9. I am an independent building surveyor as defined in s4 of the *Building Act 2011*.

Name **Gary Bruhn** Ph (08) 9792 7120

Postal address **P O Box 21 BUNBURY WA 6231** Mob  
Fax (08) 9792 7184

Email address **records@bunbury.wa.gov.au**

Registration number **046** Level **1**

Signature of certifier  Date **8 MAY 2012**

Building Commissioner - date approved: 09 Mar 2012 Building Act 2011

 L. Norton



**STANDARD BUILDING REQUIREMENTS LIST - CLASS 10 RETAINING**

1. Earthworks, site preparation and excavation shall be in accordance with the BCA Part 3.1, 3.2 and AS2870 with any excavation or filling set back from the boundary or adequately retained (>750mm requires engineer's certification).
2. Any fill placed on site is to comply with BCA Table 3.1.1.1 and where fill is used to support footings or slabs, it is to be placed and compacted in accordance with Part 3.2 and AS2870. The fill shall continue past the edge of the house by at least 1 m and shall be retained or battered beyond this point by a slope protected from erosion and not steeper than two horizontal to one vertical.
3. Where the stability of a future building / structure is reliant on a retaining wall the retaining wall shall be constructed prior to / concurrent with the building / structure.
4. All retaining walls to be installed in accordance with engineer's / manufacturer's specifications and any deviation from the conditions to be confirmed with the engineer eg minimum setback of retaining from existing structures. Clarification as to the suitability of a system for a specific site eg unusual moisture conditions caused by drains or the like, should be sought from the engineer / manufacturer, as required.
5. Sub soil drainage is to be installed where site conditions exist that create a need for subsoil water to be diverted from proposed retaining and this drainage is to be in accordance with BCA Part 3.1.2.4.
6. Concrete and reinforcing to be in accordance with the BCA Part 3.2 and AS3600.
7. Masonry work shall be in accordance with the BCA Part 3.3, AS3700 or AS4773.
8. Stairs to be in accordance with the BCA Part 3.9.1:
  - a. Not more than 18 'risers' in each flight
  - b. Treads to have a non-slip finish / non-skid strip near edge of nosing
  - c. The 'going' of all straight treads shall be consistent throughout the same flight
  - d. Not more than 3 winders in lieu or a quarter landing or 6 winders in a half landing
  - e. 'Riser' and 'going' dimensions to comply with:
    - i. Max. 'riser' (R) 190mm; Min. 'riser' 115mm
    - ii. Max. 'going' (G) 355mm; Min. 'going' 240mm
    - iii. (2R+G) Max. 700mm; Min. 550mm.
9. A landing is required where a doorway opens to a change in level greater than 570mm or three or more steps (minimum size of landing 750mm) in accordance with the BCA Part 3.9.1.



**3. Building standards applicable to the building or incidental structure**

Building standards applicable to this building or incidental structure:

National Construction Code, Building Code of Australia 2011 Vol 2, Australian Standards Adopted by Reference and Building Act 2011, Building Regulations 2012.

**4. Plans, specifications and other documents**

Plans and specifications certified in accordance with s19 (3) of the *Building Act 2011*.

Drawing Numbers: Site plans 1 and 2  
Structerre engineering detail HOR

Specifications: N/A

Technical documents: N/A

Alternative solutions (Class 2 – 9 buildings only) *Include the information required under r.17(b)*  
N / A

**5. Work affecting other land**

*Details about any work that adversely affects land beyond the boundaries of the works land*

N/A

**6. Prescribed approvals applicable to the building or incidental structure**

The following authorities under written law as prescribed in regulation 18(2) have been obtained:

- a) Health Act 1911 - City of Bunbury Health Approval No: N/A
- b) Planning & Development Act 2005 - City of Bunbury RCodes Compliant
- c) Health (Aquatic Facilities) Regs 2007 - N/A
- d) City Of Bunbury Infrastructure Requirements- City of Bunbury Engineer Approval No: N/A
- e) WaterCorp (Water Mains & Sewers) - Approval ID 328756

 W. Morton



**7. FESA advice**

Details of any advice given by FESA in respect of the plans and specifications:

N / A

Any part of this advice that I do not intend to follow:

N / A

**8. Certificate issued by**

Contractor/local government

City of Bunbury

Ph

(08) 9792 7120

Postal address

P O Box 21  
BUNBURY WA 6231

Mob

Fax

(08) 9792 7184

Email address

records@bunbury.wa.gov.au

Registration number

N / A

*(if applicable)*

Name: (print)

Signature:

Date:

Signature of Contractor or Local Government Officer

Gary Bruhn



8 May 2012

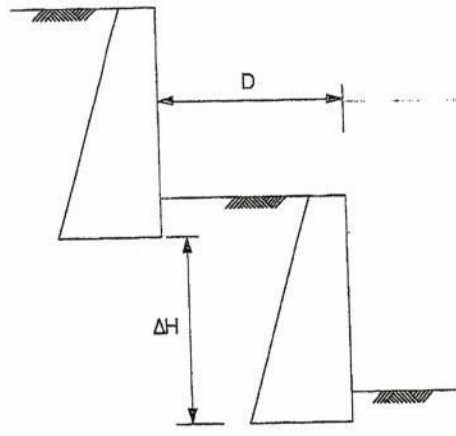
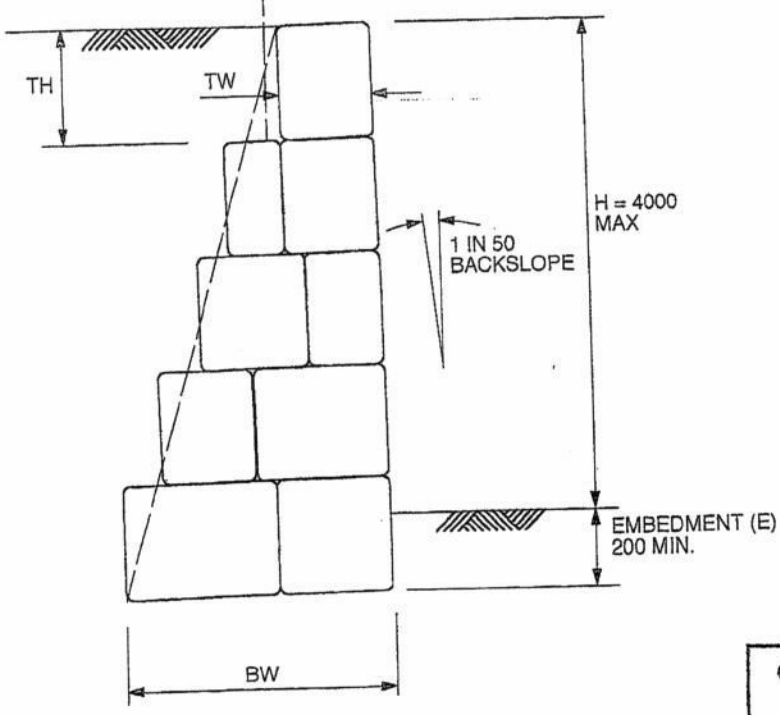


10. A balustrade shall be provided if any level is more than 1m above the surface level below, with a min. height above finished floor level (FFL) of 1m or 865mm above nosing line on stair; the max. 'gap' shall not permit a 125mm sphere to pass through balustrades or open stair treads; in accordance with the BCA Part 3.9.2.
11. Wire balustrades shall comply with construction, tension and deflection requirements of the BCA Part 3.9.2. Documentary evidence may be required e.g. at time of inspection.
12. Where floors are more than 4m above the surface beneath, any horizontal elements within the balustrade / barrier between 150mm and 760mm above the finished floor level shall not facilitate climbing in accordance with the BCA Part 3.9.2.
13. Glazed balustrades shall be in accordance with the BCA Part 3.9.2 and AS1288.

 L. Norton



"SUPER SIX" FENCE OR SIMILAR, IF REQUIRED.



**OPTION FOR TIERED WALLS**  
DIMENSION 'D' ALWAYS TO BE GREATER THAN DIMENSION 'ΔH'.

**LIMESTONE RETAINING WALL**

H	BW	E
0 - 1000	H/2 + 200 BUT NOT LESS THAN 500	200
1000 - 3000	H/2 + 200	300
3000 - 3500	H/2 + 200	400
3500 - 4000	H/2 + 400	400

TH	TW
350	250
600	350

**CERTIFICATE OF DESIGN COMPLIANCE**  
Building Act 2011 Building Regulations 2012

ISSUED: 08 MAY 2012 No. 30022

Registered Building Surveyor Level 1  
GARY BRUHN No. 046

**NOTES:**

- THIS WALL IS DESIGNED FOR USE IN STABLE SAND OR ROCK SOILS WITH FREE DRAINING GRANULAR BACKFILL. MAXIMUM WATER TABLE TO BE BELOW BOTTOM OF WALL. IF OTHER CONDITIONS ENCOUNTERED ON SITE CONTACT THE ENGINEER.
- REMOVE ALL TOPSOIL, VEGETATION & DELETERIOUS FILL MATERIAL FROM THE FOUNDATION AREA.
- COMPACT THE FOUNDATION LINE TO MIN 6 BLOWS / 300mm (AS TESTED WITH THE PERTH SAND PENETROMETER) FOR A DEPTH OF AT LEAST 750mm BELOW BOTTOM OF WALL.
- LIMESTONE MAY BE NATURAL CUT BLOCKS OR RECONSTITUTED BLOCKS (MINIMUM DENSITY TO BE 1700kg/m<sup>3</sup>). STONES TO INTERLOCK TO FORM A STRONG BOND. USE STANDARD Ø3.15 GALVANIZED MASONRY TIES BETWEEN EACH LEAF. AT 500mm CRS HORIZONTALLY IN EACH BED JOINT. CONTACT THE ENGINEER PRIOR TO PROCEEDING, IF UNSURE.
- LIMESTONE TO BE NON-FRIABLE.
- ALL JOINTS TO BE MORTARED. MORTAR TO BE M3 CLASSIFICATION, EXCEPT PROJECTS LOCATED WITHIN 1km OF THE OCEAN MORTAR TO BE M4 CLASSIFICATION. CEMENTS OTHER THAN TYPE GP PORTLAND CEMENT & 100% WHITE PORTLAND CEMENT SHALL NOT BE USED. RUBBLE NOT TO BE USED TO FILL VOIDS.

- DO NOT BACKFILL WALL UNTIL AT LEAST 5 DAYS AFTER COMPLETION.
- BACKFILL TO BE COMPACTED TO MIN 5 BLOWS/300mm. BACKFILL WITHIN 1m OF WALL MAY BE COMPACTED TO MIN 4 BLOWS/300mm.
- ENSURE NO DEAD LOAD (INCLUDING BUILDINGS) IS PLACED CLOSER TO THE WALL THAN A DISTANCE EQUAL TO THE TOTAL HEIGHT OF THE WALL. MAXIMUM SURCHARGE LOAD TO BE 5 kPa WHICH INCLUDES LIGHT VEHICLE SURCHARGE.
- ENSURE THE WALL DOES NOT SURCHARGE OR UNDERMINE ANY ADJACENT RETAINING WALLS OR STRUCTURES EITHER ON THIS OR ADJOINING PROPERTIES.
- IF WALLS HAVE OTHER WALLS IN TIERS BEHIND THEM, BUILD IN ACCORDANCE WITH OPTIONS DRAWN ABOVE.
- DO NOT BUILD OVER OR ADJACENT TO ANY WATER AUTHORITY SEWERS WITHOUT WATER CORPORATION APPROVAL.
- PROVIDE 10mm EXPANSION JOINTS AT MAX 7000 CENTRES IN STRAIGHT LENGTHS OF WALL.

**THE APPROVED SIGNATURE ON THIS DETAIL ENDORSES ITS USE ON CLASS A STABLE SITES.**

**HOR**

LAST MODIFIED: 08/02/11

**STRUCterre**  
consulting engineers

Zemla Pty Ltd (ABN 71 349 772 837) ATF the Young Purich and Higham Unit Trust trading as Structerre Consulting Engineers  
1 ERINDALE ROAD, BALCATTA WA 6021  
TEL: (08) 9205 4500 FAX: (08) 9205 4501 EMAIL: info@structerre.com.au

PROJECT: LOT 26 TRINITY RISE COLLEGE GROVE

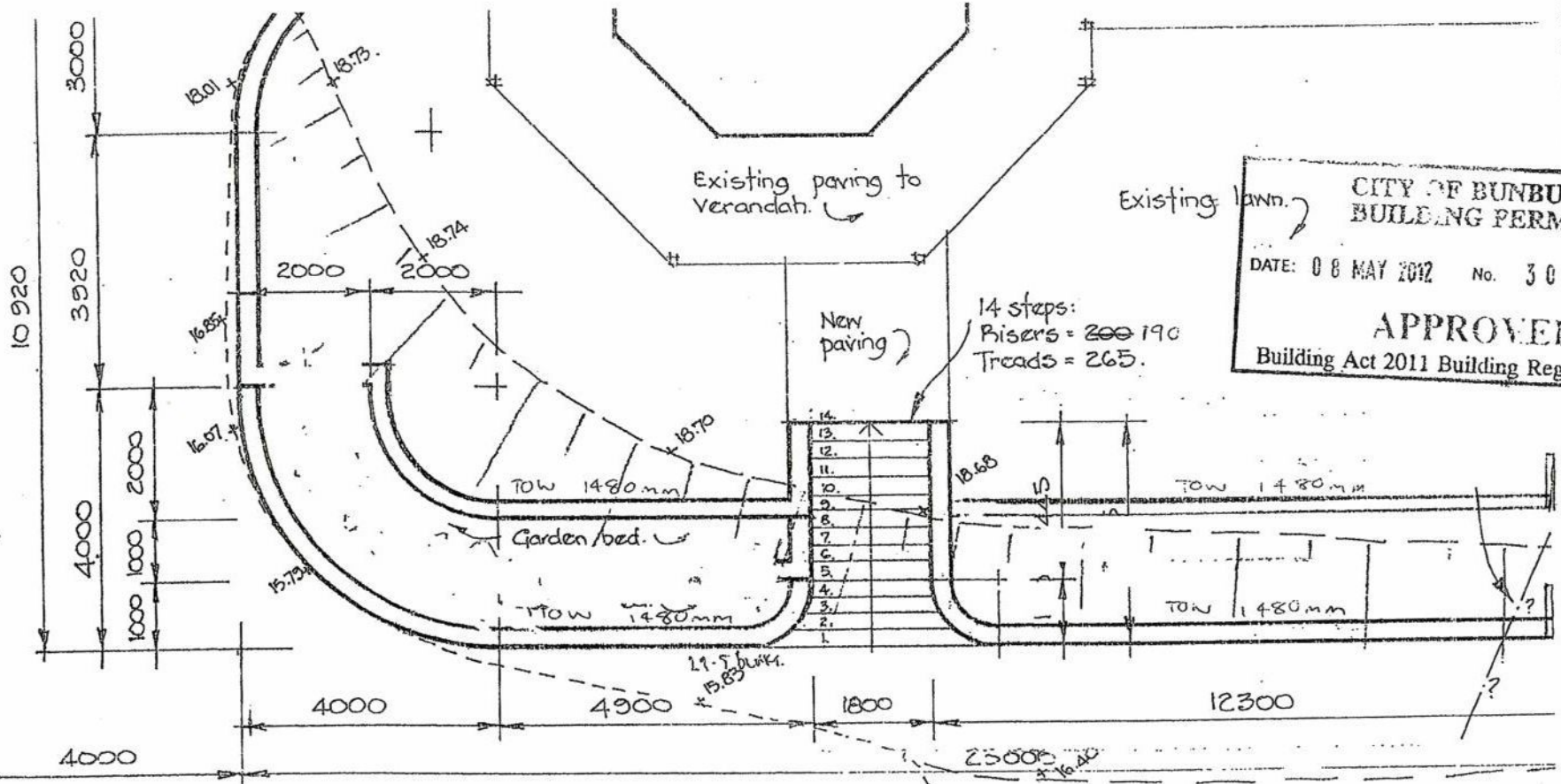
CLIENT: ARGIRIS PAPAS

SCALE 1:20 DATE 22/3/12

APPROVED

*Handwritten signatures and names: G. Bruhn, L. Morton*

Existing fence on boundary



CITY OF BUNBURY  
 BUILDING PERMIT  
 DATE: 08 MAY 2012 No. 30022  
**APPROVED**  
 Building Act 2011 Building Regulations 2012

WALLS RETURN  
 TO SUIT EAST  
 RETAINING W

Existing hotmix paving to driveway  
**CERTIFICATE OF DESIGN COMPLIANCE**  
 Building Act 2011 Building Regulations 2012  
 ISSUED: 08 MAY 2012 No. 30022  
 Registered Building Surveyor Level 1  
 GARY BRUHN No. 046

Existing s/s fence on bdy (32.9)

Existing sewerage main below  
 Existing sewerage Manhole (11.49m)  
 Existing s/s fence on bdy

PLAN.  
 1:100

*[Signature]*  
 L. Northing

pl of **4.0**



"SM13"

26/6/15

41

**BUNBURY  
concrete  
CONTRACTORS**

**ALEX 0419 937 009**

**ABN 46 314 064 889**

QUOTE  
26 - 6 - 15  
15 - 2015

M ANDREW  
11 B KEBBLE HILLS COLLEGE GROVE 0482

Order No. Description \$

0409 931 559

TO DIG RETAINING WALL FOOTING  
PLACE SUPPLIED REINFORCING & POUR  
FORM & POUR CONCRETE RETAINING  
WALL  
LENGTH APPROX 5.6 METRES  
QUOTE VALID FOR 60 DAYS

PAYMENT ON 80% ON POUR OF WALL AMOUNT \$18000  
JOB COMPLETION PLEASE REMAINING 20% ON  
REMOVAL OF FORMS GST 1800  
BSB 036 122 APPROX 28 DAYS TOTAL \$19800  
ACC No. 496 686

Driveways, Slabs and Form Work

 L. Norman



# "SM14"

ABN 57 105 812 735

Contract/Quotation  
NA\_17527

# 42



Head Office: 27 Major St, Davenport WA  
6230  
Pilbara Office: PO Box 155, Dampier WA  
6713

23-10-2012

Phone: (08) 9726 0440  
Fax: (08) 9726 0550  
Email: advance@tvfencing.com.au

## Quotation For:

Marsh, James

### Mail Address:

14 Trinity Rise  
College Grove WA 6230

### Contact:

H 9795 7773  
M 0417 994 943

### Attention:

### Site Address:

14 Trinity Rise  
College Grove

### Insurance:

Description

To remove, dispose supply and install 10 metres of storm damaged hardifence on the RHS

Charge

\$1,490.63

To move soil to enable installation

\$310.00

Ideally there should be a retaining wall erected before installation

TOTAL: \$1,800.63

GST: \$180.06

TOTAL inc GST: \$1,980.69

50.00% Deposit: \$990.34

Please refer to the attached T&V Fencing Conditions of Contract

Contract Accepted By: \_\_\_\_\_

Acceptance Date: \_\_\_\_\_

Bank Details: BSB: 306004 Acct: 070 2820

Signature: \_\_\_\_\_

Read contract: Yes/No

<http://192.168.1.155/quote/admin/printQuote.php?jobID=17527&jobDeposit=50.00&cust...> 23/10/2012

 L. Morton



1. Definitions  
 1.1 "T&V" shall mean New Horizons WA Pty Ltd T/A T&V Fencing its successors and assigns or any person acting on behalf of and with the authority of New Horizons WA Pty Ltd T/A T&V Fencing.  
 1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by T&V to the Customer.  
 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer as a principal debtor basis.  
 1.4 "Goods" shall mean Goods supplied by T&V to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and as described on the invoice, quotation, work authorisation or any other form as provided by T&V to the Customer.  
 1.5 "Services" shall mean as Services supplied by T&V to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).  
 1.6 "Price" shall mean the price payable for the Goods as agreed between T&V and the Customer's accordance with clause 4 of this contract.

2. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Act ("FTA") and application of these laws and conditions to consumers  
 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in such of the States and Territories of Australia, except to the extent permitted by these Acts where applicable.  
 2.2 Clause 9 (Defects) and clause 10 (Warranty) may NOT apply to the Customer where the Customer is purchasing Goods or Services for resale or hire where the Price of the Goods or Services does not exceed \$40,000, or where the Price of the Goods or Services does exceed \$40,000 and are of a kind ordinarily acquired for personal, domestic or household use or consumption, or where the Customer is in any other way a consumer within the meaning of the TPA or the FTA of the relevant state or territories of Australia.

3. Acceptance  
 3.1 Any instructions received by T&V from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by T&V shall constitute acceptance of the terms and conditions contained herein.  
 3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.  
 3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions on binding and can only be amended with the written consent of T&V.  
 3.4 The Customer shall give T&V not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's address, telephone number, or business practices. The Customer shall be liable for any loss incurred by T&V as a result of the Customer's failure to comply with this clause.  
 3.5 Goods are supplied by T&V only on the terms and conditions of trade herein to the extent of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

4. Price And Payment  
 4.1 At T&V's sole discretion the Price shall be either:  
 (a) as indicated on invoices provided by T&V to the Customer in respect of Goods supplied; or  
 (b) T&V's quoted Price (subject to clause 4.2) which shall be binding upon T&V provided that the Customer shall accept T&V's quotation in writing within thirty (30) days.  
 4.2 T&V reserves the right to change the Price in the event of a variation to T&V's quotation.  
 4.3 At T&V's sole discretion a non-refundable deposit may be required.  
 4.4 T&V may submit a detailed payment claim at intervals not less than one month for work performed up to the end of each month. The value of work so performed shall include the reasonable value of uncontracted variations and the value of materials delivered to the site but not yet installed.  
 4.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If as time is stated then payment shall be made seven (7) days following the date of the invoice.  
 4.6 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two percent (2%) of this Price), or by direct credit, or by any other method as agreed to between the Customer and T&V.  
 4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Delivery Of Goods  
 5.1 At T&V's sole discretion delivery of the Goods shall take place when the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by T&V at T&V's nominated address).  
 5.2 The Customer shall make arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then T&V shall be entitled to change a reasonable fee for redelivery.  
 5.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.  
 5.4 T&V may deliver the Goods by separate instalments. Each separate instalment shall be loaded and paid in accordance with the provisions in these terms and conditions.  
 5.5 The failure of T&V to deliver shall not entitle either party to treat this contract as repudiated.  
 5.6 T&V shall not be liable for any loss or damage whatsoever due to failure by T&V to deliver the Goods (or any of them) promptly or at all where due to circumstances beyond the control of T&V.

6. Risk  
 6.1 If T&V retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.  
 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, T&V is entitled to receive all insurance proceeds payable for the Goods. The production of these items and receipts by T&V is material evidence of T&V's rights to receive the insurance proceeds and the need for any person dealing with T&V to make such enquiries.  
 6.3 Where the Customer expressly requests T&V to store Goods outside T&V's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods are insured adequately, or at all.  
 6.4 The Customer acknowledges that it is their responsibility to remove any trees, plants or obstructions to allow T&V clear access along the proposed fence line prior to commencement of work by T&V unless otherwise agreed in writing between T&V and the Customer.  
 6.5 The Customer shall provide T&V with a suitable free power source.  
 6.6 Whilst T&V will take all due care during installation T&V will not accept any responsibility for fire or power damaged during installation.  
 6.7 Where fencing is installed on a retaining wall T&V shall not be liable for any movement in the fence due to consolidation of the movement of soil or any other component of the retaining wall.  
 6.8 Whilst T&V will take all care to avoid damage to any underground services the Customer agrees to indemnify T&V in respect of all and any liability claims, loss, damage, costs and fees as a result of damage to services not precisely located and notified. If the Customer requests T&V to engage the service locator then this shall be in addition to the Price.  
 6.9 T&V shall not be responsible for digging land out under fence lines nor removal of soil from the work site unless otherwise agreed in writing.  
 6.10 The Customer is responsible for ensuring the fence line is clearly marked and/or surveyed.

7. Damages  
 7.1 The Customer shall ensure that T&V has clear and free access to the work site at all times. In the event that the work, T&V shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of T&V.

8. Title  
 8.1 T&V and the Customer agree that ownership of the Goods shall not pass until:  
 (a) the Customer has paid T&V all amounts owing for the particular Goods; and  
 (b) the Customer has met all other obligations due by the Customer to T&V in respect of all contracts between T&V and the Customer.  
 8.2 Receipt by T&V of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then T&V's ownership or rights in respect of the Goods shall remain.  
 8.3 It is further agreed that:  
 (a) where practicable the Goods shall be kept separate and identifiable until T&V shall have received payment and all other obligations of the Customer are met; and  
 (b) until such time as ownership of the Goods shall pass from T&V to the Customer T&V may give notice in writing to the Customer to return the Goods or any of them to T&V. Upon such notice the rights of the Customer to obtain ownership of any other interest in the Goods shall cease; and  
 (c) T&V shall have the right of stopping the Goods in transit whether or not delivery has been made; and  
 (d) if the Customer fails to return the Goods to T&V then T&V or T&V's agent may enter upon land into and land and the Goods are situated and take possession of the Goods; and  
 (e) the Customer is only a bailee of the Goods and shall such time as T&V has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to T&V for the Goods, on trust for T&V; and  
 (f) the Customer shall not deal with the money of T&V in any way which may be adverse to T&V; and  
 (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of T&V; and  
 (h) T&V can trace proceeds to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and  
 (i) until such time that ownership in the Goods passes to the Customer, if the Goods are consigned to other products, the parties agree that T&V will be the owner of the end product.

9. Defects  
 9.1 The Customer shall inspect the Goods on delivery and shall within three (3) days of delivery (excluding the day of delivery) notify T&V of any alleged defect, shortage in quantity, damage or failure to comply with the description or specification. The Customer shall attend T&V on an opportunity to inspect the Goods within a reasonable time following delivery. If the Customer believes the Goods are defective in any way, if the Customer shall in a written notice to T&V have provided the Goods shall be presumed to be free from any defect or damage. For defective Goods which T&V has agreed in writing that the Customer is entitled to reject, T&V's liability is limited to either (at T&V's discretion) replacing the Goods or repairing the Goods except where the Customer has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (TPA) or the Fair Trading Act of the relevant

state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.  
 Goods will not be accepted for return other than in accordance with 9.1 above.

10. Warranty  
 10.1 For Goods not manufactured by T&V, the warranty shall be the current warranty provided by the manufacturer of the Goods. T&V shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.  
 10.2 To the extent permitted by statute, no warranty is given by T&V as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. T&V shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

11. Default & Consequences of Default  
 11.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at T&V's sole discretion the rate may be increased monthly at such a rate) after as well as before any judgment.  
 11.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by T&V.  
 11.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify T&V from and against all costs and disbursements incurred by T&V in pursuing the debt including legal costs on a solicitor and own client basis and T&V's collection agency costs.  
 11.4 Without prejudice to any other remedies T&V may have, if at any time the Customer is in breach of any obligation (including those relating to payment), T&V may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions of this contract. T&V will not be liable to the Customer for any loss or damage to the Customer's business or property caused by T&V's suspension of supply under this clause.  
 11.5 If any recovery proceedings are commenced against T&V within a period of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount owing (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which shall become immediately due and payable.  
 11.6 Without prejudice to T&V's other remedies at law T&V shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to T&V shall, whether or not due for payment, become immediately payable in the event that:  
 (a) any money payable to T&V becomes overdue, or in T&V's opinion the Customer will be unable to meet its payments as they fall due; or  
 (b) the Customer becomes insolvent, commences a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or  
 (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

12. Security And Charge  
 12.1 Despite anything to the contrary contained herein or any other rights which T&V may have hereunder:  
 (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and several interest in the said land, realty or any other asset in T&V or T&V's nominee to secure all accounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that T&V (or T&V's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.  
 (b) should T&V elect to proceed in any manner in accordance with this clause and/or its sub-clause, the Customer and/or Guarantor shall indemnify T&V from and against all T&V's costs and disbursements including legal costs on a solicitor and own client basis.  
 (c) the Customer and/or the Guarantor (if any) agree to irrevocably appoint and constitute and appoint T&V or T&V's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.

13. Dispute Resolution  
 13.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing (adequately identifying and providing details of the dispute, within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, in an attempt to resolve the dispute. At any such conference each party shall be accompanied by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by letter notify the other party in writing of their intent to refer the dispute to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and  
 (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

14. Compliance with Laws  
 14.1 The Customer and T&V shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the work.  
 14.2 The Customer shall obtain (at the expense of the Customer) all licences and approvals that may be required for the work.  
 14.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

15. Cancellation  
 15.1 T&V may cancel any contract in which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice T&V shall repay to the Customer any sums paid in respect of the Price. T&V shall not be liable for any loss or damage whatsoever arising from such cancellation.  
 15.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by T&V (including, but not limited to, any loss of profits) up to the time of cancellation.  
 15.3 Cancellation of orders for Goods made to the Customer's specifications or non-stocklist items will definitely not be accepted, once production has commenced.

16. Privacy Act 1988  
 16.1 The Customer and/or the Guarantor agree for T&V to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and/or Guarantor in relation to credit provided by T&V.  
 16.2 The Customer and/or the Guarantor agree that T&V may exchange information about the Customer and the Guarantor with credit providers either named as such in the credit report issued by the credit reporting agency for the following purposes:  
 (a) to assess an application by Customer; and/or  
 (b) to notify other credit providers of a default by the Customer; and/or  
 (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or  
 (d) to assess the credit worthiness of Customer and/or Guarantor.  
 16.3 The Customer consents to T&V being given a consumer credit report to collect overdue payment on commercial credit (Section 18(1)(a) Privacy Act 1988).  
 16.4 The Customer agrees that personal credit information provided may be used and retained by T&V for the following purposes and for other purposes as shall be agreed between the Customer and T&V or required by law from time to time:  
 (a) provision of Goods; and/or  
 (b) marketing of Goods by T&V, its agents or distributors in relation to the Goods; and/or  
 (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods; and/or  
 (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or  
 (e) settling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.

16.5 T&V may give information about the Customer to a credit reporting agency for the following purposes:  
 (a) to obtain a consumer credit report about the Customer; and/or  
 (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

17. Construction Contracts Act 2004  
 17.1 At T&V's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Construction Contracts Act 2004 may apply.  
 17.2 Nothing in this agreement is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Acts where applicable.

18. General  
 18.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.  
 18.2 The terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the courts of Western Australia.  
 18.3 T&V shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by T&V of these terms and conditions.  
 18.4 In the event of any breach of this contract by T&V the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.  
 18.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by T&V nor to withhold payment of any invoice because part of that invoice is in dispute.  
 18.6 T&V may terminate or suspend all or any part of its rights and obligations at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which T&V notifies the Customer of such change.  
 18.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.  
 18.8 The failure by T&V to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect T&V's right to subsequently enforce that provision.

*[Handwritten signature]* L. Morby



**Sharyl Marsh**

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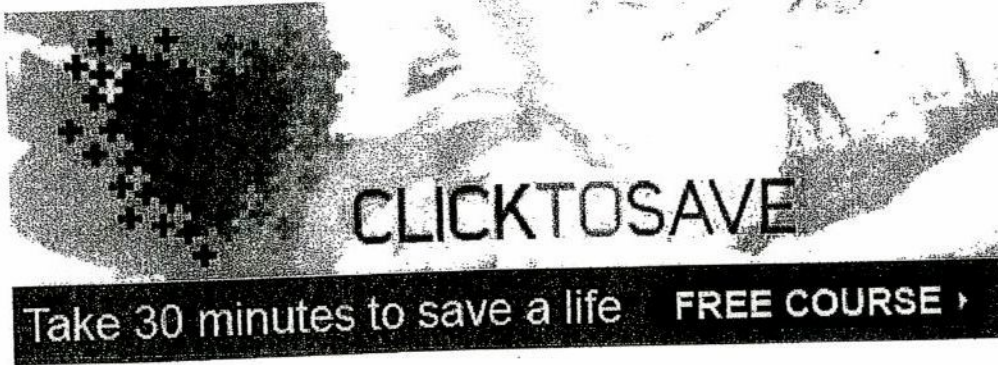
**From:** Sharyl Marsh  
**Sent:** Monday, 7 July 2014 10:31 AM  
**To:** 'Andrew Laughton'  
**Subject:** RE: Fence

Hi Andrew

We did get the quote immediately to have it replaced.

Regards

Sharyl



**From:** Andrew Laughton [mailto:[laughton.andrew@gmail.com](mailto:laughton.andrew@gmail.com)]  
**Sent:** Monday, 7 July 2014 10:14 AM

*Andrew Laughton* L. Morton

"SM15"

44



**To:** Sharyl Marsh  
**Subject:** RE: Fence

The only reason the fence further on is damaged is because the first section was not fixed quickly enough.

On 07/07/2014 9:19 AM, "Sharyl Marsh" <[Sharyl.Marsh@stjohnambulance.com.au](mailto:Sharyl.Marsh@stjohnambulance.com.au)> wrote:

Hi Andrew

As this fell in a storm we are more than happy to pay 50% for the 5metres that runs along our boundary. You may need to get a break down when asking for quote, as the fence runs over two boundaries.

Regards

Sharyl

 h. Morrison

**From:** Andrew Laughton [<mailto:laughton.andrew@gmail.com>]  
**Sent:** Monday, 7 July 2014 8:57 AM  
**To:** Sharyl Marsh  
**Subject:** RE: Fence

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Hi Sharyl

Are you happy to pay for it or should we go 50 / 50% ?

Andrew.

On 07/07/2014 8:08 AM, "Sharyl Marsh" <[Sharyl.Marsh@stjohnambulance.com.au](mailto:Sharyl.Marsh@stjohnambulance.com.au)> wrote:

Hi Andrew

No preferences, Last time we sourced the quote from T & V fencing and we thought that quote was quite reasonable, but happy to go with whoever.

Regards

Sharyl



MAGISTRATES COURT of WESTERN AUSTRALIA  
 (CIVIL JURISDICTION)  
 STATEMENT OF DEFENCE TO GENERAL PROCEDURE CLAIM  
 FORM 21

Registry: Bunbury		Case number: BUN/GCLM/316/2015
Claimant	Andrew Laughton	
Defendant	Sharyl Marsh	

Summary of the facts relevant to the defence:

1. The claim is defective because the Claimant has failed to join all proper defendants. The proper defendants are the defendant and her husband James Marsh who are the registered proprietors as joint tenants of 14 Trinity Rise College Grove.
2. In any event these are the alleged facts, known or inferred.
3. The Claimant is the registered proprietor 11B Keble Heights, College Grove which is lot 2 on Strata Plan 29201 ("the Claimant's property").
4. The Claimant's property was transferred to the Claimant on 11 March 2011.
5. The Defendant and James Marsh are the registered proprietors of 14 Trinity Rise College Grove being lot 26 on plan 18152 ("the Marsh's property").
6. The Marsh's property was transferred to them on 14 April 2003.
7. Part of the eastern boundary of the Claimant's property has a common boundary with part of the western boundary of the Marsh's property ("common boundary").
8. The natural ground level slopes down from east to west across Marsh's property down to the Claimant's property.
9. When College Grove was developed the Water Corporation built sewer mains throughout the development.
10. The sewer mains run through some of the properties in College Grove.
11. Against the title to those properties the Water Corporation has registered an easement to protect its interests in and arising from the sewer main.
12. The Marsh's property is one such property.
13. The sewerage main within the Marsh's property runs in a north south direction near the west boundary of the Marsh's property.
14. At the time the Marsh's became registered proprietors of the Marsh's property the ground level along the western boundary of the Marsh's property was the natural ground level.
15. In or about March 2011 the land partly bordering on the western boundary of the Marsh's property ("strata land") was subdivided into a two lot strata subdivision.
16. The Claimant's property is one of the two strata lots from the strata subdivision.
17. Prior to the registration of the strata plan the strata developer, in order to make the strata land level, cut into the downward slope from the Marsh's property to the strata land at the common boundary and constructed a retaining wall ("retaining wall") along a length which comprises the common boundary and the common boundary between the strata land and the neighbouring property south of the Marsh's property ("southern neighbour's boundary").
18. Prior to construction of the retaining wall the strata developer obtained an engineering design for the retaining wall ("engineer's detail").
19. The top of the retaining wall was built, and is, lower than the natural ground level at the common boundary.
20. The retaining wall was built defectively and is defective in that it lacked proper support and reinforcement behind the wall.
21. The retaining wall not constructed in accordance with the engineer's detail.
22. The construction of the retaining wall required approval from the City of Bunbury.
23. The retaining wall was built without any approval from the City of Bunbury.
24. The developer constructed a fence upon the retaining wall along the common boundary ("fence").
25. Further and in the alternative the fence retains the natural ground level above the retaining wall.
26. The Claimant or a prior occupant of the Claimant's property tied a tree to the retaining wall.
27. Before September 2012 the Marsh's constructed two retaining walls on their property.



*[Handwritten signatures]*  
 L. Morton  
 J. L. ...  
 ...



- 28. The base of the Marsh's retaining wall closest to the common boundary is at the natural ground level.
- 29. The Marsh's retaining wall was built in accordance with approved plans and an engineer's detail.
- 30. The Marsh's retaining wall was approved by the City of Bunbury.
- 31. In about September 2012, after a storm, the retaining wall moved by leaning toward the Claimant's property.
- 32. Some of the sand retained by the retaining wall fell onto the Claimant's property.
- 33. At or at around the same time the fence broke.
- 34. Some of the fence fell onto the Claimant's property.
- 35. The movement of the retaining wall was caused by the movement of the tree to which the retaining wall was tied.
- 36. The Marsh's agreed to pay half of the cost of replacement of the fence along the common boundary.
- 37. On 2 December 2014 the City of Bunbury issued to the Claimant a building permit for a retaining wall along the common boundary and the southern neighbour's boundary.
- 38. The Claimant had applied for, and the City of Bunbury had declined, to issue a building permit for a retaining wall confined to the common boundary.

Legal basis of the defence:

- 1. The Defendant did not build up soil against the boundary fence above the natural ground level.
- 2. The soil against the boundary fence was at the natural ground level.
- 3. The top of the retaining wall built by the developer of the Claimant's property is below the natural ground level and the wall is defective.
- 4. In building a retaining wall which was too low, and in building a defective retaining wall, the Claimant or his predecessor withdrew support of the Defendant's property.
- 5. The claim is defective because the Claimant has failed to join all proper defendants. The proper defendants are the defendant and her husband James Marsh who are the registered proprietors as joint tenants of 14 Trinity Rise College Grove.

The basic contentions of the party:

- 1. The Claimant in this action seeks to make the Defendant pay for the construction of a new retaining wall extending along the common boundary and the southern neighbour's boundary.
- 2. Alternatively the Claimant seeks to make the Defendant liable for construction of a new retaining wall extending along the common boundary.
- 3. The Claimant claims that the top of the retaining wall is the natural ground level.
- 4. The Defendant denies that and says the top of the retaining wall is below the natural ground level.
- 5. The Claimant claims that the soil against the fence on the Marsh's side of the Marsh's property is a surcharge above the natural ground level.
- 6. The Claimant claims that the surcharge caused the fence to lean over.
- 7. Further the Claimant says the leaning over of the fence caused to the retaining wall to lean over.
- 8. The Claimant admits the retaining wall is defective.
- 9. The Claimant wants the Marsh's to keep the soil level where it meets the common boundary at the height of the retaining wall.
- 10. The Claimant says it is impossible to raise the level of the retaining wall.
- 11. The Claimant says that is because of the defective state of the retaining wall.
- 12. The Claimant says the defective state of the retaining wall is irrelevant because the retaining wall would not have leaned over except that the fence leaned over taking the retaining wall with it.
- 13. The Claimant says the movement of the tree would have contributed to the retaining wall leaning over but to a negligible extent.
- 14. The Defendant says it was the movement of the tree which caused the retaining wall to lean over, and further the fence to break.
- 15. The Defendant says the strata developer withdraw the natural support of the Marsh's property at the common boundary by building a retaining wall lower than the natural ground level.
- 16. The Defendant says the strata developer withdraw the natural support of the Marsh's property at the common boundary by building a defective retaining wall.
- 17. The Defendant denies that and says the level of the soil against the fence on the Marsh's side is the natural ground level.
- 18. The Defendant says that if the Claimant establishes the Defendant's liability, the Claimant's loss and damage is confined to the cost of building a retaining wall along the common boundary.



*[Handwritten signature]*

*[Handwritten signature]*  
L. Morton

*[Handwritten signature]*  
J. Stello  
D/Registrar



Details of anyone who the party alleges is liable for the claim and the grounds upon which the party so alleges:

None



Date: 2 NOV 2015

Defendant or lawyer: *Ian Morison*

Please Turn Over

Sufficient copies of this form must be lodged to enable service by you on the claimant in accordance with the Magistrates Court (Civil Proceedings) Rules 2005.

Date: 2 NOV 2015

Defendant or lawyer: *Ian Morison*

Lodged by	<input checked="" type="checkbox"/> Defendant or lawyer <input type="checkbox"/> Other			
Address for service	Morison Legal 24 Arthur Street Bunbury			
Contact details	Telephone: 9792 4693	Lawyer's ref: Ian Morison	Fax: 9791 7493	E mail: ian@morisonlegal.com.au

If more than one page is used to complete the Statement of Defence then each page must be signed and dated.

*[Signature]*  
L. Morison

*[Signature]*  
J. Halls  
of Registrar