

**MAGISTRATES COURT of WESTERN AUSTRALIA
(CIVIL JURISDICTION)
LISTING CONFERENCE MEMORANDUM
FORM 32**

| | | |
|------------------------------------|------------------------------|-----------------------------------|
| Registry: 3 Stephen Street Bunbury | | Case number: BUN/GCLM/316/2015 |
| Claimant | Andrew Laughton | |
| Defendant | Sharyl Marsh and James Marsh | |

In accordance with the order of the Registrar under Rule 43A (2) the following information is provided:

1. Statement of the issues of fact and law that the party contends will need to be determined at the trial:

That the defendants were negligent in allowing 700mm of sand / soil to be placed against the dividing fence, and negligent in allowing overburden to be placed on the boundary retaining wall. In Law under the Civil Liability's Act the defendant should not have caused damage to my property. http://www.austlii.edu.au/au/legis/wa/consol_act/cla2002161/
Also this document appears to be relevant. <http://www.austlii.edu.au/au/journals/UWALawRw/1968/6.pdf>

Also in law the defendants had a responsibility to take into account the existing boundary retaining wall in the design and building of any new structure, including retaining walls. <http://www.bunbury.wa.gov.au/pdf/Planning%20and%20Building/ChangesToGroundevlRetainingWalls.pdf>

And on page 34 of defences documents received on 27 Nov 2015, form BA3, "Certificate of design compliance" dated 8th May 2012, for the defendants new retaining walls, point 6 copied here for convenience...

"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" s77 of the Building act 2011.

Relevant is the Statue of Limitations in the "Limitations Act 2005" which applies a 6 year limit, and applies to the original boundary retaining wall but not to the new retaining walls on the defendants property. https://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_542_homepage.html

Also relevant is a past ruling that stopped a previous land owner from claiming the cost of a dividing fence after they sold the property. The implication being that if I did manage to sell the house I would not be able to claim the cost of the retaining wall.

2. How each allegation of fact will be proved:

Expert written reports and possibly oral evidence in court..

3. The names, addresses, occupations, and qualifications of each witness the party will call to give oral evidence at the trial:

Stephen Woodhouse; First Floor 62 Wittenoorn Street Bunbury, WA, 6230;

CEO and Director of WML Consultants, a company with 30 staff providing Civil, Structural and Geotechnical Engineering Services. Bachelor of Engineering in Civil Engineering.



Andrew Laughton, 11b Keble Heights, College Grove.
Claimant.

4. Annexed are the statements of the intended evidence of each witness who is not an expert witness:

Annexure labled "11b Keble Heights Retaining wall problems"

Date:22/02/2016

Claimant/~~defendant~~ or lawyer: 

Tick [✓] appropriate box

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



**MAGISTRATES COURT of WESTERN AUSTRALIA
(CIVIL JURISDICTION)
STATEMENT OF INTENDED EVIDENCE OF A WITNESS
FORM 32A**

| | |
|--------------------------|---|
| Registry: BUNBURY | Case number: BUN/EC/M/316/2015 |
| Claimant | ANDREW LAUGHTON |
| Defendant | SHARYL + DA MARSH + JAMES GLYNN MARSH. |

Note: This form for use by witnesses other than an expert witness

I ANDREW LAUGHTON of 11 B KEBLE HEIGHTS,
in the State of W.A., ELECTRICIAN (occupation),
Say as follows:

1. SEE ATTACHED APPENDIX "11 B KEBLE HEIGHTS RETAIN WALL PROBLEMS"



Date: 22/2/2016.

Signed: *[Signature]*

Tick [✓] appropriate box

| | |
|---------------------|---|
| Lodged by | <input checked="" type="checkbox"/> Claimant or claimant's lawyer <input type="checkbox"/> Defendant or defendant's lawyer <input type="checkbox"/> Other |
| Address for service | <u>11 B KEBLE HEIGHTS</u> |
| Contact details | Telephone: <u>0409 951 559</u> Lawyer's ref: _____ Fax: _____ E mail: _____ |