

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

COURT HOUSE  
17 FEB 2016  
BUNBURY

Registry: Bunbury		Case number: Bun/GCLM/316/2015
Claimant	Andrew Laughton	
Defendant	Sharyl Marsh and James Glynn 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:

1. Did the Claimant's predecessor undermine the Defendants' property or did the Defendant's surcharge the Claimant's property.
2. Was the Claimant's wall defective.
3. What is the cause of the loss and damage?
4. What was the natural ground contour.

2. How each allegation of fact will be proved:

Witness statement of Sharyl Marsh and the following documents:

1. Landgate search of our property. This shows that 14 Trinity Rise was transferred to us on 14 April 2003.
2. Landgate search of the Claimant's property at 11B Keble Heights, College Grove which is lot 2 on Strata Plan 29201.
3. 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.
4. Structerre Consulting Engineers dated 6 November 2012.
5. Email from the Claimant to Gary Bruhn of the City of Bunbury dated 20 April 2014.
6. Email from the Claimant to BC Info dated 28 May 2014.
7. Plans prepared by WML for a new retaining wall.
8. Email from the City of Bunbury to Sharyl Marsh dated 28 May 2015.
9. Bundle of three photographs 9A, 9B and 9C.
10. Email from the Water Corporation to the Claimant dated 11 September 2015/
11. Unsigned letter from Agiuras Papas, the director of M&A Papas Stone Constructions to James Marsh dated 7 May 2015.
12. Copy of the building permit for the retaining walls constructed by Defendants at 14 Trinity Rise
13. Quotation for a retaining wall.
14. Quotation from T&V Fencing dated 23 October 2012.
15. Email chain in which Sharyl Marsh confirms she obtained the quote and agreed to pay one half of the Defendants' section of the fence.

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

Sharyl Marsh



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

Date: 17/2/16

Claimant/defendant or lawyer: Ian Morrison

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 6230			
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**

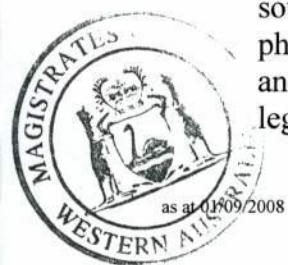
<b>Registry: Bunbury</b>		<b>Case number: Bun/GCLM/316/2015</b>
<b>Claimant</b>	<b>Andrew Laughton</b>	
<b>Defendant</b>	<b>Sharyl Marsh and James Glynn Marsh</b>	<b>COURT HOUSE 17 FEB 2016 BUNBURY</b>

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

I Sharyl Marsh of 14 Trinity Rise College Grove,  
in the State of Western Australia, Administrator (*occupation*),  
Say as follows:

1. 1 I say:
2. (1) any damage to the retaining wall was caused by:
3. (i) its defective state; and/or
4. (ii) the movement of a tree on the Claimant's property which had been anchored to the retaining wall.
5. (2) the retaining wall was built below the soil level at the common boundary at the time it was built;
6. (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.
7. 2. The evidence as to the defective state of the retaining wall is as follows:
8. (1) 11A and 11B Keble Heights were already built when we bought our property at 14 Trinity Rise.
9. (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.
10. (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.
11. (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.
12. (5) My husband James and I constructed two retaining walls on our property in 2012.
13. (6) As the Claimant concedes 14 Trinity Rise is uphill of 11B Keble Heights.
14. (7) 11A and 11B Keble Heights are level.
15. (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.
16. (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.

17. (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.
18. (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.
19. (12) Annexed hereto and marked "SM-7" are plans prepared by WML for a new retaining wall.
20. (13) The retaining wall was built without Council approval or a building permit. The evidence for that allegation is:
  21. (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".
  22. (b) The existing retaining wall was built well before 2 December 2014; the approval of 2 December 2014 is for a new wall.
  23. 3. 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).
  24. 4. 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:
    25. (1) As the Claimant concedes 14 Trinity Rise is uphill of 11B Keble Heights.
    26. (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.
    27. (3) There is a sewer main through our property running parallel to and near the common boundary.
    28. (4) The sewer main is part of the sewerage system for the College Grove development.
    29. (5) The sewer main was built before the developer of 11A and 11B Keble Heights excavated the soil at the boundary.
    30. (6) The soil against the fence at the common boundary was the same level as the inspection points of the sewer main.
    31. (7) Annexed hereto and marked "SM-9" is a bundle of three photographs 9A, 9B and 9C. Photograph 9A shows an inspection cap for the sewer main. The photograph is taken from a point north of the inspection cap. On the right in the photograph is the retaining wall and to the right and below the retaining wall is the Claimant's unit. Photograph 9A shows a retaining wall on the left; that is on our southern neighbour's property.
    32. (8) Photograph 9B shows the sewer cap from a point south of the sewer cap. The retaining wall to the immediate right in the foreground is our southern neighbour's retaining wall and the retaining walls beyond are ours.
    33. (9) Photograph 9C shows the manhole for the sewer main. This photograph is taken from a point north of the manhole. Our retaining walls are to the immediate left and our southern neighbour's retaining wall is beyond that, with a fence on top. To the right in this photograph is the boundary fence on the boundary between our property at 14 Trinity Rise and the property adjoining and to the north of the Claimant's unit, so that the boundary dog legs slightly to the right and out of view is the retaining wall and common boundary.



34. (10) Annexed hereto and marked "SM-10" is an email from the Water Corporation to the Claimant dated 11 September 2015 stating that the infrastructure on the easement at 14 Trinity Rise (ie the sewer main), has not moved or been raised since 1991.
35. (11) My husband I built retaining walls on our property in 2012 but this did not result in any extra soil being placed along the common boundary. Annexed hereto and marked "SM-11" is unsigned letter from Agiuras Papas, the director of M&A Papas Stone Constructions to my husband James of 7 May 2015 indicating that our retaining walls were adequately designed and subsequently constructed in accordance with the design requirements, and that the designs were provided by structural engineers and the walls were constructed in accordance with all applicable standards and regulations, and that prior to and on completion there were no requirements to replace, fill or remove sand from the neighbouring ground level area to the boundary retaining and no increased loads were imposed on the neighbouring area to the boundary retaining wall structure of 11B Keble Heights.
36. (12) Annexed hereto and marked "SM-12" is a copy of the building permit for the retaining walls constructed by my husband and me at 14 Trinity Rise.
37. 5. Evidence that the Claimant's claim for rebuilding of the retaining wall is for the whole length of the retaining wall extending beyond our common boundary to the boundary between the Claimant's property and our southern neighbour, is as follows:
38. (a) Annexures "SM-8" and "SM-9".
39. (b) I am informed by Gary Bruhn of the City of Bunbury and believe that the Council will not allow construction of only a section of the approved retaining wall.
40. (c) The Claimant in the form 3 claims \$29,000.
41. (d) The Claimant provided to us a document which is annexed hereto and marked "SM-13". It appears to be a quotation for a retaining wall. The bulk of the writing is in blue pen. Some of the writing is in black pen including "Length approx. 5.6 metres". I believe those words were added after the document was first prepared.
42. (e) If the length of 5.6 metres mentioned in "SM-13" is for a retaining wall confined to our common boundary, there is no approval for that wall.
43. (f) Our two retaining walls, much more extensive than the Claimant's proposed retaining wall, cost us \$24,750 in 2012.
44. 6. 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).
45. 7. I verify every fact alleged in the Statement of Defence to General Procedure Claim form 21 filed 15 January 2016.



Date: 11<sup>th</sup> February 2016

Signed: 

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 6230			
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