

**MAGISTRATES COURT of WESTERN AUSTRALIA
(CIVIL JURISDICTION)
INVITATION TO ADMIT FACTS
FORM 37**

Registry: 3 Stephen street, Bunbury

Case number:
BUN/GCLM/316/2015

Claimant Andrew Laughton

Defendant Sharyl Marsh and James Marsh

(* Delete as applicable)

Take notice that the *claimant* in this case invites the *defendant to admit, for the purposes of this case only, the particular alleged facts specified below.

Facts invited to be admitted	Qualification or limitations, if any, subject to which they are admitted
1. That: This document has an appendix "AL appendix to Form 37"	1.
2. That:	2.
3. That:	3.



Facts specified in documents invited to be admitted

<i>Facts invited to be admitted</i>	<i>Description of documents</i>	<i>Dates</i>
1. The movement of the tree on the claimants property which had been anchored to the retaining wall caused negliable, if any damage to the retaining wall or fence.	Email from Greg Hamilton from Structerre agreeing that the sand and wind loading on the retaining wall are the dominant loads by a considerable degree. Page 6 of Apendix "AL 2012_11_20" WML Engineers report.	20 Nov 2012 22 Feb 2016.
2. That while the building permit allows for the entire Eastern retaining wall to be reinforced, the cost claimed is only for the section of common boundry and an allowance for the difference in height of the ground level between 14 Trinity Rise and 15 Keble Heights The length of the common boundry is 5.000 meters.	Quote from Bunbury Concrete Contractors for a lenth of 5.6 meters, Referanced as "SM13" page 41 and included in the defence statement of 27 Nov 2015. Building permit 1994/11489 as supplied on 5 Jan 2016 as part of defence of default judgement. I can supply documents specifying this to the millimeter if needed.	26 June 2015 5 Jan 2016
Slopes greater than two horizontal to one vertical are considered unstable from an engineering standpoint and need to be supported.	Included in the Marshes building permit, form BA3, page 35, at the end of point 2, Supplied by the Marshes. 0.6 meters horizontal x 0.5 = 300 mm	27 Nov 2015

An additional 0.6 meters only allows for a height difference of 0.3 meters	high	
3. That Structerre acted for the defence in designing and approval of the Marshes new retaining wall, and that they also acted for the claimant in producing an engineering report, and that this is a probable conflict of interest.	The Marshes Building permit & two of the three engineering reports.	
4. That building permit 1994/11489 refers to the claimants Eastern boundry retaining wall nearest the defendants, and is valid.	Building permit 11489 issued by the city of Bunbury on 7 July 1994. Supplied to the Marshes as part of defence of default judgement.	5 Jan 2016
5. The original boundry retaining wall and fence were never designed to hold an additional 700mm of (sand / soil) and that this was the main, if not only cause of both the fence failing and the retaining wall to tilt and crack.	Structerre engineering report. WML engineering report.	6 Nov 2012 22 Feb 2016

Date: 22 Feb 2016

Claimant/defendant or lawyer: 

Tick [✓] appropriate box

Lodged by	<input checked="" type="checkbox"/> Claimant or Claimants Lawyer <input type="checkbox"/> Defendant or Defendants Lawyer <input type="checkbox"/> Other			
Address for service	11b Keble Heights, College Grove, Bunbury. 6230			
Contact details	Telephone: 0409 931 559	Lawyer's ref:	Fax:	E mail: laughton.andrew@gmail.com



“AL appendix to FORM 37”

Invitation to admit facts dated 22 Feb 2016

As part of case BUN/GCLM/316/2015

This is an appendix to Form 37, Invitation to admit facts, submitted by Andrew Laughton and modified somewhat to allow for a bigger list of facts than the form allows for.

1. Two retaining walls were constructed on 14 Trinity Rise in 2012.
2. The boundary fence was damaged around September 2012, shortly after the Marsh's new retaining walls were built.
3. The top of the common boundary retaining wall appears to have been built below the soil level at the common boundary at the time it was built.
4. James Marsh and Sharyl Marsh are joint owners of 14 Trinity Rise, College Grove Bunbury.
5. Andrew Laughton is the sole owner of 11b Keble Heights, College Grove.
6. 14 Trinity Rise is uphill from 11b Keble Heights.
7. 11a Keble Heights and 11b Keble Heights are level with each other.
8. The developer of 11a and 11b Keble Heights excavated the original ground level along the common boundary of 14 Trinity Rise to build the boundary retaining wall.
9. That a building permit was issued by the city of Bunbury to reinforce the damaged retaining wall between 14 Trinity Rise and 11b Keble Heights on 1st December 2014.
10. There is a sewer in a sewerage easement through 14 Trinity Rise running along our common boundary.
11. The sewer in the above easement appears to have been installed before the boundary retaining wall between 14 Trinity Rise and 11b Keble Heights.
12. The soil against the fence is approximately the same level as the top of the sewer manhole.

AL 2012-11-20



Andrew Laughton <laughton.andrew@gmail.com>

#11b Keble Heights, College Grove

12 messages

Kylie Heydon <kheydon@strucsterre.com.au>

20 November 2012 at 11:33

To: laughton.andrew@gmail.com

Kylie Heydon | Office Clerk

Office Hours Monday to Friday 9.00am - 5.00pm

STRUCterre

consulting engineers

Bunbury Office

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S598518 #11B KEBLE HTS COLLEGE GROVE.pdf

572K

Andrew Laughton <laughton.andrew@gmail.com>

20 November 2012 at 11:44

To: Mary Verboom <mary.verboom@gmail.com>

----- Forwarded message -----

From: Kylie Heydon <kheydon@strucsterre.com.au>

Date: 20 November 2012 14:33

Subject: #11b Keble Heights, College Grove

To: laughton.andrew@gmail.com