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THE MAGISTRATES COURT OF

WESTERN AUSTRALIA

CIVIL

BU GCLM 316 of 2015

ANDREW LAUGHTON

and

SHARYL MARSH

and

JAMES GLYNN MARSH

MAGISTRATE M. PONTIFEX

TRANSCRIPT OF PROCEEDINGS

AT BUNBURY ON TUESDAY, 16 AUGUST 2016, AT 11.01 AM

MR A. LAUGHTON appeared in person.

MR I. MORISON appeared for the defendants.

JSO: Bunbury Magistrates Court is now open. Calling GCLM 316 of 2015, Laughton v Marsh.

HER HONOUR: All right. I will take appearances. Thank you.

MORISON, MR: Your Honour, I appear for the defendants. Morison, for the defendants.

HER HONOUR: Mr Morison. And you're Mr Laughton.

LAUGHTON, MR: I'm Laughton, yes.

HER HONOUR: All right. Is the matter ready to proceed?

MORISON, MR: Yes, your Honour. There are some objections that I've made to the form 32A of the claim and I've filed those. There are some objections to the expert report of WML. I have filed an outline of submissions. So those three documents were filed last week. So it may be appropriate for your Honour to have the form 32A and then we can go through the objections, if that's the way you saw it going. And then, I'm not sure whether Mr Woodhouse, the author of the expert report, is being called. I did advise the claimant that he would need to be called, but I don't know whether he is going to be appearing. If not, then I would of course object to the report going in.

The subpoenas, thank you, for the leave, we've - I've looked through those. I believe Mr Laughton had the opportunity to look through the Water Corporation and the Structerre ones. The third one, the City of Bunbury, just came in yesterday and so we've had a quick look through those. I would be - I will be cross-examining potentially on some of the documents that arise from those. So that's the way I see the matter going.

HER HONOUR: All right. Thank you. Mr Laughton, you're in a position to proceed today?

LAUGHTON, MR: Yes. The witness - WML witness, because I didn't know when he was going to be needed, so - - -

HER HONOUR: When have arranged for him to come?

LAUGHTON, MR: Basically when I SMS him. He's two blocks away. He would be here in less than five minutes.

HER HONOUR: All right. Now, the matter will proceed today. Just so you understand how it works, because you're

the claimant and you've got the onus of proving the claim, you go first.

LAUGHTON, MR: Yes.

HER HONOUR: And you will give your evidence first. Now, you've put it in a statement.

LAUGHTON, MR: Yes.

HER HONOUR: And the defendants have made some objections to some of those statements as not being proper evidence or whatever. Well, we can go through those and - because, generally speaking, what would happen is that statement would form your evidence and then you would be cross-examined on the basis of that evidence, but, because there is some - I've obviously read it, as I do in all matters to prepare, there is - some of the matters are potentially objectionable, so we can go through that and cross out what can't be in there. When we've done that, that will become your evidence-in-chief.

LAUGHTON, MR: Yes.

HER HONOUR: And Mr Morison can cross-examine you. So he can ask you questions about your evidence.

LAUGHTON, MR: Okay. Good. Good. Is it appropriate to call the witness now, like he can be here in five minutes' time, sort of thing.

HER HONOUR: No. It's going to take quite some time. Have you got - Mr Morison, have you got much cross-examination?

MORISON, MR: Yes. Yes.

HER HONOUR: He's probably more likely going to be maybe after lunch.

LAUGHTON, MR: Okay. What time is lunch?

HER HONOUR: Usually about 1, but we don't usually interrupt a witness. We try and finish a witness.

LAUGHTON, MR: Yes, yes.

HER HONOUR: And you need to complete your evidence first

- - -

LAUGHTON, MR: Yes.

HER HONOUR: - - - before you call your expert, because, with experts, their opinion is admissible, but their opinion is only so good as the facts that it's based on. So there has to be proof of the facts that they base their opinion on. Okay?

LAUGHTON, MR: Mmm.

HER HONOUR: So do you want to - do you follow what I mean? So we need your evidence. Have you got any other witnesses today?

LAUGHTON, MR: No, just the one.

HER HONOUR: Just yourself. Yes. So you're the witness of fact.

LAUGHTON, MR: Yes.

HER HONOUR: And then we will hear your expert's testimony.

LAUGHTON, MR: Yes.

HER HONOUR: And, by that time, we would have some - we would know what the evidence is about the factual situation and therefore can judge - I can judge your expert's opinion as reliable or not, because he would have - he based it on certain facts that he was either told or he observed. Okay?

LAUGHTON, MR: Okay.

HER HONOUR: Mr Morison, for the Marshes, will have the opportunity to cross-examine your expert witness as well. All right. Now, when that's done, and that will be the close of your case if you've got no other evidence, and then the Marshes will have the opportunity to present the evidence supporting their side of the case and you have the right to cross-examine - how many witnesses have you got, Mr Morison?

MORISON, MR: One, possibly two, your Honour.

HER HONOUR: Okay. I've only got the one statement.

MORISON, MR: Yes. Yes. I might ask for leave for a matter, if it arises, for short evidence from Mr Marsh, your Honour, if it arises.

HER HONOUR: We will deal with that when it comes, because there should have been a witness statement.

MORISON, MR: Yes. Yes.

HER HONOUR: All right. And you have the right to cross-examine their witnesses. Have you got - and you haven't got an expert?

MORISON, MR: No, your Honour.

HER HONOUR: All right. Now, just so you understand, this is a general procedure claim - - -

LAUGHTON, MR: Yes.

HER HONOUR: - - - which means that the rules of evidence apply.

LAUGHTON, MR: Yes.

HER HONOUR: And it's not an informal process even though you're self-represented.

LAUGHTON, MR: Yes.

HER HONOUR: So the court will be required to deal with evidentiary matters or looking at objections to evidence - - -

LAUGHTON, MR: Yes.

HER HONOUR: - - - according to those rules.

LAUGHTON, MR: Yes.

HER HONOUR: Okay? And they're fairly - the rules of evidence are reasonably strict about what can and cannot be said - - -

LAUGHTON, MR: Yes.

HER HONOUR: - - - by various people. Now, I can assist you with process but I can't obviously give you any legal advice as we go. All right. Now, I just wanted to ask you, because it's not - having read all the papers, it's not entirely obvious. Is your claim against the Marshes in negligence, is it?

LAUGHTON, MR: Yes.

HER HONOUR: Okay. All right. Now, what is the act or acts that just - and this can be reasonably brief, but I need to know, because your - the material you filed is very comprehensive. I need to know what is the actual thing or things that you say they did that was negligent. Now, if you were a lawyer, you would have particularised the actual actions in your statement of claim. So what is it, concisely, the things that you say was done which were - was negligent?

LAUGHTON, MR: 700 millimetres of sand was allowed to build up against the Super Six fence and - do I just - that's basically it. As a result of or - - -

HER HONOUR: So the actual thing that you say they have done which caused harm in breach of a duty of care - - -

LAUGHTON, MR: Yes.

HER HONOUR: - - - was to allow 700 millimetres of sand to build up against the fence.

LAUGHTON, MR: Yes.

HER HONOUR: And you say that's what caused the fence to fall over and the damage to the retaining wall.

LAUGHTON, MR: Yes.

HER HONOUR: Okay. All right. Okay. Thank you. Just have a seat for a moment. Have you got a copy of this document, Mr Laughton, your statement which - with Mr Morison's objections on behalf of the Marshes?

LAUGHTON, MR: I've got one that was my original one from about four or five months ago, but I've not got one from - one I submitted on about the 8th.

HER HONOUR: This one is dated the 9th. Did Mr - - -

LAUGHTON, MR: Yes. The reply was dated - - -

HER HONOUR: - - - Laughton get given a copy of that?

MORISON, MR: Yes. I emailed it to him and I've just given him a hard copy.

HER HONOUR: He has got a hard copy. Okay. Have you read that?

LAUGHTON, MR: Yes, I've read this.

HER HONOUR: So you know the objections which are being taken.

LAUGHTON, MR: I know the objections to the one that I submitted five months ago. I don't know what the objections are to the one I submitted on the 8th.

HER HONOUR: On the 8th of - - -

LAUGHTON, MR: August. A week or so ago.

HER HONOUR: This is your statement of damages?

LAUGHTON, MR: Statement of issues of fact and law.

HER HONOUR: Yes. That's not something where there would be objections to that, as such. They're like submissions. So they're different to evidence.

LAUGHTON, MR: Okay.

HER HONOUR: Okay. So they're what you're saying is - just like - you're saying what essentially - they're the points you're making essentially under the direction that you had to put in your submissions. Yes?

LAUGHTON, MR: Yes.

HER HONOUR: Yes. All right. So that wouldn't - normally, you wouldn't expect objections to that as such, because you're making certain points based on - - -

LAUGHTON, MR: Okay.

HER HONOUR: All right. Now, I'm not sure how we will deal with this. I think it's probably best we go through the schedule - the objections to your evidence. So what I will do is - and this is part of your evidence because this would be your evidence-in-chief. So if you take - do you want to - have you got many documents?

LAUGHTON, MR: I've got a bus full.

HER HONOUR: Okay. All right. Well, perhaps just take your statement of evidence and the schedule of objections and a pen and any documents you were going to tender as you went along over to the witness box, which is there.

LAUGHTON, MR: Okay.

HER HONOUR: Is that being difficult? And then we will go through the statement. We will do the objections one at a time.

LAUGHTON, MR: Yes. Okay. Hang on.

HER HONOUR: I'm not - you will be able to get up and down and get stuff. Just I'm trying to be - you've got your bundle there ready.

LAUGHTON, MR: Yes. Okay.

LAUGHTON, ANDREW affirmed:

HER HONOUR: Yes. All right?---Thank you.

So we will just go through the document paragraph by paragraph?---Yes. Thank you, your Honour.

Just so you know what we're going to do, I think is the best way to do this, is perhaps we will work from Mr Morison's objections and I will just deal with them and we will either strike through the paragraph or not. Obviously I will give you the chance to respond?---Yes.

Okay. All right. So, paragraph 1:

My uphill neighbours added new retaining walls to their front lawn and 700 mils of sand was stacked against the fence with no other support.

MORISON, MR: My objection is that that's a conclusion. There's nothing to indicate that it is personal knowledge and therefore it's speculation and conclusion.

HER HONOUR: All right. Mr Laughton, what do you say about that? Are you giving evidence later in your statement about how the 700 mils of sand came to be there?---I wasn't aware of what was happening at the side of the wall until after the problems existed. When it was placed there, I don't really know. I'm just mainly - it was there and it caused the damage. The speculation, I can show you photos of the appropriate sand.

All right. So you agree it is speculation?---Define "speculation"?

So are you saying here - are you saying:

My uphill neighbours added new retaining walls to their front lawn

?---Yes.

So that's a statement of fact?---Mmm.

Are you saying, "They added 700 millimetres of sand"?---There was 700 mil of sand against the fence.

Right. Well, what I'm going to do is, I'm going to allow that as a statement. It's a statement of fact. He says there were 700 mils of sand stacked against the fence. So we will cross out "and" so there's no link to uphill neighbours. Do you see what I mean?

MORISON, MR: Yes, I do.

HER HONOUR: Mr Laughton? So have you got this one in front of you?---I've got that one.

Yes. Okay?---Yes.

So if we go to Summary, first page, I'm going to allow that paragraph except I'm crossing through the word "and"?---Okay.

And this repeats the - where's my copy of the witness statement. Yes. All right. Next one.

MORISON, MR:

The boundary fence broke and at the same point of time the retaining wall beneath it cracked and bulged. Neither the boundary fence nor the retaining wall were designed to restrain this 700 millimetres of sand.

Objection is that's an opinion.

HER HONOUR: What do you say about that?---I've got in my little bag, there's design recommendations from the manufacturer that say it should not be used as a retaining wall. There's a little paragraph in there saying it can be used up to 150 millimetres as part of a trench. I've also got, when - when he finally gets here, expert witness regarding - - -

Okay?--- - - - what the fence is able to retain.

All right. That first sentence:

The boundary fence broke and at the same point of time

is a statement of fact. That second sentence is a statement of opinion and that has to be proved by other evidence because you're not an expert. Okay?---Okay.

All right. So I'm ruling out - that doesn't mean there can't be evidence of that. It just can't come from you. Okay?---Okay.

All right. So I'm ruling out the words:

Neither the boundary fence nor the retaining wall were designed to retain the 700 mils of sand.

MORISON, MR: I just note that the claimant indicated that he has got other evidence, a design recommendation. I don't think I've seen that. I don't think that's in his form 32A. I would object to that, but we can come to that at that time.

HER HONOUR: Well, I think that's going to come from Mr Woodhouse, is it?---Depends if he's referring to the manufacturer's information or - - -

But you can't usually just tender a document without a witness, because we don't know - they have to be - - -?---Yes.

They have to be available for cross-examine on the conclusions reached in the document?---Yes. Are we talking about the engineering report or the manufacturer's - - -

The manufacturer's report?---I provided the link on the - on the, whatever you call it, submission for court hearing on the - I think it was the 8th to make it easy to find. I didn't actually - - -

It still may be documentary hearsay. We will come to that when we get to that. Okay?---Okay.

All right. Next one. That's that - - -

MORISON, MR: I object - - -

HER HONOUR: The objection?

MORISON, MR: The objection is that the following is irrelevant and speculation, and that is:

The bobcat used to help build this new retaining wall is estimated to weight approximately 2700 kilograms and probably ventured too close to the fence.

I just - I would indicate that he has got an expert's report. There are certain objections to that, but this seems to come from his expert's report. But, in any event, I say that that's irrelevant and speculation.

HER HONOUR: All right. What do you say, Mr Laughton?---The original engineering report I had made, I didn't realise it was made by the same people that caused this problem in the first place. They mentioned a avocado tree was applying additional load. That avocado tree was maximum, like extreme maximum, 127 kilos. If, in the event of an extreme storm which happens once every 500 years. It didn't happen during the life of that tree. I would suggest that the 127 kilograms anchored 2.4 metres from the crack in the wall - just to put it in perspective, the actual loading the bobcat would cause - - -

Okay?--- - - - within a metre or so and weighing the order of magnitude sort of - - -

Mr Laughton, do you have any personal knowledge at all of what you've said in paragraph 3? Did you see the bobcat? Did you see it - do you know its weight and did you see it venture too close to the fence?---I have a photo of the bobcat. I don't know its weight. I did ask for that as part of the evidence. As far as venturing too close to the fence, it physically wouldn't be able to get in and put down the 200 kilogram bricks - - -

Okay. So that's an inference you've drawn from your observations of the site, is it?---Yes.

Okay. So that's not something of your own knowledge that you can put into evidence. I accept the objection to that. So paragraph 3 has to come out?---Okay.

MORISON, MR: Paragraph 4:

Council regulations require all retaining walls should not have additional loading placed on them above what they were designed for regardless of whose land the retaining wall is built on.

My objection is that that's speculation and argument. It's probably also hearsay. If he had brought forward the regulations, then they would be the subject of judicial

notice, but he hasn't done that. Therefore, speculation and argument.

HER HONOUR: What do you say, Mr Laughton?---I did actually highlight that in the latest version. It's the Building Act 2011, section 77, and, yes, and I also believe there's a council - local council bylaw that covers that as well.

Yes. I'm going to allow that to remain in, Mr Morison. I think it's pretty much common ground here that council regulations require retaining walls to be approved and designed and built to specifications that are appropriate in the circumstances, and I don't think it's really contentious. It's probably even great common knowledge to some extent, but it's certainly in our papers. Across the board we're seeing examples of that. So I'm allowing that.

MORISON, MR: Yes, your Honour. Number 5:

A structural engineer's report stated that the extra overburden could cause the retaining wall to collapse,

which is hearsay, but I presume he's referring to the WML report. Then it goes on:

However, the Marshes refused to remove this overburden because of fears that it would undermine their new retaining walls which have their foundations approximately 700 millimetres higher than the top of the original boundary wall and at 550 millimetres higher than an abutting retaining wall on our common neighbour at 14 Keble Heights.

My objection to that is that it is speculation.

HER HONOUR: The bit about the Marshes' reasons for refusing to remove the overburden, is it?

MORISON, MR: Yes. That's right. That's right.

HER HONOUR: All right. What do you say about that, Mr Laughton?---Well, for starters, there's actually two structural engineering reports mention the same thing and I've also got emails from the Marshes stating they will not remove the soil for this reason.

So you will be putting those emails to them?---Well, they should already have them but - - -

No, but when it comes to evidence, you will be producing the emails to them - - -?---Yes.

- - - and saying, "Isn't this your reason?---Yes.

Okay. So, yes. All right. Allowing for Mr Laughton being self-represented, I will allow that to stay because he says there's documentary evidence from the Marshes expressing that.

MORISON, MR: Yes.

HER HONOUR: So I will allow that. And, obviously, the structural engineer's report will speak for itself, but it's just a reference to put the rest of the paragraph in context.

MORISON, MR: Yes.

HER HONOUR: Al right. So that stays in. Okay.

MORISON, MR: So paragraph 6:

The Marshes feel they can do whatever they like because the 20-plus year old retaining wall does not have the proper building permit.

And objection is relevance, argumentative and scandalous.

HER HONOUR: Yes. Mr Laughton, what do you say about that? That's probably a matter of submission rather than evidence?---Yes. That was the original reason I was told. It's probably not relevant and I'm not - no real objection if that's scrubbed out.

All right. I'm striking through paragraph 6.

MORISON, MR: Paragraph 7.

HER HONOUR: Yes.

MORISON, MR:

I feel that this retaining wall is well-documented as part of building permit 11489 grounded on 7 July 1995 and the entire problem has caused by them because they stacked so much sand against the fence and that they should pay to fix the damage they caused.

The objections are that it's irrelevant. It's argumentative and it's hearsay because it's derived from a

document and there's no explanation as to how the document will be proven.

HER HONOUR: This is the building permit?

MORISON, MR: That's right. That's the reference to the document.

HER HONOUR: I think the building permit has been discovered, hasn't it?

MORISON, MR: It has been, yes.

HER HONOUR: And it will be a business record.

MORISON, MR: Yes.

HER HONOUR: Yes. All right. So this bit - what do you say, Mr Laughton? It seems to me that the statement:

And the entire problem was caused by them because they stacked so much against the fence,

that's what I'm actually going to decide?---Yes.

So we said that - we've allowed into evidence that you say that there was 700 mils of sand stacked against the fence (indistinct), so I'm striking out after "1994"?---Okay.

Because that's what I'm here to decide?---Yes, yes, yes.

So we don't - it's not factual evidence?---Yes. That's fair enough.

MORISON, MR: Paragraph 8:

Structerre were originally asked to come up with a solution to this problem but not only failed to do so, also failed to notify anybody that it was too difficult for them.

The objection is this is irrelevant. It's argumentative and it's scandalous.

HER HONOUR: Yes. "Scandalous" has a legal connotation. It doesn't mean, you know, the common parlance of - just so you understand. All right. What do you say about that?---I was more trying to sort of explain to whoever was reading it what the situation is and I've got no objections if that's taken out.

Okay. All right. I'm striking through paragraph 8.

MORISON, MR: Paragraph 9:

I then commissioned WML to come up with a solution to the problem. They offered two solutions, the first being to reinforce the original wall and make it twelve and a half so that the ground level above the retaining wall could be level. The second option was to simply reinforce the boundary retaining wall at its original height.

The objection is that it's hearsay and it's opinion evidence.

HER HONOUR: All right. But we understand that Mr Woodhouse is now coming.

MORISON, MR: Yes.

HER HONOUR: I think that's allowable.

MORISON, MR: Yes.

HER HONOUR: All right. Thank you. Well, paragraph 9 stays in.

MORISON, MR: I wonder if it might be understood that if of course the expert's report did not, as it were, come up to proof and verify these statements which are on their face hearsay, then the statements would not be taken into account.

HER HONOUR: Well, it's Mr Laughton's evidence of his side of the conversation.

MORISON, MR: Right.

HER HONOUR:

I offered James Marsh the option of contributing towards a higher retaining wall but the offer was flatly rejected.

Mr Laughton, that's probably one shouldn't be in there.

MORISON, MR: Yes.

HER HONOUR: And, two, it probably is relevant to determining what the actual legal issues are?---Yes. That's fair enough.

So I will strike through paragraph 10?---Yes.

Because I'm not supposed to know about any negotiations?---I'm sorry.

Yes. All right. What's the objection to paragraph 7?

MORISON, MR: Paragraph 11:

I then obtained a council building permit and started to build the reinforcing myself. I purchased most of the reinforcing bar and was compacting a stand at the foot of the retaining wall in preparation to dig the foundations when I was abused and hosed down by Sharyl.

Up to that point, it's irrelevant, argumentative and scandalous. And he continues:

I decided at that point that me putting in effort to help them to save money was not such a good idea and sought legal advice to see what my options were.

Irrelevant.

HER HONOUR: All right. What do you say to that, Mr Laughton?---I think 11 and 12 both should be struck out.

Okay.

MORISON, MR: Paragraph 13:

There was a pre-trial hearing on 18 June and 30 July to try to resolve this problem but so far the only money offered has been for a quarter of the boundary fence and the overburden Structerre warned could cause the original retaining wall to collapse is still in place.

My objection is that's irrelevant.

HER HONOUR: I think that has to go out for the same reason as paragraph 10?---Yes. Okay.

And in fact it's in the Act that the court is not to be made aware of anything that occurs at a pre-trial?---That's fair enough.

MORISON, MR: Paragraph 14 is in effect telling us what the Marshes' logic are and I object because that's argumentative and irrelevant.

HER HONOUR: What do you say about that? Is that
- - -?---Yes. I - - -

Agree?--- - - - pretty much agree. And probably 15 as
well.

Okay.

MORISON, MR: So we get to the detailed timeline, which is
separately numbered. The numbering starts again. Number
1:

1991, driveway on 14 Trinity Drive appears to have put
in before the sewer pipe. The sewer pipe in the
easement is thought to be installed this year.

The objection is that's speculation. He has no personal
knowledge of it.

HER HONOUR: What do you think, Mr Laughton, on that
one?---The driveway - like logic would say they had put the
sewer in before they even they even thought about doing
anything else. However, in this specific case, the
driveway has had a trench dug into it directly above the
sewer pipe and that is a - it's - it is speculation. It's
- there's no personal knowledge. It's - yes, it's a very
big question mark, that one.

Have you got any documentary evidence that you will be
tendering to support that?---I've got photos of the
driveway.

Right. So you say the sewer pipe in the easement is
thought to have been installed this year. Do you mean 2016
or 1999?---1991.

1991. Sorry. Well, I suppose, Mr - look, I think that can
stay in. It can stay in, subject to the tendering of the
supporting documentary evidence.

MORISON, MR: Yes.

HER HONOUR: All right.

MORISON, MR: There's no objection to 2.

HER HONOUR: Yes.

MORISON, MR: 3, 15 April 1994, he contends:

The Water Authority approval for the first retaining wall at 11B Keble Heights.

The objection is that it's hearsay because it's derived from a document. There's no explanation as to how the document will be proven.

HER HONOUR: Is this a document returned under summons?

MORISON, MR: It may be.

HER HONOUR: Well, if it's a document returned under - from the Water Authority, it's probably admissible as a business record. We will leave that in.

MORISON, MR: Number 4, in my numbering, 23 April 1994. It refers to:

A building approval 11335 given for retaining wall at 11 Keble Heights, College Grove.

Same objection but the same response.

HER HONOUR: Yes.

MORISON, MR: Yes.

HER HONOUR: I'm assuming that hopefully there is business records from the - obviously I haven't familiarised myself with the summons documents because they're not in evidence?---No.

But I'm assuming, looking at the cover, which I have done, is that they're from Water Authority and the shire. The ones I approved today to look at were from the shire and that, so I assume there's some documents in there that will be assisting the court?---The building approval I'm referring to here would be from the shire.

Okay. All right. We will leave that in.

MORISON, MR: Yes. And in fact I'm just looking down to - everything in 6 can remain on the same basis we've been discussing.

HER HONOUR: And 5?

MORISON, MR: And 5. Indeed.

HER HONOUR: Yes. Okay.

MORISON, MR: So all the way from 3 to 6 on that basis.

HER HONOUR: Yes.

MORISON, MR: Builder's permit, page 2, writing on the envelope as to building permits, I withdraw that on the same basis.

HER HONOUR: Yes.

MORISON, MR: 7, I withdraw, same basis, or the second objection.

HER HONOUR: Yes.

MORISON, MR: No objection to 8 and 9. 10, I withdraw, same basis. 12, I withdraw on the same basis. The being in Melbourne, receiving a phone call about the boundary wall is irrelevant.

HER HONOUR: Yes. Do you agree with that?---Yes.

I will strike through paragraph 13.

MORISON, MR: And also the reference to chasing up retaining wall people and being told things by them, which didn't make a lot of sense.

HER HONOUR: Yes. That would seem to be hearsay. I will strike through that second part of paragraph 13.

MORISON, MR: 14 is 10 October '12, when he refers to flying back to Bunbury, only the boundary fence had collapsed, that it did have a bulge and a crack. Sorry, there's no objection to that.

HER HONOUR: No.

MORISON, MR: Nor to 15.

HER HONOUR: All right.

MORISON, MR: Then 16 is - he's sending an email to Mr Arkel of T&B Fencing explaining what he wanted to make sure the wall was okay before replacing the fence, is irrelevant.

HER HONOUR: Is that not going to damages?

MORISON, MR: Yes. He has no evidence on damages, which is one of the points I was going to make, not in any form 32A.

HER HONOUR: No. I will leave that in. I think that could - - -

MORISON, MR: Very well.

HER HONOUR: - - - potentially go to damages.

MORISON, MR: I'm going to withdraw the next two objections.

HER HONOUR: That's the one to the Structerre report. That - following the words, "Received Structerre report" and following the words, "wall to collapse."

MORISON, MR: Yes.

HER HONOUR: Okay.

MORISON, MR: And then - sorry. I'm not going to bother to press the next entry.

HER HONOUR: The one about sending the Marshes the objection. That's on the record.

MORISON, MR: Now, based on rough calculations, working out the settling effect on the matter is irrelevant and it not being refuted by Strcuterre is hearsay. I observe also that it's opinion evidence.

HER HONOUR: All right. So this is you, is it, Mr Laughton, saying you've done some calculations?---Originally, yes.

Okay. And Structerre aren't coming, are they?---I did have an email exchange with them where they agreed it was insignificant. They didn't actually put a number on it. And I also asked the WML engineer to comment on it because it was in the original engineering report.

So is your - is Mr Woodhouse going to comment on it?---If you ask him nicely, yes.

Well, that's not my job?---Okay.

But is he - - -?---Yes.

Well, the part that's your calculations I will strike through. So, "Based on rough calculations," the (indistinct) mentioned, "Mine is only one per cent and this was not refuted by Structerre." I think that's something that - that note that the crack in the boundary wall - you're not objecting to that anyway. That's something that Mr Laughton can say.

MORISON, MR: Yes. Then it refers to the diagram attached to the report shows what they were looking for when probing for backing blocks. I withdraw that.

HER HONOUR: Okay.

MORISON, MR: I withdraw the next objection and I will deal with the objection to:

This may still be there or it may have been washed
- - -"

HER HONOUR: Sorry. Just let me catch up.

MORISON, MR: Certainly.

HER HONOUR: So you're withdrawing the objection at the top of page 5, which was to the, "A copy of the building permit."

MORISON, MR: Yes.

HER HONOUR: Yes. That stays in. And then the next paragraph is:

This may still be there now.

MORISON, MR: That's, I say, speculation and irrelevant.

HER HONOUR: Yes. Mr Laughton?---Well, I wrote that at the time and this is sort of regurgitated and I guess it is, yes, not terribly relevant.

All right. I will strike through that paragraph beginning, "This may still" ending "close to the fence."

MORISON, MR: I don't pursue the next objection.

HER HONOUR: I beg your pardon?

MORISON, MR: Sorry. I withdraw the next - - -

HER HONOUR: Thank you.

MORISON, MR: - - - objection to the passage, "I was not aware," etcetera. Paragraph 17, I withdraw on the same basis that it's going to be - - -

HER HONOUR: It can well go to damages, I think.

MORISON, MR: And it could go to damages if we had any evidence of it. 18, I haven't objected to. 19, is working and being in Bunbury. Being based in Bunbury is irrelevant.

HER HONOUR: Do you agree with that?---Yes. Yes.

I will strike out paragraph 19?---Yes.

MORISON, MR: 20, I do object to because I don't think there's any question of the signed sales agreement being part of his form 32A.

HER HONOUR: All right. What do you say to that?---It's not relevant to actually proving the damage was caused. It may well be relevant to the damages' actual value. I'm not sure - yes, I - I've made it available. I'm not even sure if I've got it with me. I didn't think it would be needed.

So, perhaps that could be dealt with - do you want to say there that you entered into a sales agreement with Henry from Professional Real Estate - - -?---Yes.

- - - for the 11B Keble - - -?---Yes.

I think that's relevant - - -

MORISON, MR: Yes.

HER HONOUR: - - - potentially. So I'm going to change that slightly. With your permission, Mr Laughton, I'm going to put:

I entered into a signed sales agreement with Henry from Professional Real Estate relating to the sale of -

well, is that the listing - probably a listing, was it?---Yes. When you put it up for sale, you sort of sign all this paperwork.

...for the listing for sale - - -

?---Yes.

All right. No problem with that, Mr Morison?

MORISON, MR: No.

HER HONOUR:

...of 11B Keble Heights?---Heights, yes.

All right. So we will leave that in as amended.

MORISON, MR: Next objection, 21, is in relation to the settlement date for land it appears he has bought in Port Lincoln and what the loan was and what his safety net was. That's irrelevant.

HER HONOUR: Do you agree with that?---It's irrelevant as far as causing the damage. It's not irrelevant as far as potential damages.

All right. I will allow that to stay in as to damages. It will be a matter of weight.

MORISON, MR: Yes. The next one, 22, he's back in Melbourne dealing with family issues.

HER HONOUR: Yes. I think that's irrelevant?---Yes. Yes. Okay.

So that will come out.

MORISON, MR: 23, in 2013, Murray from Bunbury City Council inspecting the fence is irrelevant?---It might be relevant as far as his photos and his other paperwork goes. Yes, I'm a little bit on the fence on that one. I'm not overly stressed if it's scrubbed, but it's not irrelevant, I don't think.

HER HONOUR: Were you there?---Probably not.

Okay?---But I've had emails from him regarding that.

All right. So is there some documents from the Bunbury City Council to go into evidence, is there?---I haven't really had a chance to go through it. Possibly.

Well, I will leave that there for the moment. It's probably - I don't think it's highly contentious necessarily. Obviously any conclusions reached by Murray may be but - all right.

MORISON, MR: On the same basis, I withdraw the objections listed on 24.

HER HONOUR: So this exchange.

MORISON, MR: Yes, at 24, about chasing up Murray.

HER HONOUR: Yes.

MORISON, MR: At the bottom there.

HER HONOUR: So, hang on. Was there a bit more in the - so you've got, "Received this exchange," dot, dot, dot. What does that mean?---I - as part of the sort of sequence to try and get my thoughts in order and get all my documents in order, I was hoping to sort of, "Okay, here it is," to a lawyer. It's actually a link to the appropriate email exchange which doesn't show up on the paper.

All right. So I will just - I can strike through, "Received this exchange"?---Yes.

Okay. And, all right, paragraph 25.

MORISON, MR: Assuming that this is going to go into evidence, subject to any objection I have to non-disclosure and it not being in the form 32A, but, if it gets into evidence, then, on that basis, I have no objection and withdraw the objection.

HER HONOUR: Okay.

MORISON, MR: 26, purchasing something for Road, Rail and Sea Containers to transport belongings and put in storage. I suppose, if it's said that that goes to damages and it's supported in the usual way, it's admissible and I - it can stand.

HER HONOUR: All right.

MORISON, MR: If it please the court.

HER HONOUR: All right. I will leave that.

MORISON, MR: 27, I object to because he's not - the Structerre report is not part of his evidence, or at least they're not calling anybody from Structerre.

HER HONOUR: Okay. So do you understand that objection?---Yes, partly, and partly it is irrelevant. I was just trying to put all the details on all the timeline and that is - - -

All right?---It's partially relevant, but it's relevant in that the report did not cover what it was - the scope it was supposed to cover, but, yes, we can scrub that out.

Unless someone from Structerre is there to be cross-examined on the report, it can't go in - - -?---Okay.

- - - in any meaningful way. The fact that you may have commissioned it can go to your damages, but it's not relevant to liability?---No. I didn't commission that one.

Okay. All right. Email containing a copy of letter.

MORISON, MR: On the basis that it's going to go in, then I have no objection and I withdraw the objection.

HER HONOUR: Okay.

MORISON, MR: The same basis - then I withdraw the objection listed in 29.

HER HONOUR: Yes.

MORISON, MR: First paragraph of objection 30, on the same basis I withdraw the objection.

HER HONOUR: Okay.

MORISON, MR: The next paragraph about the western retaining wall having its own separate permit and the permit clearly showing the extent of the retaining wall, on the same basis, I withdraw the objection.

HER HONOUR: Okay.

MORISON, MR: I do not have a clue about what he thinks eastern retaining wall building permit is for?---Yes.

HER HONOUR: That can come out, I think?---Yes. Okay.

MORISON, MR: Then, notes on the original building permit stating that the retaining walls need to be finished before foundations for the house could start, on the basis that there will be allowed and admitted evidence of the building permits and they state that, then I withdraw the objection.

HER HONOUR: Okay.

MORISON, MR: The next paragraph refers to the proximity of the house to the retaining walls and it not being possible, that the failing of the eastern retaining wall

was built up, the house was built, that is speculation and opinion.

HER HONOUR: I think that also is a - if there's to be a conclusion to that point, that would be something I would make, rather than something you would state?---Yes.

So I will rule out that.

MORISON, MR: Maintain objection to the next paragraph because that is pure hearsay.

HER HONOUR: Yes. So that the paragraph starting, "Phone call" will be crossed out?---Yes.

MORISON, MR: And then the next one seems to follow on. This is despite - - -

HER HONOUR: Yes. All right. So I will - - -?---Yes.

- - - strike through that as well?---Yes.

MORISON, MR: 31. My objection to 31 is about suspicion in Structerre being partly to blame, irrelevant, hearsay, argumentative, etcetera.

HER HONOUR: Do you disagree - - -?---Yes.

- - - with that?---It is. I was trying to explain to any potential lawyer, and it is irrelevant in this - in this particular thing, yes.

All right. I will strike through that.

MORISON, MR: Then objection 32, the first objection is to the email notice with proposed complaint. I withdraw the objection to the reference to that.

HER HONOUR: Yes. Can you just pause? I just need to change my pen. Yes.

MORISON, MR: I withdraw the other objection in paragraph 32.

HER HONOUR: Yes.

MORISON, MR: 33, the first objection, on the usual basis, I withdraw.

HER HONOUR: Yes.

MORISON, MR: Now, the next - the second of the objection to 33 is to do with the Marshes wanting to pay him a quarter of the section of fence, not the entire fence, and their logic being, etcetera.

HER HONOUR: Yes. For the same reason as earlier, I will strike through that. So the words from "Email exchange" through to "fence replaced" are struck through.

MORISON, MR: Objection 34, assuming that this is admitted into evidence, on that basis I withdraw the objection.

HER HONOUR: Yes.

MORISON, MR: First objection in 35, same basis, I withdraw it.

HER HONOUR: Yes.

MORISON, MR: I withdraw the second objection, the one about - the one to, "I commissioned WML," etcetera.

HER HONOUR: Yes.

MORISON, MR: Top of page 8, so that's the next objection as part of objection 35.

HER HONOUR: That can come out for the same reason, that it's negotiations as to the claim?---So, sorry, the - - -

Top of paragraph 8?---Page 8, yes.

Page 8. I beg your pardon?---Yes. Okay.

Yes, the first one. Yes?---And - and probably the next paragraph as well.

MORISON, MR: Yes. Thank you.

HER HONOUR: That can come out as well?---Yes.

Okay.

MORISON, MR: 36, "They have no objection to withdrawing the sand." That seems to be privileged but I - on the usual basis, I withdraw the objection to 36.

HER HONOUR: All right.

MORISON, MR: On the usual basis, I withdraw the objection to 37.

HER HONOUR: Yes.

MORISON, MR: The Marshes making it clear they don't want to contribute to a higher boundary wall, so a smaller one - I withdraw the objection to that.

HER HONOUR: All right.

MORISON, MR: On the usual basis, I withdraw objection 39. Same basis - usual basis, objection 40 is withdrawn. Usual basis, 41 - objection 41 is withdrawn. 42, I object because it's irrelevant. It deals with the listing of the house, it being on the market for 18 months, the prospects being low of selling it and so on.

HER HONOUR: What do you say about that?---It's relevant as to causing the damage. It is relevant as to the damages in - like I've - I've been forced to pay because of it. It's - - -

Look, I think it probably can go to damages. It's a question of weight. Obviously there can be many reasons why a house doesn't sell?---Thank you.

But I will allow that in, but it will be a question of what weight I give it, do you understand, in any decision?---Yes.

MORISON, MR: Objection 43 refers to an invoice from WML, other emails. I don't think they're needed. Withdraw that objection on the usual basis.

HER HONOUR: Yes.

MORISON, MR: 44, I maintain that objection, abused and hosed down, irrelevant argument.

HER HONOUR: Yes. Do you disagree - - -?---Yes.

- - - that that needs to - - -?---That's not really relevant.

No.

MORISON, MR: 45 is all about going and seeing another lawyer and being dissatisfied?---Yes. That's - that can be scrubbed.

HER HONOUR: That comes out?---Yes.

MORISON, MR: 46. Now, I will be objecting to the quote because I understand that the author of the quote will not be called, and so it is an objection that I maintain because there will be no possibility of that document being admissible, on my submission.

HER HONOUR: Yes. All right. Do you follow the basis of that objection?---Because I'm not calling him as a witness I can't - - -

He can't be cross-examined as to the basis of - see, you would say to me, "I've put in a quote for \$19,800. That's what I want to be paid?---Yes.

But that - so that's for the - the amount of damages hasn't been admitted. There has been no admission along those lines?---Yes.

So that's contentious. So the person who provides a quote for damages needs to attend in person - - -?---Yes.

- - - so they can be cross-examined about the basis on which the quote was given, the reasonableness, etcetera, just as in any other - any other person. Most of these documents I'm allowing in as business records because they're not contentious. So, like, for Water Authority and that. This is contentious?---Yes.

So it is, on its face, hearsay?---Yes. Okay.

So are you going to call someone about the quote or - - -?---I thought the document would have stood on its own merit, but I hadn't arranged for it, no.

That is going to be an issue in proving damages. Okay?---Okay.

Well, I will strike it out. I will strike it through because the document - the quote is not admissible. I accept that objection to it. If there's - someone comes and you discover the quote, someone comes and gives evidence as to the quote and is available for cross-examination, then it could - it would then become admissible. Okay?---Yes.

So I'm ruling out 46.

MORISON, MR: 47, on the basis that he can make something more of that and have admissible evidence on those matters, then I withdraw the objection.

HER HONOUR: Yes.

MORISON, MR: I don't object to anything up to "have been used up." And there was - I withdraw the objection 48. 49 is really just a - - -

HER HONOUR: It's not relevant?---Yes, just information. That can be scrubbed.

MORISON, MR: I will withdraw the objection 50, presume that's correct. I maintain objection 51. That's all got to do with - - -

HER HONOUR: That can come out on the basis that the court should not be advised of what is said in pre-trial.

MORISON, MR: And since it was in there and the court has seen that, then I will just say for the record that it's disputed hotly. 52, which seems to be part of the negotiations.

HER HONOUR: Yes. I'm taking that out. I accept that.

MORISON, MR: 53 is the visit from Alex from Bunbury Contractors, cost of dressing up concrete has to be added to the costs. I withdraw - I maintain that, because it's laced with hearsay from Alex.

HER HONOUR: So that's the same as paragraph 46, is it?

MORISON, MR: Yes, the same issue.

HER HONOUR: I don't have a problem - I will hear from Mr Laughton, but I don't have a problem with saying that he came to site and gave the quote to include the length.

MORISON, MR: Right.

HER HONOUR: After that it - Alex's words are hearsay unless he's here to give evidence of them. So - - -

MORISON, MR: I would object to the second sentence though about discovering the quote - - -

HER HONOUR: Yes.

MORISON, MR: - - - and including - - -

HER HONOUR: I've done - so I'm crossing through - I will leave the last part, "I confirmed with WML." Okay. 54.

MORISON, MR: 54, withdraw. 55, I press. It's privileged.

HER HONOUR: Yes. All right. Do you understand the basis of that objection? What's said in those meetings in privilege between - - -?---Okay.

MORISON, MR: Ditto 56.

HER HONOUR: Yes. I think 57 can stay?---Can stay.

It's not contentious?---Yes.

Same with 58?---"At this stage" - 59:

At this stage, I have still not received the alternate quote to reinforce the retaining wall.

It just doesn't go anywhere, so I don't think anything can be made of it. I withdraw the objection. 60, I press, consultation with a second lawyer.

Yes. That can come out?---The first sentence about visiting a lawyer, I've got no objection to scrubbing that.

Yes. And so you object to the objection about the (indistinct)?---That's just information.

Yes. I think the next - the rest of paragraph 60 is not particularly relevant.

MORISON, MR: 61, irrelevant.

HER HONOUR: Yes. That's on the face of the court record anyway. So that doesn't need to be given - - -

MORISON, MR: 62, irrelevant. 63, irrelevant.

HER HONOUR: Yes. I accept that.

MORISON, MR: 64, irrelevant. 65, irrelevant. 66, irrelevant. 67, irrelevant.

HER HONOUR: So I do accept these because they're part of the court record. They don't need to be given in evidence.

MORISON, MR: The other basis is relevance. And 68. I will just look at my - my objection over on page 13 is the documentary hearsay objection.

HER HONOUR: Sorry. I'm only up to paragraph 67.

MORISON, MR: I'm sorry.

HER HONOUR: So that's coming out. That was Mr Laughton filing things. And then that's him receiving things. 69, same thing?---Sorry. 68 was scrubbed out or - - -

Yes?--- - - - left in or - - -

Yes. That's just your list of - - -?---Yes, yes, yes.
Just general information.

69 also. I think that 70 can come out. I think 71 can come out. 72 can come out. 73, 74, 75 can come out, because they're just describing the court process?---Sorry. 75 was coming out?

Yes. Yes, that's probably submission, 76, mostly. That can come out, as 77. 78 can come out. Yes, I think the balance is not necessary. All right. Now, what I think we should do next, Mr Laughton, is go through and tender your documents that you're going to use for your support that we've been referring to - - -?---Okay.

- - - you used in your statement?---Yes.

So you said you haven't had a chance to look at the Bunbury documents. Do you want a bit more time, Bunbury Council documents?---We will go as far as we can until - might actually - I may not need it.

All right?---It might be irrelevant.

Okay.?---So, hang on, just going back a little bit. 79, 80 and 81 are all irrelevant?

They're all - yes. They're just a description of the court process we've gone through?---Yes. Yes, yes, yes. Okay. Just I was a little bit behind, that's all.

All right. So, now, what - you've got documents to go in now?---I've got the WML Engineering report. I've got the Structerre Engineering report, the expert witness when we need him. I've got the manufacturer's - - -

Okay?--- - - - guidelines on how - what the fence is good for.

All right. So the engineer's report we're putting to one side for a minute, Mr Woodhouse's report?---Yes.

It's going to one side. Now, I believe there's an objection to Structerre's report going in.

MORISON, MR: There is. Yes.

HER HONOUR: What's that?

MORISON, MR: Yes. Hearsay and hearsay.

HER HONOUR: Yes. All right. So the Structerre report objection is hearsay, and that's because the author of the report isn't here and available to be cross-examined on the contents of the report. So, absent that, that report is inadmissible - - -?---Yes.

- - - in the proceedings, except to the extent we've allowed - it has been - following our discussion, we've allowed some references to it in your evidence. All right?---Okay.

So that's inadmissible. What's the next document on your list? Your manufacturer's recommendation?---The manufacturer's, yes.

All right. Have you got that there?---I've got it somewhere. Yes.

Take all your documents that you need over to the witness box. All right. Just have a seat and - all right. Is this objected to?

MORISON, MR: It is, your Honour. Documentary hearsay.

HER HONOUR: Okay. Mr Laughton, this falls into a similar category of documentary hearsay. So the - this is - this printout you got - which you got of the internet - yes?---Yes.

From their site is - certain statements are made in there. They are not necessarily - the court can't accept them as - it can accept statements are made but not as to the truth of the statement without the author of the document being present for cross-examination. As I've said, this is a general procedure claim, so strict rules of evidence apply. So that is inadmissible too, for that same reason. I will hand that back?---Okay. I will just scrub this out.

Have you got your mobile phone on?---I might have.

There was a message. I think you will need to probably turn it off because it interferes with the recording

equipment?---Okay. Yes. Yes. So the James Hardy manufacturer's is - - -

Out?--- - - - out. So the next one will probably be out too because it's the same manufacturer's - - -

Yes?---Different - different guide. Yes. Okay, scrub that. As far as 700 millimetres of sand allowed to build up and remained against the boundary fence, I've got photos.

Okay?---Would you like to - - -

Yes. You can - have they been discovered? Have you given them to the other side?---I'm not sure. They've all been - - -

There has been lots of photos - - -?---I've made them available.

- - - I noticed in the file?---Sorry?

Just so Mr Morison. These are photos of the site, is it?---Yes.

Yes. And did you take them?---Some of them I wasn't in - even in Western Australia for.

Okay?---The - I would have to look at the individual photo to tell you.

Yes, Mr Morison.

MORISON, MR: Your Honour, these weren't discovered. What happened was we found a website of the claimant on which he put a good deal of information and documents relating to this case. I have printed them out and they include some 70 pages of photographs that I hadn't seen before. Those seem to be among the photographs that he had on his website. I notice, from just looking at the Water Authority - Water Corporation's file, that they're on their file as well. I have seen those, so I won't maintain the objection about the lack of discovery.

HER HONOUR: Yes. And I assume that it's common ground that this is a photo of the general area where we're talking about which - yes. Can I get a paperclip please, Madam JSO? So this is one, two, three, four, five, six, seven - a bundle of seven photos, and so that's exhibit 1. Exhibit 1 is a bundle of seven photos of - can I describe this as of the area where the two properties abut?

MORISON, MR: Yes, the general area perhaps, because there's another property shown there too.

HER HONOUR: Okay. General area of where the claimant and defendants' properties abut.

EXHIBIT 1 Applicants DATE 16/08/2016
Bundle of seven photos of the general area where the claimant and defendants' properties abut.

HER HONOUR: All right. Next document?---I've got a map of the sewerage easement pipeline. I'm not sure if it's relevant or not.

I would have thought it's relevant. I assume there's no objection.

MORISON, MR: Perhaps I could just have a look at it.

HER HONOUR: But where is the map from? Is that from the Water Authority?---They emailed it to me, yes.

Yes?---But I think there might be more that I haven't actually discovered in that last little pile that I handed this morning.

MORISON, MR: Yes. Again, this wasn't discovered in the proper way, but I see that it's on the Water Corporation file. Perhaps it could just be marked for identification in case anything arises from it.

HER HONOUR: Well, is it in the summons documents?

MORISON, MR: It is. Yes, I believe so.

HER HONOUR: Yes. Well, I would have thought there's no - I mean, both parties, on my reading of the documents, talk about the sewerage easement. So I think it's relevant that their - that the Water Authority's plan be tendered into evidence.

MORISON, MR: It is - - -

HER HONOUR: And it's not really - I assume it's not contentious.

MORISON, MR: No. Well, there's information from this that we haven't gained before because we haven't seen it before this morning.

HER HONOUR: Yes.

MORISON, MR: So, subject to making an application arising from being surprised, I have no objection.

HER HONOUR: All right. I will mark that as exhibit 2. Now, I might need some help here. I don't think this is contentious. This is Trinity Rise, is it?

MORISON, MR: Yes.

HER HONOUR: Coming up here?---Yes.

And that's Keble Heights?---No. Sorry. Yes, it is.

Yes. Sorry. It's very difficult for everyone and I'm quite happy (indistinct)?---Where that circle is - - -

So which one is your property, Mr Laughton?---Where that circle is - - -

Yes?--- - - - it's to the left-hand side of that.

So the one that has got "27" on it. That one there? Is that you?---I'm not sure. It looks like it.

27 there?---I'm not sure of the lot number, but it does - no, it might be the one below it. It's - it needs a re-gaze at it.

Okay. And which - perhaps which one is - do you say is Mr and Ms Marsh's property?---Just lift the pen ever so slightly.

There?---The pen, lift the pen.

Up?---Whoa. Yes.

So number 26 there?---Yes.

Can you just have a look at that and tell me which one is yours? I need to understand clearly which one is which?---Yes, okay. I've got multiple copies anyway.

Do you mind if Mr Laughton puts a tiny cross on the one he says is his?

MORISON, MR: No, your Honour.

HER HONOUR: Okay. And perhaps a triangle on the one that Marshes are, and you can show it to your clients and see if you want?---Hopefully that's - - -

Can I have the plastic sheath it was in too?---Yes, Yes. This is the - what was attached to it. I don't know if it's relevant.

Just show it to Mr - - -

MORISON, MR: I don't have any objection. I haven't fully absorbed it but, subject to making an application, I have no objection.

HER HONOUR: Yes. It's just - all right. Okay. So what we're going to do is mark that map as exhibit 2, and exhibit 2 is the marked up Water Authority sewerage easement map.

<u>EXHIBIT 2</u>	Applicants	<u>DATE</u> 16/08/2016
	Marked up Water Authority sewerage easement map	

HER HONOUR: And, just for the transcript, Mr Laughton has written, "11B Keble" on the property and "26 Trinity" on the Marsh's property, which I assume is correct?---14 Trinity and - - -

Beg your pardon?--- - - - 26 is the lot number.

Yes, 26. That one is 14. So that will be lot 26 Trinity - Keble?---Well, I'm not quite sure what you're pointing at, but, Yes, 11 - where I've written "11B Keble" or even just "11," that's street number 11. The lot number appears to be H11.

Yes. So you come into your property down the side here, do you?---Yes.

Okay. And the Marshes come in up here?---Yes.

All right. And does this - sorry, I'm trying to not be difficult here?---Yes.

This - that small portion of wall just there is the overlap, is it?---Yes.

Okay. All right. So that's exhibit 2. The next document?---Next document - - -

This is the building permit, 11489?---I've got that if it helps.

I don't want to get you out of order. You go down your list and we will get - - -?---Well, there is - it's a - - -

I'm just going through the statement?---It's a little bit - I've got a copy of an email from Structerre discussing the - how much strain is being put on by the avocado tree, which, if Structerre is not going to be present, it's probably - - -

It can't - yes, that's - - -?--- - - - not relevant. There is an email somewhere where the Marshes - are the Marshes denying there was 700 mil of sand against the fence?

MORISON, MR: We're not admitting it.

HER HONOUR: Yes. They're not admitting it, which is the same as - you have to prove it?---Yes. Okay. I've got an email where the Marshes discuss removing sand from the fence. That's not relevant. Getting a building permit. I don't think that's relevant. I've got a bunch of images taken from Google Earth which may or not - may or may not be relevant regarding the - the timeline of, Yes, when things got built. I'm not sure if that's relevant.

Mr Morison.

MORISON, MR: Perhaps if I could just have a quick look. I have no objection to the (indistinct) photograph on the first page. The others are obscure?---I've got - - -

HER HONOUR: So you don't object to this one?

MORISON, MR: That's right, your Honour. I make no admissions about the date shown.

HER HONOUR: Mr Orderly. I will give you that one. Mr Orderly?---Three copies, so you can have one.

I will give you those back. Okay. So, again, this is essentially documentary hearsay because we don't have the image-maker here, but this part here, this can be admitted without objection?---Yes.

So that's that - that's the clear photo - - -?---Yes.

- - - marked "Imagery date 16 November 2015," and that is - be exhibit 3, which is Google image?---Google Earth.

Google Earth image dated 16 November '15.

EXHIBIT 3 Applicants DATE 16/08/2016
Google Earth image dated 16/11/2015

HER HONOUR: All right.

MORISON, MR: Could we put, say, "marked 16 November '15"?

HER HONOUR: Yes. I've said - I will put that in the description of the exhibit.

MORISON, MR: Thank you.

HER HONOUR: Is exhibit 3 is the Google Earth image dated 16.11.15. Okay. Yes?---I've got information about balustrades, handrails and stairs which is possibly not relevant. I've got information about how much cover should be on sewerage pipelines, whether it's - is sort of built up or not enough. Probably not terribly relevant. I've got an email discussing the hiring of a Skip bin and taking away of sand.

That probably goes to damages. But is it an invoice or anything like that?---No. It's just an email saying it has happened.

Yes.

MORISON, MR: Can I have a look at that, please?---I've got information about what the council may require when people are putting in retaining walls.

Just coming back to this one, yes, I don't have an objection to an email of 25 March from Ms Marsh to Gary Bruin of the council.

HER HONOUR: Okay. Can you hand it back for me, Mr Orderly, please. Just read it. I will just pause while I read it. All right. So exhibit 4 is an email from Sharyl Marsh to Gary Bruin, tendered without objection from the defendants, dated 25 March 2014.

EXHIBIT 4 Applicants DATE 16/08/2016
Email from Sharyl Marsh to Gary Bruin,
tendered without objection from the
defendants, dated 25/03/2014

HER HONOUR: Yes?---I've got a builder's checklist which is probably not really relevant. I've got a local planning policy, changes to ground level and retaining walls section

printed off the web, which unfortunately I'm not entirely sure what the webpage was. It was probably off the council, which wasn't very clever. It's - yes, I don't know if - - -

Well, is it relevant to this - I mean, I'm struggling to see how it's relevant to liability and damages - liability, causation and damages in this matter because I assume that your expert is going to give us all the evidence we need about the goods or bads or this retaining wall situation?---Yes, fair comment. I will leave that out.

MORISON, MR: Can I just have a look at that, your Honour?

HER HONOUR: Yes?---I've got a copy of the Building Act 2011, section 77, which didn't print all that well.

Why is that relevant?---Other land not to be adversely affected without consent, court order or other authority, talking specifically about overloading retaining walls.

Yes. That's - is that a penalty provision? Does that have a fine at the bottom of it?---25,000.

Yes. That's a penalty provision?---Yes.

That's a provision in which prosecutions are taken under. They're not relevant to civil matters?---Okay.

If there had been a conviction under that section, it could be evidence potentially that's introduced, but that's not relevant. So that's an Act prescribing certain behaviour as a criminal offence?---Yes.

So it's not a civil - it's not relevant to civil matters. See how it has got the fine at the bottom?---Yes, yes, yes.

Okay. So, if a prosecuting authority thinks someone has done something wrong - - -?---Yes.

- - - they prosecute them under that section?---Okay.

Okay? Because it's an offence?---Yes.

All right? And that offence - that's what it is. It's an offence. Okay. It doesn't actually create a civil right?---Okay.

It's a prescribed matter. Okay. The civil rights are prescribed in other legislation. So I don't - I will try

not to give legal advice, but that is not relevant. If there had been - if the Marshes, for example, had been convicted of an offence under that section following a trial, then there may have been findings of fact made in that that could be relevant to this, but, otherwise, it's not relevant, and, in any event, it's - - -?---Okay.

Legislation doesn't have to be tendered, but that's why - so do you understand why I'm saying it's not relevant?---Yes. Basically, it's - okay, they've broken the law, but it doesn't apply in this case.

Well, they haven't been - see, have they been charged under that Act, Mr - - -

MORISON, MR: No, your Honour.

HER HONOUR: - - - Morison?

MORISON, MR: No.

HER HONOUR: See, they haven't even been charged under that Act?---Okay.

So there's no findings of fact against them or anything against them under that Act which is relevant to this, so you're - and you're alleging that they've infringed your civil - the rights you have - a civil remedy?---Yes. Okay. So the Civil Liability Act would be a similar - - -

Yes. No, no. The Civil Liability Act is relevant to this. I have a copy of it; you don't have to tender it?---Okay.

You have to explain to me later why your claim falls within the provisions of that Act and how it does - - -?---Yes.

- - - but you don't have to give me a copy?---Okay. The building code - yes. Relevant section of the building code - which probably falls under that as well. Yes. I will just - the building code, for the moment, will be there. So what we've got so far is photos, the sewage map - - -

Yes?--- - - - and I've got a (indistinct) hopefully.

MORISON, MR: I won't object to original documents that he wants to tender coming - - -

HER HONOUR: Yes.

MORISON, MR: - - - from the Water Corporation.

HER HONOUR: Okay. Do you want - would it be easier to take them over to your desk over there?---Okay. I've got a copy of the original building permit for the appropriate
- - -

So this is the one from 1994?---Yes.

Okay. That's in paragraph 7 of your evidence. Okay. Have you got a copy of that, Mr - - -

MORISON, MR: (indistinct)

HER HONOUR: Pass that up. All right. So - - -?---
(indistinct)

- - - this is - all right. So what you've just handed me up is - - -?---A copy of (indistinct)

- - - building permit 11489. That's exhibit 5.

EXHIBIT 5 Applicants DATE 07/07/1994
 Building permit 11489

HER HONOUR: And - permit 11489 from 7 July 1994. And this is - I think it's your evidence - I don't think it's controversial - that that is the building permit for the wall that you're - that is now damaged?---Yes.

Okay.

MORISON, MR: I thought it was for the western wall, actually. I thought 11335 was the eastern wall. I stand to be corrected. 11489 - - -

HER HONOUR: I - - -?---Sorry.

HER HONOUR: It looks like this wall here. 17.7 is on here.

MORISON, MR: Yes.

HER HONOUR: No. That's height.

MORISON, MR: Yes. No. That - what you're pointing at, your Honour, is the western boundary of Keble Heights, so there's another one that deals with (indistinct)

HER HONOUR: So is this - is any - have either of these - can you just orientate me on that?---If you point it - hold it vertically - - -

That way?---No.

Other way?---Yes.

Yes?---Up is north.

This is north?---Yes.

Do we agree with that, Mr - yes. Okay. If you mind - anyone mind if I write - - -

MORISON, MR: No.

HER HONOUR: - - - north on there?

MORISON, MR: No.

HER HONOUR: Okay. So that's north. And is this - is this Keble Heights or Trinity?---No. That's Keble Heights.

That's Keble Heights? Anyone mind if I write that on it?

MORISON, MR: No.

HER HONOUR: All right. And so where's - which wall is the retaining wall that has been damaged?---On the top right-hand corner.

So it's not showing on here?---Yes. It should be.

Top right-hand corner?---Yes. It's - if you see a lot number 26 in the very, very top corner?

This bit here?---Yes.

That's the retaining wall that has been damaged?---Yes.

Okay. Does anyone object if I put an arrow - - -

MORISON, MR: No.

HER HONOUR: - - - towards that bit of the wall?---No.

And that's the abutting wall - - -

MORISON, MR: Yes.

HER HONOUR: - - - between the two properties - that little - that bit there that's got a five on it?---Yes.

Yes. So we've got 26 in the background and 5, so it's that bit there?---Yes. 26 is the lot number for - - -

Yes. Okay?---Yes.

Thank you for that. So that's exhibit 5?---Okay.

Does that take care of your questions as well - - -

MORISON, MR: No - - -

HER HONOUR: - - - Mr Morison?

MORISON, MR: - - - because what that is showing is the retaining wall on the western boundary. You will see that there's a detail of a retaining wall on the western boundary, or on the left as you hold it up.

HER HONOUR: Yes.

MORISON, MR: There's another one, 11335, which is the plan that relates to a retaining wall on the eastern side.

HER HONOUR: So the defence will say that this document is not approval for this bit of wall here?

MORISON, MR: That's right.

HER HONOUR: Okay. So you understand what Mr Morison is saying?---Yes (indistinct) sorry. I also have the building permit for the western wall.

Okay. All right. So we will make - we will still keep this as exhibit 5, and if you would hand up the permit for the common wall. Can I call it that?

MORISON, MR: I just want it noted it's for the common wall and beyond, so it's - - -

HER HONOUR: Right.

MORISON, MR: - - - for virtually the whole of the retaining fence on the eastern side (indistinct)?---Yes. And, also, that retaining wall continues on straight through to Trinity Rise in a different property.

MORISON, MR: I don't accept that?---Okay. This is the building permit for the western retaining wall (indistinct)

HER HONOUR: All right. So - - -

MORISON, MR: (indistinct) there are two documents there, your Honour: one is the equivalent of 11489 - - -

HER HONOUR: Yes.

MORISON, MR: - - - and the second is a set of plans of footings. I don't mind both of them going in.

HER HONOUR: All right. So exhibit 6 is now building permit 11335 dated 23 April 1994, and that is accompanied by a footing - engineer's detail - will we just call it "engineer's detail"? And engineer's detail.

<u>EXHIBIT 6</u>	Applicants	<u>DATE</u> 23/04/1994
	Building permit	11335 accompanied by
	engineer's detail	

HER HONOUR: And, again, the same orientation for me is - the orientation for me is the same. We're talking about the common wall being the section of wall - - -?---Yes.

- - - 5?---Yes.

All right. So that's exhibit 6. Now, can I have a stapler, please? Thank you. That was exhibit 6, was it? It's the bag. All right. Yes. Next?---There's a WML engineering report on the wall.

That will go in when your witness comes?---Okay. Sorry. It's all a bit, sort of, scattered.

I think you next had - your next thing on your list here would be - you said there were pictures of the 14 Trinity Drive - 14 Trinity Rise driveway?---Okay.

I'm just going through the statement of evidence. So that's on page - number 1 on page 3?---There's not really anything (indistinct) I thought I had a better copy of it. There's also some photos I just saw earlier today from the - Bunbury City Council took some photos, and I don't know what happened to that paperwork, but - they might have some better photos, but - - -

Okay?--- - - - there are a - - -

So (indistinct)?--- - - - couple of photos here.

I will have to show them to Mr Morison first.

MORISON, MR: There's at least one I haven't seen before, but, subject to any application, I have no objection. So we've got, now, three bundles of photos, I think.

HER HONOUR: Do you want to show Mr - these ones you're talking about?---It does show the posting rail between (indistinct) and it also shows the sand that was present, but, yes, not the ideal, but that will do.

Are these also the - I don't know if Mr Morison has seen these, but - he has, has he? Okay. All right. Thank you. Now, these are photos. What's the - what are these photos of? You were putting these in. Is this the one you were saying somehow shows some sewage?---Yes. It's very hard to tell from that photo, but, basically, the bottom part that's red - - -

Yes?--- (indistinct) red - that's got a trench cut into it.

Right?---It goes through to the actual street, which is not the ideal photo. I thought I had better, and I probably have got - - -

So exhibit 7 is a bundle of photos - one, two, three, four, five, six, seven, eight, nine, 10, 11, 12, 13, 14, 15, 16 - including photo of drive of 14 Trinity and City of Bunbury photos. Am I correct in that description?

MORISON, MR: Yes, your Honour.

THE WITNESS: Yes.

HER HONOUR: All right. And that is exhibit 7.

EXHIBIT 7 Applicants
 Bundle of 16 photographs of drive of
 14 Trinity and City of Bunbury
 photographs

HER HONOUR: All right.

THE WITNESS: (indistinct)

HER HONOUR: Now, the next thing on your list was the original title for 14 Trinity Rise; is that - does that need to be tendered? Is ownership in dispute, or - - -

MORISON, MR: It would be useful, I think, to do that
 - - -

HER HONOUR: Okay.

MORISON, MR: - - - in terms of the (indistinct)

HER HONOUR: All right. Have you got that?---It was in that bunch of documents I saw this morning. I don't believe I've got a copy. No.

Okay. So you've got - you said "20 August 1991, original title issued for 14 Trinity Rise". So you don't actually have a copy of that?---No. No. That's the title of the land.

Yes?---The building permit was actually in that bundle. It was nineteen - I forget the date.

Okay. So then the next one is - so Mr Laughton doesn't have that document.

MORISON, MR: I have a copy, your Honour. What I'm handing up is three pages. The first two pages are the original title cancelled, and then the next title - the next - the third page is the current certificate for title, and they happen to be pages 5, 6 and 7 from an affidavit that Mrs Marsh did (indistinct) setting aside default judgment.

HER HONOUR: All right. Show them to Mr Laughton?---Yes. That's not - I was more referring to the building permit for the house, which - - -

HER HONOUR: I'm just referring to - your paragraph 2 on page 3 says "the original title issued for 14 Trinity Rise". End of paragraph 3 is the water authority approval for the first retaining wall?---I'm not sure which document you're referring to. Is that this one?

Yes. You've got here on paragraph - on page 3 - I'm just going through - I've been going through here to - see, I allowed a lot of these statements to be made on the basis of documents?---Yes. Yes. Yes. Yes.

Okay. So we need to go through - - -?---Yes.

So paragraph 1. That was - that was - - -?---Yes.

- - - the one you wanted - - -?---Sorry.

- - - the photo of the gap in the driveway. Then number 2 is the original title for - - -?---Yes.

- - - 14 Trinity Rise, and Mr Morison has kindly provided us with a copy of that, because - - -?---Yes.

- - - you said you didn't have one?---Yes.

So that can be exhibit 8.

EXHIBIT 8 Applicants
 Original title for 14 Trinity Rise

THE WITNESS: Yes. Yes. Okay. Yes (indistinct) in that bundle of paperwork I saw this morning, there was also an A3 map with lots of lovely contour lines and the dates of the building permit for the house.

HER HONOUR: Is that from the water authority or
- - -?---That was from Bunbury City Council.

Okay?---I've not looked at the (indistinct)

Just so we (indistinct) original title is exhibit 8?---That might be it (indistinct) put a bit of blue paper on it. Yes. I think it might be that first one. Yes. This one (indistinct) making a mess. Yes. It's got the contour lines, and it has also got the date - '96 - of the original house.

Just show Mr Morison?---Yes.

That's 8. That's the original title for 14 Trinity Rise.

MORISON, MR: So what we've got doesn't include the building permit, which I think is called BA3, but it does show plans that have been prepared. The first page is - Structerre has prepared a plan, and there are other plans, some of which show (indistinct) homes and so on, Mr and Mrs Melville for some reason. I don't have any objection to it, although I can make submissions on weight if I may.

HER HONOUR: All right. That can be exhibit 9. Exhibit 9 is plans approved - plans from 1 August '96 for 14 Trinity Rise.

MORISON, MR: Is it '96, your Honour?

HER HONOUR: Yes. '96.

MORISON, MR: Is it? Thank you.

HER HONOUR: Yes. Plans approved.

THE WITNESS: Was it first four '96?

HER HONOUR: I beg your pardon?---"1 August 1996", it's stamped.

EXHIBIT 9 Applicants DATE 01/08/1996
Plans for 14 Trinity Rise.

THE WITNESS: 1.8.1996.

HER HONOUR: Okay. Now, the next one you had on your list was 15 April 1994 water authority approval for the first retaining wall?---Yes. That's probably not relevant. The building permits for the walls are relevant.

Well, that was allowed into evidence on the basis that it was derived from a document which was - had come in from the water authority. So 9. So - - -?---Yes. Okay. I can (indistinct) so what bullet point number was it?

3 on page 3?---Okay. 15.4.99.

What have you got (indistinct)?---(indistinct)

Six?--- (indistinct) water (indistinct) water storage requirements one of them or not?

No. Just the water authority approval for the first retaining wall at 11B Keble Heights?---On 15.4.94?

Yes?---Okay. That will be this one. Yes. That will be it. It has been - had extra writing on it, but it should be okay.

What we might do, after the break - after this one is we will take a luncheon break, and Mr Laughton can dig out all his documents and put them in the order so it will be quicker when we come back. Now, sorry. Just interrupting there. I will let you look at that, Mr Morison.

MORISON, MR: Sure. I will just pull this out. There's actually three pages. There's an A3 page, contour plans mainly, and then there's two documents - I think they're copies, actually - called "stormwater - storm - stormwater requirements", and I - at this stage, I don't concede to the stormwater requirements going in, but the one A3 copy - I don't have a problem with it going in.

HER HONOUR: All right. Give the stormwater documents back to Mr Laughton. And exhibit 10 will be the water authority approval. Again, that's the western wall?---The stormwater would be for the house.

No. This approval, I assume, is for the western wall,
again - - -?---I'm - - -

- - - because that's there - that's the wall we're talking
about, isn't it?---Yes.

It's actually not the one for the eastern wall?---No. I
think it would be for the stormwater, for the drainage. I
don't think it's terribly relevant, to be honest.

Yes. No. It's just that you've listed a document being
(indistinct) - - -?---Yes. There's the - - -

(indistinct)?--- - - - documents that I have.

Okay. Well, I can tell you what we're going to do is
- - -?---Yes.

- - - I can put that in (indistinct) exhibit 10. Water
authority approval - - -

MORISON, MR: Could I suggest an alternative: "water
authority contour survey".

HER HONOUR: Contour survey. Okay. Dated 15 April 1994,
which is exhibit 10.

<u>EXHIBIT</u> 10	Applicants	<u>DATE</u> 15/04/1994
	Water authority contour survey	

HER HONOUR: Now, what's going to happen now, parties, is
we're going to rise for lunch now. We will reconvene
shortly after 2 o'clock. In the luncheon break, I want you
to sort out the documents you want to go in, in an order
- - -?---Okay.

- - - and with particular reference as well to your
statement of evidence where you've relied on documents to
make your statements - - -?---Yes.

- - - and then we can hopefully speed up the process of
tendering when we're going through, and it might even be
helpful if Mr Morison gets (indistinct) quick look through
them before we come back. Okay? And I'm just trying to
work out - I don't - I'm very conscious of, because I'm
relieving, not going over time. Mr Waterhouse, is it?

MORISON, MR: Woodhouse. Yes.

HER HONOUR: Woodhouse. Now that the evidence-in-chief, as such, has been given, can Mr Woodhouse be interposed, or do you want that to wait until after cross?

MORISON, MR: If he was interposed, your Honour, I wouldn't want the claimant to be here.

HER HONOUR: I see. That could be difficult. Yes. All right. We're just trying to work out when Mr Woodhouse is coming, and he would normally not come until after you've finished your evidence?---Okay.

And the problem is that - - -?---I haven't finished my evidence.

- - - because he has been - you haven't finished your evidence - - -?---Yes.

- - - and you can't really hear what he says before you finish your evidence, so we will have to finish your evidence - - -?---Yes.

- - - after lunch, so - you say you've got quite a bit of cross?

MORISON, MR: Yes. I would say probably an hour.

HER HONOUR: If we were to schedule Mr - how long would - Mr Woodhouse could be quite a long time as well?

MORISON, MR: Could be. Not as long. Half an hour, three quarters.

HER HONOUR: Should we try and get him here for 3 o'clock?

MORISON, MR: Yes.

HER HONOUR: Yes.

MORISON, MR: Now, 3 o'clock. Quarter past two, we come back.

HER HONOUR: I could come back at 2.

MORISON, MR: Say 2. Then probably take at least a quarter of an hour for the rest of their case to come out. That would be about three quarters of an hour. Perhaps 3.15 or - - -

HER HONOUR: Yes. All right.

MORISON, MR: 3 is fine. He can wait a little while, I would suggest.

HER HONOUR: Well, we want to minimise costs. I mean

MORISON, MR: Yes.

HER HONOUR: Look, let's make it 3.15. So not before 3.15. If he could be here for that time - - -?---Yes.

- - - and we will try and - even if we have to sit a bit late, we will try and finish his evidence, and then we can get on with the rest of the case tomorrow. That's why you need to make those documents at quarter past?---Yes. I (indistinct)

We will reconvene at quarter - 2 o'clock. Thank you.

(LUNCHEON ADJOURNMENT)

JSO: Recalling GCLM 316 of '15, Laughton v Marsh.

HER HONOUR: Have a seat. All right. How did you go with your documents?---A little bit better than I was.

Sorry?---A little bit better than I was.

Okay. Yes. What's your next one?---Next one - the building permit for the retaining wall for the new - new retaining walls on 14 Trinity.

Yes?---There's clauses in the building permit that say it should not affect land below it. Hopefully, it's in that bundle that come from the Bunbury City Council.

Right. Madam JSO, just give Mr Laughton the green file?---And, also, entire section 4 of the affidavit on 8 August.

Which - this is your submission one?---Yes. It was intended to replace the earlier one, but anyway.

"Cost to reinforce damaged boundary wall retaining"?---No. The Ombudsman.

Hey?---The Ombudsman.

I've got the 8 August one. So what are you referring to, sir?---Section 4.

Yes?---Four one (indistinct) so anything to do with the Ombudsman: do you want evidence from that or not?

Well, sorry, it's your case?---Yes.

I can't say - - -?---Yes.

Yes. So you did something to do with the Ombudsman about something?---I complained to them about this is happening, and they said they won't touch it until it has been to the court, and I thought, "Okay."

But why is it relevant?---Well, because the Ombudsman basically said it was.

What? Said what was relevant?---This court case.

Yes. So I assume he's saying, "We can't do it. It's before the court"?---Yes.

"That has to be resolved before we do anything"?---Possibly. I'm not sure, but - - -

Sorry, sir. This is your case?---Yes.

You should be sure?---Okay.

So if the Ombudsman has made some findings, has investigated and made findings, then that may be relevant. If he's just saying, "Your complaint to me has to await the outcome of the court proceedings," then it's not relevant?---Okay. Okay. Section 5 is - I'm guessing that's not relevant as well.

I don't know what "unsigned letter from Agrius to James Marsh dated 7 March" is.

MORISON, MR: Your Honour, I'm sorry, but I'm struggling to find the affidavit in question.

HER HONOUR: Mr Laughton lodged an affidavit - - -

MORISON, MR: I see. No, it's - - -

HER HONOUR: - - - to define the documents he wanted a copy of from the defence.

MORISON, MR: Right?---No. No, not that one.

HER HONOUR: No?

MORISON, MR: I've just found one. It's 8 August.

HER HONOUR: So this is the one you've done instead of your issues. Yes? Ombudsman? And 5 - yes, which one about 5?---Well, I'm guessing I don't need to prove the defence's claims.

Well, if you've got documents relevant to their claims, you need to tender them as part of your evidence?---Yes. Okay. And the default judgment: do I need to put any document - like, they've already been submitted to the court. I don't need to resubmit them?

Well, if you want them to be tendered as part of this, yes, you do. So that proceeding - so there were documents relating to that proceeding. Okay?---Yes.

And that proceeding - they were in that proceeding, but if you want them to be part of the trial documentation, you have to submit them in the trial as well?---Okay.

So if you're saying you submitted documents to the Ombudsman - - -?---No.

- - - that you want as part of this, that's different to your correspondence with the Ombudsman?---Yes, yes, yes. Okay.

So if you put documents in your affidavits relating to the setting aside of the default judgment and you want them to be in the trial, they have to be tendered in the trial now?---Now. Okay. Okay. And my receipts for damages: do I tender them as well?

You do.

MORISON, MR: I object, your Honour. They're not referred to in the form 32A.

HER HONOUR: Well, it's an unrepresented party. He has referred to - he has given a very clear outline of his damages in other documentation. I will allow him to submit his supporting documentation for damages.

MORISON, MR: Can I make another objection, and that is documentary hearsay.

HER HONOUR: Well, we will see - we will look at them as we get to it.

MORISON, MR: Yes.

HER HONOUR: But, quite frankly, we've talked about the quotes earlier, but if he has got documents that he has paid, for example, receipts from lawyers or from other things that he wants to put in, then he can do it?---Yes. This - this whole file is basically receipts.

What are these receipts as to?---The retaining wall, how much interest I've had to pay, as per the list that I've put in, submitted, and - on 9 August.

Well, you can't just tender them as a bundle. You will need to, you know, tender them one at a time and clearly explain what they are - - -?---Okay.

- - - so they can be considered. Have you finished tendering the documents relating to liability yet?---I was trying to sort of jump ahead so I wasn't holding people up. The - - -

Well, if it takes time, it takes time, but we've got to - - -?---Okay.

So you were going to - you were looking for some sort of - one of the building approvals before we went to lunch?---Yes. Yes, yes.

You spoke about emails before when you were going through the objections. There's all sorts of things we spoke about?---I've already submitted the email regarding removing sand.

Yes. You said there was an email exchange with Gary from the City of Bunbury. There was an email - - -?---
(indistinct)

- - - exchange containing the initial letter from the City of Bunbury, email notice of proposed complaint
- - -?---Yes.

- - - email exchange where the Marshes respond they had no intention of removing extra sand, all these - - -?---Yes.

- - - things that you spoke - I let these things in on the basis that you said they were - - -?---Yes. The one that's relevant is probably the building permit, where it states it should not affect any other structures.

Right?---And - - -

So tender that one?---Okay. I've got to find it first. There it is. 8.5.12. They don't have dates. That's

handy. This is the document, and point 6 is the one that is relevant.

Exhibit 11 is a building permit dated 8 May 2012.

EXHIBIT 11 Applicants DATE 8/5/2012
 Building permit

HER HONOUR: And you wanted to draw my attention to something on there?---Point - point 6.

Sorry?---Bullet point 6.

Okay. So that's exhibit 11?---Okay. Now - hang on. Your Honour, the default judgment as well. That's hopefully it.

MORISON, MR: I've just been handed an affidavit. I don't know what it's meant to be evidence of. If it's meant to be evidence of costs he has incurred as a result of setting aside the default judgment, that would be, I submit, a matter of the bill of costs - of costs rather than of damage, but I don't what purpose he's putting his affidavit forward for.

HER HONOUR: This is the one - is it bearing a court stamp, "4 January"?---This is submitted on 9 December '15. Hang on. Sorry. 5 January '16. It's - - -

Can I just see it, please. So you want some of these documents attached to that to go into evidence, do you?---It's basically the reasons why the default judgment should not have gone ahead.

Yes. That has been decided. That is not part of this, but I understood you wanted some of these documents attached to that to go in, do you not?---No, no, no, because, apparently, the costs of that default judgment need to be decided at this hearing.

Yes. That would be taxed another day, at another time?---Okay.

Okay?---So what about the receipts? That needs to be - - -

Look, what I'm doing today is I'm deciding are they - well, today and tomorrow and however longer it takes us - are they liable to you at all - - -?---Yes.

- - - and, if they're liable to you, how much money do they owe you?---Yes.

So it's the documents relating to how much money they owe you. The documents - how much money they owe you - are the moneys - the amounts to put you back - the damages that you've incurred, so the amount to fix the wall or to fix the fence or whatever. Okay? I will give you this back. There has already been a determination of costs on that, which will be decided on another day, on taxation, which isn't for me. Okay?---Okay.

That costs order has already been made?---Okay.

I will make a costs - if and when we get the - not "if". When we get the result of this matter, there will be a separate costs order - - -?---Yes.

- - - depending on what happens in this matter?---Okay.

Okay? So you don't have to worry about the costs for setting aside the default judgment?---Yes.

What you have to worry about is the documents you say that prove your losses - - -?---Yes.

- - - resulting from what you say they've done wrong?---Okay. Okay. The retaining wall itself hasn't been fixed yet.

No?---Just as long as you're aware of that little detail. Okay.

You've got a bundle there?---I've got a bundle here.

All right. They will probably have to go in separately, but we will just let Mr Morison see and see what he doesn't object to first, and then we will deal with what he does object to.

MORISON, MR: I've made a note, your Honour, of what he has got there, and perhaps I could just deal with that from - my note, I think, generally describes it. Invoice WML - perhaps I better see them, actually, come to think of it. So this is a receipt from Structerre. Perhaps I will begin with a receipt from Structerre. It's a receipt for - looks like \$555.50. It doesn't say what it's a receipt for. Perhaps on the other side. I see. There's a tax invoice, and it's a fee for services rendered.

Woodhouse and Pope. That seems to be in - yes, that's in respect of the wall. Strictly speaking, that would be costs or a disbursement of costs, but I'm content to have it put in, in any event. So if I can make that pile. Then

we've got various documents from Concrete Contractors. We've got three tax - two tax invoices and a quote. There's a tax invoice from Bunbury Concrete Contractors to dig and pour retaining wall footings, \$9000, paid in full. So it's \$9900 with GST. I don't object to that going in if, in fact, that work has been done.

HER HONOUR: That was the work that's showing in the photos as having been done to date?---That's the foundations, yes.

Yes. Okay. Yes.

MORISON, MR: That's the foundations. Right. No problem there, but then it says - there's another one that says, "First pour to retaining wall: 9000?---Yes. I - - -

That's the same one, is it?---I - it's basically the same one. I lost it and asked for another copy, and they gave me another copy (indistinct)

All right. Well, perhaps we could just put that into a reject pile, as it were. It's the same one. Now, this is the quote that I'm objecting to on the basis that he's not being called. It's the quote of 26 June '15 for \$19,800 for digging a retaining wall footing, etcetera. So if I could put that into the objected-to pile.

HER HONOUR: That was the one that was subject to paragraph 46. I've ruled out - - -

MORISON, MR: Yes. Then tax invoice from WML. This seems to be for work done to the - or services rendered. I presume Mr Laughton will say that this is design work that was done. It just says, "Professional fee for services rendered." And it says, "Wall, 11B Keble Heights, 14 Trinity Rise."

HER HONOUR: That was to get your planning approval for the repairs?---That - that was to draw up how we were going to fix this and do the drawings suitable for the council.

All right. That can go in.

MORISON, MR: Yes.

HER HONOUR: How much was that for?

MORISON, MR: That was \$4576 with GST. Bunnings: \$139. Electrodes and so on: no objection to that. I presume that's verified to be related to the work.

HER HONOUR: That was part of the work stuff you bought
 - - -?---I - I - - -

- - - to do the work yourself?---I started to do it myself,
 and I got a variety of bits. I got the reinforcing - those
 particular bits of metal I was using to brace the wall, and
 - yes.

Okay.

MORISON, MR: Fuel: \$9.75. I would say that
 - - -?---That was for the compactor to compact the soil
 - - -

HER HONOUR: Yes?--- - - - sand. There's another one
 there for fuel as well. I - I - my - my car runs on
 diesel. I had no reason for - I've only claimed one of
 them, if you look, but there's - I just put it all in
 together.

Yes?--- (indistinct) for that.

MORISON, MR: I'm not making any admissions about the
 appropriateness of it, but I'm just not going to object to
 it, your Honour.

HER HONOUR: Right.

MORISON, MR: This is Bunbury Machinery. Kubota. This
 seems to be for the hire of - - -

HER HONOUR: That's \$110, is it?

MORISON, MR: That's right, your Honour.

HER HONOUR: Yes. That's certainly in the list here.

MORISON, MR: Good. Midalia Steel: this relates to -
 this is \$27.50.

HER HONOUR: Yes. The reo bars?---No. The reo bars was
 seven - - -

I beg your pardon?--- - - - 700-odd. That's part of the
 metal for bracing the wall.

MORISON, MR: All right. Well - - -

HER HONOUR: Okay. So, yes, there's three lots of metal
 for bracing the wall here.

MORISON, MR: Yes. I've got one for 27.50. I make no admissions, but I'm just not objecting. Then there's - looks like one, but it goes over two pages, and it's the same one, but it's a total of \$779.81.

HER HONOUR: Yes.

MORISON, MR: That's to do with deformed - - -

HER HONOUR: "Reinforcing bar bent to suit wall"?---Yes.

Yes.

MORISON, MR: Then there's City of Bunbury, 132.50.

HER HONOUR: That's the permit?

MORISON, MR: Building permit application - - -?---Yes. That's the building permit, yes.

MORISON, MR: - - - and building services levy. No objection to admissibility. J&P Group, \$45.10, seems to be the cutting of steel?---The cutting of steel was part of - it's - it's purchasing the steel, and I got them to cut it as well.

HER HONOUR: Mr Laughton has listed it as "metal for bracing for wall"?---Yes

MORISON, MR: Very well. No objection to admissibility. And J&P Group, a second one for \$30 in total. It has just got "40NB pipe".

HER HONOUR: He has listed that as "metal bracing for the wall, 6 December 2014".

MORISON, MR: Thank you. \$59.40, J&P Group, screw jack, etcetera: no objection to admissibility. T & V Fencing quotation dated 7 July '14 for a total of \$2032. A 50 per cent would be \$1117.60. A copy. And then another one that's a contract quotation - different number - for a total of \$1980.69, and that is to remove, dispose, supply and install 10 metres of storm-damaged HardieFence. So that's a quote. And moving the soil to enable installation. So I would just - I just wonder whether the court would inquire whether that has been paid or not, because it's just a quotation?---It has not been paid. It has not been - the work has not been done.

HER HONOUR: This is the quote to do the fence that was originally sitting on top of the - - -?---Yes.

- - - retaining wall?---Yes.

And, as I understand it - and I, obviously, will place no reliance, essentially - but, as I understand it, there wasn't necessarily a dispute about the need to replace the fencing per se that was on top of the original wall.

MORISON, MR: That's right.

HER HONOUR: Therefore, I would have thought it's in the interests of both parties if a quote for that is accepted into evidence without the necessity and expense of calling a contractor, which would probably be more than the quote.

MORISON, MR: Quite so, your Honour. We have something to say about the proportion, but it doesn't affect admissibility.

HER HONOUR: Yes. Okay. So that goes in. Yes.

MORISON, MR: Now, there's two quotations?---They might be different dates.

They are. One is 17 July '14; the other is 23.10.12. And they both seem to be quotations for the same work?---Yes.

But they're different amounts. One is \$1980; the other is \$2235?---Yes. There's - - -

HER HONOUR: I suggest that they both go in, and then we can - if it's necessary, in terms of - then the court can fix an appropriate amount by way of damages.

MORISON, MR: Anglia Container Services tax invoices: I presume that they've been paid. Yes the answer is, so no objection to admissibility. Interest charged - - -

HER HONOUR: And just so you understand, when Mr Morison says there's no objection to admissibility, he's not saying, "Yes, we agree that if we lose, we pay that." It's just that that document goes in in case they do get ordered to pay it. Yes?---Yes.

MORISON, MR: Yes. Then there's a sleeve with bank statements in there from the National Bank, and there's a post-it note that says, "9 interest charged". Now, this appears to be interest on his home loan, and I would object to that.

HER HONOUR: As an item of damages or that going - - -

MORISON, MR: As an item of damages. It's - - -

HER HONOUR: Yes. That's a business record. So I think the document can probably go in. You would certainly object to it, as I understand, as an item of damages, but we deal with that when we get to it.

MORISON, MR: Now, the next is a series of paperwork regarding the claimant's consultations with Mr Owens and Benz Legal, and I suppose they can go in, provided that the claimant verifies they've been paid, but, obviously, we will be saying that they're simply not claimable.

HER HONOUR: That's right. So they would be more if - they can go in?---Yes.

But that would be more if you are successful - - -?---Yes.

- - - and they had to pay your legal costs. They would be relevant to that rather than as a - they come under that sort of side of the ledger rather than damages. Okay?---Yes, yes.

Yes.

MORISON, MR: So the next one is a receipt or invoice from the Magistrates Court for \$678 relating to - - -

HER HONOUR: That's costs.

MORISON, MR: That's just costs. I put that on another file. Then we've got a receipt from the City of Bunbury for \$82. It has, evidently, been paid because \$100 was handed over, and change of \$18, and I presume it's - it says it's "building plan search", so I don't object to the admissibility of that. Bayswater Car Rental Proprietary Limited, \$569.80, receipt as well as a lease agreement, so I won't object to admissibility. Officeworks - - -?---I don't think I claimed anything from Officeworks. I just put it all in the same folder.

Okay. It's just \$13 and \$2.40 and 40 cents.

HER HONOUR: Is that for printing out your court docs, is it?---Basically, yes.

That will be costs, but you can put it in.

MORISON, MR: Right?---That's - the bulk of it is the A3. The A4 stuff is only about 8 cents a page.

HER HONOUR: Yes.

MORISON, MR: National Australia Bank bank statements for his Choice Package offset home loan: on the same basis, no objection. Various documents relating to plane flights that he has taken, seemingly, with Qantas: I won't object to admissibility but, obviously, to - - -

HER HONOUR: They may go to costs and disbursements rather than damages.

MORISON, MR: So shall I put them in the - yes. And then there's City of Bunbury, \$96, building permit application, presumed paid. Yes. No objection to the admissibility of that. Now, that leaves one that's \$96?---That's a copy of
- - -

It's the same one. All right.---Yes. It's the same one. It's just a photocopy.

So perhaps I could just hand up first to your Honour the ones that I'm proposing not be accepted.

HER HONOUR: Right.

MORISON, MR: And then in your other hand - yes, in your other hand - thanks. So in - - -

HER HONOUR: These are the ones that are being accepted, are they?

MORISON, MR: The larger bundle, yes, your Honour. No objection is made to the admissibility of the larger bundle.

HER HONOUR: Which ones are you objecting to? Those ones. Okay. I will just put them back in a - - -?---Yes. There is a yellow folder there that (indistinct) keep them together.

Right. So I've got here the - the first pours of the concrete wall you weren't objecting to, were you?

MORISON, MR: No, your Honour.

HER HONOUR: And to dig the footings you weren't objecting to.

MORISON, MR: Well, they were - are both of them \$9900, your Honour?

HER HONOUR: Yes?---Yes. And they should be the same date as well.

MORISON, MR: So there's only one lot of \$9900, I believe?---Yes.

HER HONOUR: Yes.

MORISON, MR: That's right. I don't object to that.

HER HONOUR: Are you objecting to the \$1980 one, are you?

MORISON, MR: Yes, your Honour.

HER HONOUR: Right. What's the basis for that?

MORISON, MR: It's just a quote, your Honour, and it's central to this case, and I certainly would be cross-examining the author of it. There are several matters that we wish to raise with him.

HER HONOUR: All right. Now, Mr Laughton, remember, going back to your statement of evidence in paragraph 46, I gave you the reasons why that had to be struck out, because this is hearsay, without the person who made - - -?---Yes.

- - - the quote being here, to be present. So your alternatives are to forego this matter going in, or it can be marked for identification pending you producing the person from Bunbury Concrete who gave you the report as a witness just to attest to that so Mr Morison can cross-examine them?---Okay.

Do you want it marked for identification?---Sorry?

Do you want it marked for identification? Are you likely to get the person from Bunbury Concreting to come and give some evidence about that?---I haven't arranged it for these two days, but if it - if the - I don't know if the - - -

Well, certainly, I don't - I'm only here for two days - - -?---Yes.

- - - in doing this case?---Yes, yes.

So you would have to get them here tomorrow?---Okay. I will - yes.

Otherwise, it's not admissible, sir?---Yes, yes, yes.

So I will put - - -?---Okay.

What I do is I write "MFI" on it?---Yes, yes.

So it means it has been before the court, but it's not in evidence, subject to the person who wrote it identifying it and being present for cross-examination. Okay?---Okay.

The Bunbury Concrete Contractors quote for \$1980 is MFI1.

MFI 1 Applicants
Bunbury Concrete Contractors quote for
\$198

THE WITNESS: Hang on.

HER HONOUR: And what was the other one?---One - - -

Yes. And the Officeworks ones: were they going in?

MORISON, MR: I don't think so, your Honour.

HER HONOUR: They're not going in. All right. I will return those. Okay. So the other invoices are tendered as a bundle - - -?---Yes.

- - - without objection, and they will be exhibit 12.

EXHIBIT 12 Applicants
Bundle of invoices

HER HONOUR: Okay. They are invoices and receipts for damages. And MFI1. Now, have you any other documents that you're tendering?---No. When I contact Bunbury Concrete Contractors, should I tell them a time to try and be here or - - -

Well, I think we would do our best to interpose it because it should be very short. I can't imagine Mr Morison will have a lot of cross-examination. So, yes, if you can get a time that they can be here tomorrow?---Yes.

I assume you don't object to interposing just that?
There's no - - -

MORISON, MR: I'm just wondering whether I ought to object generally, your Honour. There has been no form 32A given. I've given notice to the claimant that he would need to call this witness if he wanted to adduce this witness.

HER HONOUR: Well, I'm saying he can call him.

MORISON, MR: Very well.

HER HONOUR: It's really a matter of timing.

MORISON, MR: Certainly, yes.

HER HONOUR: You know, the court has a duty to make sure that an unrepresented person is not unduly prejudiced without, obviously, creating an unfair thing. So if he can get the person here for 10 or 15 minutes, which is all it's probably going to take, then I will allow him to interpose.

MORISON, MR: Yes.

HER HONOUR: Yes?---Yes. Hopefully there's no other documents.

Right. So stay there because then - that concludes your evidence? Yes?---Yes.

All right. Now, Mr Morison has the right to cross-examine on behalf of the defendant?---Yes.

Yes. Thank you, Mr Morison.

MORISON, MR: Thank you, your Honour. Could the witness please see exhibit 3, the Google Image map.

HER HONOUR: I will send it over to you. Here you go?---Yes.

MORISON, MR: So what's in evidence is the - I think it's the bottom one, the clearer one. Now, does that show the extent of the retaining wall on the eastern side of 11 Keble Heights? Does it?---Yes. It shows the western side of 14 Trinity Rise and the - - -

Sure?--- - - - eastern side of - - -

So the answer to my question - does it show - is it the retaining wall on the eastern side of 11 Keble Heights?---Yes. Yes, yes.

That's correct, is it?---Yes.

And that retaining wall is level, the whole length of it?---Yes. Sorry. At the driveway itself, there is a section, maybe roughly five metres, where it has got an extra course of bricks, and the rest of it, I believe, is level all the way, yes.

It's higher at the driveway, do you mean?---It's a course of bricks higher at the driveway, yes.

Right. And so are you indicating about 30 millimetres there higher or - - -?---The height of the block - - -

Perhaps we don't need to necessarily go into it too far?---Yes.

But, anyway, you say that there's a first section of the retaining wall where it comes into the driveway. Where it begins at the driveway - - -?---Yes.

- - - is a little higher, is it, than the rest of the retaining wall?---Yes.

Okay. And it's a little higher for about five metres, is it?---Roughly, yes.

Right. So then it steps down again, does it, at that point?---One course of bricks, yes.

One course of bricks?---One layer.

One layer of - do you mean cement bricks, limestone blocks or those bricks?---I believe they're limestone, but I'm not positive on that.

Okay, because the way you're showing your hands, it's about - I would say about a half a metre is the distance you're showing with your hands; is that right? Is that what you're trying to do? In any case, after five metres - - -

HER HONOUR: Sorry. So how far does it step down after five metres?---No, no, no. It's - it's written on the building permit. I don't know off the top of my head. There's - they're roughly that long, roughly that high and roughly that thick.

MORISON, MR: All right?---The measurements are on the building permit.

HER HONOUR: So I think you were showing about half by half by 300, or 400 by 400 by 30?---Maybe 500 by 300 by 250, maybe. I'm - I'm not sure.

All right.

MORISON, MR: Well, perhaps if Mr Laughton could see exhibits 5 and 6, and we can have exhibit 3 back again.

HER HONOUR: That's 5 and 6, and that's 3 coming back.
Okay.

MORISON, MR: Now, just before I take you to them specifically, you've just indicated, Mr Laughton, that - just put that down and look at me, if you wouldn't mind, thanks?---Sorry.

You've indicated to me that it shows - the building permit will show the dimensions of the brick and, therefore
- - -?---Yes.

- - - the height of the step up?---Yes.

Now, those are in evidence. There's the building permit for the retaining wall on the east side, and that's exhibit 6?---Yes.

And then on the west side is exhibit 5. Now, when you said that the building permit shows what you were saying, do either of these documents reveal what you were saying?---Yes, yes, yes. It has actually got the block size written up the top.

All right. So we're relying on somebody's handwriting, are we?---Well, it also lines up exactly with what's on - actually physically in place.

Okay?---So anyone can go along at any time and measure them.

All right. But you don't know - it wasn't your handwriting on there, is it?---That's not my handwriting, no.

All right. I don't think that takes us any further. Those can come back, please?---And, if I may add a little bit
- - -

Not quite. So after five metres, I think we've established, it steps down again, and then the wall is level from there right up to the north-east corner of 11 Keble Heights; is that correct?---I think it's level right up to Trinity Rise Road.

All right. I'm only asking you now about north-east corner of 11 Keble Heights. After the step down, is that retaining wall level, that is, at the same height, all the way from the step down to the north-east corner of 11 Keble Heights?---Yes.

Now, could Mr Laughton please see - could he please see exhibits 4 and 5 again, I'm sorry - sorry - 5 and 6 again. So exhibit 5 we might as well use. Actually, we will use exhibit 6 because that shows the retaining wall on the eastern boundary. Now, do you agree that that contains swirl contours?---yes.

And would you agree that the swirl contours there show that the north-eastern corner of 11 Keble Heights was the highest part of 11 Keble Heights?---The boundary between lot 26 and lot 50 was, relatively speaking, 10.1, so it's slightly higher than the - the actual corner itself.

Okay. So there's a contour that says 10 metres, isn't there?---Yes.

And that contour intersects the eastern boundary of Keble Heights, doesn't it?---Yes.

And it intersects the northern boundary of Keble Heights, doesn't it?---Yes.

And so that everything north-east of that 10-metre contour line is higher than what is below?---Yes.

It's correct, isn't it?---Yes, yes, yes.

So - - -

HER HONOUR: Just stop there. I need to make a - sorry.

MORISON, MR: Sorry.

HER HONOUR: What was put? The proposition was put - was everything north-east of the contour line - is what?

MORISON, MR: Is higher than what is below the 10-metre contour line.

HER HONOUR: And your answer to that was yes?---Yes.

Okay. Thank you.

MORISON, MR: Then could I ask the question again: does it not follow that the area of 11 Keble Heights that was north-east of that contour line was the highest point on 11 Keble Heights originally?---Originally?

Yes?---Yes. Yes.

You can put that to one side for a moment. Is it correct that you installed columns along part of the retaining wall on the east side of Keble Heights?---No. That was existing when I bought the house.

There were columns there, were there?---Yes.

HER HONOUR: Sorry. "Is it correct you installed columns" along which - - -

MORISON, MR: The retaining wall on the eastern boundary of Keble Heights.

HER HONOUR: You said, no, they were there when you bought it?---Yes.

MORISON, MR: And they are, what, brick columns or limestone brick columns?---I'm not completely sure, but they appeared to be the same material as the wall itself.

Could you please go to - withdraw that. Now, you applied for a building permit for a new retaining wall on the eastern boundary of Keble Heights, did you?---I applied for a building permit to reinforce the existing retaining wall on the eastern corner of Keble Heights.

Right. Do you have that - and a building permit was issued, was it - - -?---Yes.

- - - in respect of a retaining wall?---Yes.

Do you have that building permit there?---I believe I do. I also believe I've given you a copy.

You might have the original?--- (indistinct) a couple of different versions. That one is earlier. Yes, I've got a copy in my hand.

Thank you. Can I just have a look at that.

HER HONOUR: Could I have exhibit 5 and 6 back when you've finished showing Mr Morison that one, thanks. Thanks.

MORISON, MR: All right. Those are drawings from WML. I was inquiring - can I ask you whether you have the actual building permit, the BA2 or BA3? Perhaps I will (indistinct)?---I do have it (indistinct) that would be it there.

Thank you. I'm going to now ask you to look at the building permit that you've just been shown?---Yes.

What's the nature of the work the subject of the building permit? What does it show there?---Nature of building work is retaining wall.

Right. Meaning the construction of the retaining wall?---No. Meaning the categories that the Bunbury council have are reasonably broad, and this doesn't fall under a pergola. It doesn't fall under a house. It falls into the category of retaining wall.

Well, are you seeking to charge the Marshes for the construction of a new retaining wall along the common boundary?---No. I'm seeking to get (indistinct) to reinforce the retaining wall that has been broken.

Right. So what is the - is there anything there that you can see on that building permit that indicates that it's not for the construction of a retaining wall?---That it's not for the construction - - -

Yes?--- - - - of a retaining wall?

Is there anything in that that supports your comment that it is for reinforcement?---The building designs themselves.

Right. You say that the building designs are showing that the retaining wall stays - - -?---Yes.

- - - but is reinforced. Is that - - -?---Yes.

- - - what you're saying?---Yes, yes.

Right. All right. Now, what is shown there as the estimated value of the work? What does the building permit show as the estimated value?---The building permit showed what I estimated the material value to be.

Just tell me what figure is shown there?---Thirteen and a half thousand.

Thirteen and a half thousand. And that's a building permit for the reinforcement of the entire length of - - -?---No.

Sorry. The entire length of the retaining wall, is it not?---That's to reinforce five metres.

Just five metres?---5.6 metres.

5.6 metres. Are you sure about that?---Yes.

I tender that.

HER HONOUR: All right. That can be exhibit 12. Exhibit 12 is building permit or dwelling permit approval 6.2014.32124.1 dated 1 December 2014. And that would be exhibit - what was exhibit 12?

JSO: The bundle of invoices.

HER HONOUR: That was the bundle of invoices. Thank you, Madam JSO. That was the invoices. So that's exhibit 13.

EXHIBIT 13 Respondents DATE 1/12/2014
Dwelling permit approval 6.2014.32124.1

MORISON, MR: Thank you, your Honour. Could I have that back, please. I wonder if you could look at this again. It's exhibit 13 you're looking at now, and you indicated to me that it can be ascertained from WMLs plans that the length of the retaining wall to be reinforced was 5.6 metres?---No.

Then say what you mean?---The - there's a slight misunderstanding. The retaining wall was actually designed to go for - - -

What are you looking at there?---I'm looking at the - - -

The plans. Right?---The plans - - -

Right?--- - - - which include - can't actually see a measurement. I think it's about 15 metres. I'm not sure of the length. That was the original - to do the whole shebang, to do the whole length of it that's in my property, within 11 Keble.

So what are you saying, that the plans drawn by WML are plans for the reinforcement of the whole length of the retaining wall; is that right?---Yes.

Right. And those plans you've just been looking at: are they the same plans that are attached to the building permit, exhibit 13?---I believe so, yes.

Just check that?---It's a much bigger version. I'm not aware of any difference.

All right. So the plans that are attached to the building permit, exhibit 13, are plans of WML for the reinforcement, you say, of the whole length of the retaining wall; is that correct?---The plans are, yes.

Right. And you indicated that you can ascertain from the building permit what the length of the retaining wall is the subject of the building permit from those plans. Those plans show that it's the whole length of the retaining wall. So the building permit is for the whole length of the retaining wall, isn't it?---The building permit allows me to cover the entire length of the retaining wall, yes.

Well, it is for the reinforcement, you say, of the whole length of the retaining wall, isn't it?---It allows me to do the whole length, yes.

Yes. You're not suggesting, are you, that you were at liberty to do only part of the length of the retaining wall?---Yes. I am suggesting that, and that is what I intended to do.

Have you anything to show whereby the council would allow you to do only part of the reinforcement of a retaining wall?---I've spoken to the council. I don't have - nothing in writing, no.

That can come back, if it please the court.

HER HONOUR: Thank you. To you or to me?

MORISON, MR: To you, your Honour. Thank you. Now, the document that Mr Laughton was reading from - perhaps he can just put to one side those plans there in A3. Could Mr Laughton please see exhibit 1. They're a bundle of seven photographs - the general area?---Yes.

If you could take those out of the sleeve, and what I'm going to ask you to do is to hold them up and show me and her Honour each one in turn, and then I'm going to ask you a question about each one. So do you want to hold up the first one? All right. So is that a photograph that you took?---Probably, but - most likely, but I don't know.

All right. And from what position did you take that photograph?---Well, obviously, from the strip of land behind - behind number 15 Keble Heights.

Right. How did you get there?---By climbing the fence.

Then the next one, please. Right. And if you could show her Honour that.

HER HONOUR: Yes. Do we need to describe it for the transcript?

MORISON, MR: Yes. That wouldn't be a bad idea.

HER HONOUR: That's one where, on the left-hand side of the photo, there's a large portion of other retaining wall and an area of soil with green on it in the foreground and a small portion of the Super Six fence to the right.

MORISON, MR: Very good. I wonder if the court would allow me to mark them by numbers on the back.

HER HONOUR: Yes. I think that, well, yes, that would be good. We could get Mr Laughton to do it, really.

MORISON, MR: That would be good. Thank you.

HER HONOUR: Have you got a pen there?---Yes.

On the back of that first one that we talked about, can you write "A"? All right. And the second one: can you write "B"? Thanks.

MORISON, MR: All right. If you could hold that up again. So just assist us with what that is showing. Is that showing - perhaps I can assist. Is that showing, on the right, the retaining wall at 15 Keble Heights?---Yes.

And beyond that is the retaining wall at 14 Trinity Rise, is it?---Beyond that is the boundary between - - -

I'm talking about the wall?---I think it's 12 Trinity and - - -

I'm talking about the wall on the right, beyond the retaining wall?---Well, on that is the one that's facing Keble Heights, which, I think, is - - -

15?--- - - - 15, and that is 14 Trinity - - -

That's right. And then the fence on the left, the Super Six, is that a - broadly, you could describe that as a Super Six fence, could you?---Yes.

And is that going along the length of the boundary where it's a common boundary with 15 Keble Heights, is it?---It starts almost at the road from 13 Keble Heights, and it follows right through to Trinity Rise, or did before it was broken.

Right. So the next photograph: if you could mark that "C", and hold - - -?--- (indistinct)

And hold that up, and then show her Honour. And does that show soil where it has been removed by Mr Marsh near the boundary?---Yes.

And in the foreground there, there's an object there that appears blue to me, and do you know what that is?---Yes.

What is that?---That's the vent for the sewerage.

Vent for the sewerage.

HER HONOUR: Sorry. What - - -?---Sorry. Inspection point for the sewerage line.

What are we talking about?---It's - - -

MORISON, MR: It's the blue object in the foreground on the right. Yes, you've got your thumb on it.

HER HONOUR: This one?

MORISON, MR: Yes.

HER HONOUR: So it's actually galvanised - - -?---Yes. Checker-plate lid.

Yes?---Yes.

MORISON, MR: Thank you..

HER HONOUR: So that's the inspection for the sewerage?---Yes.

MORISON, MR: All right. And that's about how far out of the ground?---I don't know.

All right. And the next photograph: could you mark that "D"?---Yes.

Could you hold that up for us? Okay. And then for her Honour. And who took that photograph?---I don't know for sure, but it was quite possibly me.

Right. And where were you when you took the photograph?---Well, it appears I was on 14 Trinity Rise.

Right. With the permission of the Marshes?---With the assumed permission of the Marshes, yes.

What do you mean?---Well, they never told me not to, and I assumed we were both trying to solve the same problem.

Right. If you can put that down and mark the next one "E". Thank you. And there's some foliage there. Is any part of that foliage the tree that was attached to the retaining wall?---Yes.

Which part? The part on the right of the photograph?---Yes.

Right. Thank you. And, where we're looking, are we looking into 15 Keble Heights there?---Yes. No. This is from 11 Keble Heights, my house. The retaining wall behind that you can see in the background is 14 Trinity Rise.

Right. The ground that has been dug away - - -?---Yes.

Is that ground on 15 Keble Heights?---No. 14.

14. Did you - - -?---The bulk of it, anyway.

The bulk of - did you move that earth?---I dug it away to try and stop it falling into my property, yes.

Right. I suggest that that earth there is on 15 Keble Heights?---What didn't fall into my property, yes.

Right. The next one: if you could mark that, please?---That was E. We go F?

F. Yes. Thank you. So if you could hold that up for myself and her Honour. Thank you. Right. Now, does that show a length of the retaining wall from north to south?---Yes.

And is there a tree on the right-hand side?---Yes.

And was that tree at the height of the top of the roof of 11B Keble Heights?

HER HONOUR: Sorry. "Was it at the height of - - -"

MORISON, MR: The top of the roof of 11B Keble Heights?---I believe it was higher than the eaves but lower than the top.

HER HONOUR: Higher than the eaves but lower than the roof, did you say?---Yes.

MORISON, MR: Your Honour, I'm conscious that the expert is going to be here now.

HER HONOUR: Yes.

MORISON, MR: And I've got quite a bit more to do. I'm just wondering whether I might withdraw my objection to the claimant being in here with that just to ensure that we get this done, as it were.

HER HONOUR: You've asked the most controversial questions?

MORISON, MR: No. Actually, no, I haven't.

HER HONOUR: Well, that's fine. I mean, my preference would be to get the expert in, heard, dealt with, because either way, it will cost one or the other of you a lot of money.

MORISON, MR: So - - -

HER HONOUR: Okay.

MORISON, MR: I don't have an objection to leave being given to interpose the - - -

HER HONOUR: All right.

MORISON, MR: - - - expert.

HER HONOUR: So what I will get you to do is pass those photos back. What we're going to do now, Mr Laughton, is we will get Mr Woodhouse in - - -?---Yes.

- - - and deal with his evidence. So can you just check if he's outside for me?---Yes.

And if he is, invite him into the courtroom?---That was on those photos (indistinct)

Yes. And you can come back to your seat. You take your stuff for the minute?---Okay.

(THE WITNESS WITHDREW)

WOODHOUSE, STEPHEN affirmed:

MORISON, MR: Your Honour, I have made extensive objections, but in the interests of expedition, I would be proposing that the court be allowed to - that it go in and the court - it just be a matter of the court giving such weight to it as it thought fit.

HER HONOUR: Yes. All right. So, Mr Laughton, what you need to now ask Mr Woodhouse - show him a copy of his report, and ask him to identify it and adopt the matters in the report. And if you have any matters arising from that, you can ask him, although that should be already in his report. And I assume you accept Mr Woodhouse's qualifications as an expert?

MORISON, MR: I do, your Honour.

HER HONOUR: All right. Mr Woodhouse is accepted as an expert evidence before the court.

LAUGHTON, MR: Here we are.

MORISON, MR: As to structural engineering matters.

HER HONOUR: Yes. That's it. Yes, so - - -

LAUGHTON, MR: This is the report.

HER HONOUR: Show Mr Woodhouse a copy. He has probably brought one, but show him that copy?---I do have a copy of it, yes. Yes, that's a copy of my report.

All right. Now, we will tender that report.

LAUGHTON, MR: Okay.

HER HONOUR: (indistinct) do you want to retain it? You've got no further questions for Mr Woodhouse?

LAUGHTON, MR: No. I've got other copies somewhere.

HER HONOUR: Okay. All right.

LAUGHTON, MR: That report is tendered into evidence, subject to the court dealing with any subsequent objections. So that's exhibit 14. Exhibit 14 is the expert evidence report of Mr Stephen Woodhouse.

EXHIBIT 14 Applicants
 Expert evidence report of Stephen
 Woodhouse

HER HONOUR: All right. Stand up, Mr Laughton. Are there any further questions for Mr Woodhouse?

LAUGHTON, MR: No.

HER HONOUR: Okay. All right. Thank you. Mr Morison.

MORISON, MR: Yes, your Honour. Can Mr Woodhouse please see exhibit 6. Now, could you take that out of its sleeve. Are there one page or two pages there?---There are two pages.

Right. Now, this is in evidence as being part of a building permit for the retaining wall on the east side of 11 Keble Heights. Do you see contour lines shown there?---Yes.

And do you see that the water authority has approved this on 15 April 1994 - - -?---Yes.

- - - and the City of Bunbury on 23 April 1994?---Yes.

Do you see contour lines going across 11B Keble Heights, starting with five metres and ending up at 10 metres?---Yes.

And do you see that the 10-metre contour is at the north-eastern corner of 11 Keble Heights?---Yes.

And does it follow that the ground above, that is, to the east of the 10-metres contour line, is higher than the rest of 11 Keble Heights?---Yes. You could infer that it's an upward slope.

Well, it's exactly what the contour shows, isn't it, because it starts at five and then, across, it shows six and then, across, it shows seven, then eight, nine, and then 10 is the last and the highest of the contours. So that just clearly shows, doesn't it, that the north-east corner is the highest part - was the highest part of 11 Keble Heights, doesn't it?---Yes.

And where it intersects this 10-metre contour line, where it intersects the eastern retaining wall, it intersects it - let's see if there's a - - -

HER HONOUR: Sorry. Could you slow down a bit, Mr Morison.

MORISON, MR: I'm sorry, your Honour.

HER HONOUR: So Mr Woodhouse has agreed that the north-east corner was the highest part of 11 Keble Heights. What was your next question, sir?

MORISON, MR: Yes. Do you see where the 10-metre contour line intersects the eastern boundary of 11 Keble Heights?---Yes.

And would you agree that that intersects at a point about five metres from the common boundary? Let me put it another way. You will agree that there's a part on the north-east corner of about five metres, which is the common boundary between 14 Trinity Rise and 11B Keble Heights. Do you agree with that?---Yes.

So, taking that dimension, would you agree that the distance from the point where it angles through to the intersection of the contour line and the boundary is not more than five metres?---I agree.

And it shows, then, that along the remaining length of the retaining wall, the ground was lower than 10 metres; is that right?---Yes.

Could you go to the second page. Would you just hold that up to (indistinct) now, that - yes. Thank you. Is that a series of details relating to a retaining wall at the common boundary between 14 Trinity Rise and 11 Keble Heights?---I would disagree with that.

Right. What do you say that is?---I would say that is a detail on the western and northern situation, not on the eastern.

Now, could you look at these two documents, please. Now, these are two pages of - I think you will agree with me so far - two pages of footing details prepared by Civil and Structural Engineering. Are either of those pages footing details of the eastern retaining wall?---I don't believe they are.

Neither of them are?---No.

Do you know - I will just have those back, if I may, please. Look, before I do, I'm sorry, what is it that makes you believe that neither of those are footing details for the eastern retaining wall?---We've seen the rear of the wall, and there is not - like, what I had seen is no - no mass block - block - molten rock behind it. We've got - we have blocks behind all.

What I'm really asking you is not so much to compare that with your visual inspection but to indicate whether one of those appears to be the footing details, the ones that are just hanging over the witness box?---As far as I can see,

these are the same drawing. This is exactly the same drawing.

All right. I wonder if I can have that back, please. I wonder if those could be marked for identification, your Honour.

HER HONOUR: All right. Hand those up. Can I have exhibit 6 back? You're finished with that?

MORISON, MR: Yes, your Honour. Thank you.

HER HONOUR: All right. So 6 is returned, and the two drawings shown to Mr Woodhouse are marked MFI2.

MFI 2 Respondents
Two drawings

MORISON, MR: Thank you, your Honour. Now, Mrs Marsh's evidence will be that she took a photograph of a hole that Mr Marsh dug just on their side of the retaining wall, and I will show you the photographs that were dug. This will be the evidence. Could the witness please see this.

HER HONOUR: Dug a hole where?

MORISON, MR: On their side, on the 14 Trinity Rise side, of the retaining wall. And the evidence will be that Mr Marsh dug that hole and that the hole was deep enough to accommodate the length of the spade and some of his arm as well. Now, do you agree that that indicates that there was no reinforcement whatever on the 14 Trinity Rise side of the retaining wall?---I - I can't, from this photograph, say - say where that is in relation to the front face of the wall.

Would you look at this photograph, please. Now, the evidence will be that this is a photograph of Mr Marsh with his shovel down on the surface on the Keble Heights side. You see there, don't you, that there are some metal objects which are, presumably, designed to hold the wall up? Is that correct?---Yes.

And you saw those, did you?---Yes.

Yes. So do you now know - - -?---I can see their position now, yes.

All right. So the question was, do you agree these show that there was no support whatever for the retaining wall on 14 Trinity Rise's side?---At that position, it would

appear that there is no backing block for the length of that handle.

Does that not then entirely put in error your suggestion that it is fully reinforced by concrete blocks throughout the length of the common boundary?---I would have to expose further lengths in that. I mean, our - our probing indicated that there were backing blocks behind the - the face block.

But you would agree not there?---At this position, there - it - I don't know how deep it is, but it looks like there's two or three blocks perhaps - with the length of the handle, two blocks perhaps.

Two blocks?---700 millimetres.

Well, how many places did you drill down?---I think we probed in two places.

In two places. I tender those.

HER HONOUR: They can be exhibit 15. Exhibit 15 is two photographs of the area behind the common retaining wall.

EXHIBIT 15 Respondents
Two photographs of area behind common retaining wall

MORISON, MR: Yes. I wonder if I can see the subpoenaed documents provided by the Water Corporation, please.

LAUGHTON, MR: That's the (indistinct)

HER HONOUR: That's City of Bunbury. I think the Water Corp is one of the pink bundles.

MORISON, MR: Actually, may I have the City of Bunbury as well, please. Thank you. I'm now handing the witness a document from the Water Corporation.

HER HONOUR: Is that a larger version of exhibit 2?

MORISON, MR: I wonder if it is exhibit 2.

HER HONOUR: There's exhibit 2. It's a much larger version, which is probably more helpful for the witness.

MORISON, MR: Yes. That's right. I wonder if you could have a look at this, please. This is one of the documents that have been provided by the Water Corporation pursuant

numbers is a dimension from the corner of - of the boundary.

Thank you.

MORISON, MR: Now, this is from the City of Bunbury's documents that they provided in answer to a subpoena. Would you look at this document, please. Now, would you agree that that's part of building permit for one of the retaining walls on 11 Keble Heights?---It's related to Keble Heights. It's a little difficult to read. Retaining walls - it appears to relate to retaining walls at Keble Heights.

Yes. Thank you. And the next page - just hold up the - that page for me, if you wouldn't mind. All right. And does that page indicate that there had been a - that there had been soil piled on the backing material for the retaining wall before it had been inspected?

HER HONOUR: So does it indicate that there had been soil
- - -

MORISON, MR: Yes.

HER HONOUR: - - - piled on the backing material - - -

MORISON, MR: Yes.

HER HONOUR: - - - before what?

MORISON, MR: Before the backing material had been inspected?---Yes. But it isn't specific as to which wall that I can tell.

All right. Does it have a building permit number on either of the documents?---There is a number. I can't make that out.

You can't make that out. Is it 11489, the building licence?---It could be.

Right. All right. Well, I can have that back. I don't think that goes anywhere. Thanks. So if it please the court, I'm now handing back all of the exhibits, save for the ones that have become MFI or - sorry - not the exhibits - the subpoenaed documents, save for the MFIs or exhibits left.

HER HONOUR: Thank you.

MORISON, MR: Could the witness please see exhibit 13. Now, this is in evidence as a building permit in respect of the eastern retaining wall for 11 Keble Heights, and there are attached to this document some plans drawn up by your firm?---Yes. Yes.

And could you go to the front page of the building permit, the VA something - VA3. What is the work the subject of this building permit according to that?---Class 10b retaining wall.

A retaining wall. And the retaining wall, as you understand it, is the retaining wall for - in respect of the whole length of the existing retaining wall on the eastern boundary; is that correct?---As shown on my - my drawing. Yes.

Right. And this involves the removal and the reconstruction of a retaining wall in accordance with your plans, does it?---The - the - the plans have been drawn up so that the existing retaining wall can be remain in position.

Right. And so that's a building permit, as you understand it, for the - would you call it the reinforcement, would you or - - -?---Strengthening, I would - - -

The strengthening - - -?---I would describe it as.

- - - of the retaining wall. And that's a building permit - you couldn't do part of the retaining wall pursuant to the building permit and not do the rest, could you?---That's not for me to say.

From an engineering point of view, you couldn't - - -?---It - - -

- - - reinforce part of it and not the rest, could you?---No. But how - how you stage that work, I'm - is not for me to say.

All right. But when you say "no", is it not the case that you would need to do it as one job, after all, may I put it to you, that the integrity of the wall depends upon the whole wall, and so if you're going to reinforce any part of it, you would have to reinforce the whole, wouldn't you?---We have designed for the whole - whole length of wall. I would say that in this instance it would be theoretically possible to stage these works, and I would recommend starting with the wall wherever the condition is worse, which is at the northern end. The other end where

it's not so bad, I - I would be okay for what - some - some delay to occur before those works are undertaken. I think staging is appropriate.

When you say "it would be theoretically possible", what do you mean, "it would be theoretically - - -"?---When I say - you know, some of this work, I - I understand, you know, from economic position, you may not be able to do in one go, and provided you carry out the works within the duration of the licence, I - I would be quite happy with that.

Did Mr Laughton show you email correspondence from the Water Corporation in relation to backing blocks? Did he show you any email correspondence with the Water Corporation?---I have seen Mr Laughton's webpage and there is lots of information on there. It's very possible I may have opened up those and read it. I - - -

Okay. Now, that webpage, how did you - that was on the internet, was it?---Yes. Mr Laughton gave me the - the address for that.

Right. And was there two parts to it? Was there a summary and timeline? Was that part of it?---Yes. I recall that.

And was there 60 pages, then, including some 48 pages of photographs?---Possibly. Yes.

Right. Now - all right. So you don't recall any email correspondence, but what you're saying is that you - that it may have been there, but you - - -?---I - - -

You would obviously defer to Mr Laughton as to what was there?---I - I would have - I would have looked at it. If I felt it was relevant, I might have read through it. If it wasn't relevant to me, I probably wouldn't have spent the time delving into it.

And do you know whether you were shown - or were you shown an email correspondence between Mr Laughton and the City of Bunbury?---I - I recollect there being a number of streams of emails in the - on the webpage.

On the webpage. All right. Well, we will ask Mr Laughton about that. If they weren't on the webpage, then where did you see them?---I wouldn't have seen them anywhere else but on the - on the website.

Right. And did you see any email correspondence - were you shown an email correspondence between Mr Laughton and the Building Commissioner's office?---Yes. I think I did.

Where?---On the website.

On the website?---Yes.

You think you did and you think it was on the - - -?---I did. There was something for the SAT, I seem to remember, and I remember an ombudsman email as well. I'm not sure which one you're referring to.

All right. What - in what form did Mr Laughton's instructions take to you?---I - my - I - I had two - two phases of instructions. The first was to design remedial works for the retaining wall, and then more recently a report which has been presented here.

Yes. What instructions did you receive from him for the report?---To examine the wall, describe its circumstance, and a situation about its - the sand behind it and whether it was, I guess, structurally stable.

So it was oral instructions, was it?---Yes.

Right. There's no emails from him to you setting out those instructions, or was there?---I don't recollect one.

You don't need to look at Mr Laughton?---No. No. I - I don't recall one at all.

No?---There may have been.

Mr Laughton doesn't need to be shaking his head either?---But, yes, I don't - I don't recall an email with any written instructions Mr - - -

Yes. I see. Apart from what was on the internet, did you receive any other hard copy documentation?---No. No.

Okay. Now, you didn't see any - you didn't see the retaining wall at 14 Trinity Rise being constructed, did you?---No.

You didn't see any vehicles going on to 14 Trinity Rise in the course of the construction - - -

HER HONOUR: Just slow down, thank you.

MORISON, MR: Sorry, your Honour?---No.

HER HONOUR: Thank you.

MORISON, MR: And you know that there's a sewer main in the strip between the boundary of 11 Keble B and - - -?---Yes.

- - - the retaining wall of 14 Trinity Rise. And you know that there's an inspection plate within that section there, that strip between the retaining wall of 14 Trinity Rise and the boundary of - - -?---Yes.

Yes. And so your suggestion in your report that there may have been vehicles going near the boundary of 11 Keble Heights, that's speculation, isn't it?---It isn't possible to manhandle blocks of the size that were used for the construction of the retaining wall, and mechanical lifting and carrying is how contractors normally build retaining walls, which would be vehicles such as a bobcat with an arm adapted to the front to lift and carry in place blocks.

Yes. And that's - and it would be perfectly possible, wouldn't it, for a - machinery of that nature to create - construct the retaining wall without going anywhere near the boundary of 11 Keble Heights, wouldn't it?---No.

Well, are you suggesting that they would have driven over the sewer main?---Yes.

I suggest you're not an expert - with respect, I suggest you're not an expert on machinery that would be needed to build a retaining wall or the manner in which a machine would build the retaining wall. That's not part of your expertise, is it?---As an engineer, and as a designer of retaining walls, and inspecting retaining walls in many thousands of home sites, I would say I would have reasonable expertise as to how a retaining wall is constructed.

Those are my questions, your Honour. No. I just - might just consult one other source. All right. Now, you - the suggestion there was 700 millimetres of soil against the fence, that was not of your personal knowledge, was it?---I could infer that from the situation.

No. It wasn't of your personal knowledge?---No.

No. Was this tree that was tethered to the wall about the height of the roof of 11B Keble Heights?---No. It's - well - so higher than the eaves.

Higher than the eaves. Somewhere between the height of the eaves and the height of the top of the roof?---Yes.

It wasn't an immature tree, was it?---I would have said it was. It was still growing. Yes.

So your conjectures regarding the natural ground level, that would give way to actual contour surveys, wouldn't it?---Sorry. I'm not quite understanding that question.

When you were asked about - when you were giving an opinion on possible soil height, you didn't have before you any contour surveys, did you?---I had the drawing that we saw earlier and another drawing which showed contours on it as well.

Why would you need to speculate then on what the natural ground level would be if you had contours onto the drawings?---Well, that - that was - you know, the - those drawings were from the - the nineties. You know, accuracy was perhaps less than it was these days, so within a few hundred millimetres one way or another, but I - I - I wasn't - yes. That was just really a matter of accuracy.

So you ignored the contour surveys that you saw?---No. No. I mean, I - I based my levels on the contour surveys and the temporary benchmark that was used on one of the plans and extrapolated from that.

Why would you not regard the contour surveys - if I'm asking the same question again - why would you not regard the contour surveys on these stamped plans - - -?---Yes. I
- - -

- - - as - sorry - as being accurate as to the natural ground level?---Like within accuracies of the time, I would say that they would be inaccurate.

Right. Those are my questions, your Honour.

HER HONOUR: All right. Now, Mr Laughton, if you stand up. You're permitted to clarify with Mr Woodhouse anything he has been asked in cross-examination. You can't ask him for new information, but if you want him to clarify anything that he has been asked in cross-examine, you can ask him. That's called re-examination.

LAUGHTON, MR: Okay. Referring to those photos that I've not actually seen before, despite asking for them, can I

- - -

MORISON, MR: I object, your Honour.

HER HONOUR: On what basis?

MORISON, MR: I object to that, because as I understand it, it's not correct. They were, as I understand it, provided. I would have to look into it, but I don't think from the bar table my - - -

HER HONOUR: Leaving aside the gratuitous mark, are you referring to these ones?

LAUGHTON, MR: Yes.

HER HONOUR: Okay.

MORISON, MR: Yes. Thank you.

HER HONOUR: You wanted to ask your witness about those, do you, or you want to see them?

LAUGHTON, MR: Yes.

HER HONOUR: Okay. So the witness - Mr Laughton is talking about exhibit 15.

LAUGHTON, MR: Okay. How do I put this? Given that the original boundary retaining wall has moved, would you expect the backing blocks to move with it?---The face blocks could move independently of the backing blocks. Yes.

So there would be a gap between the face block and the backing blocks?---There could theoretically be a gap.

And that hole we assume to be roughly the size of that gap?---I couldn't say on that. The - the photograph is too dark in - in the depths of the hole to see clearly what's going on.

Yes. Fair enough. So it's quite possible that - - -

MORISON, MR: Your Honour, that's leading. If it please the court, I object.

HER HONOUR: Can't ask a question that suggests the answer.

LAUGHTON, MR: Okay.

HER HONOUR: So you ask him an actual question. You were about to say, "Isn't it possible that this is the case", which suggests to your witness the answer.

LAUGHTON, MR: Okay.

HER HONOUR: So - - -

LAUGHTON, MR: Are you able to tell from those photos if there is a backing block or not?---No.

Okay. I forget the other questions he was asked. Sorry. I've just sort of gone blank. Yes. That can go back if he's not sort of then fussed.

HER HONOUR: We will have exhibit 15, thanks, back.

LAUGHTON, MR: Yes. The - I've got to phrase this right. Sorry. Can I say, "Is it possible" - no, I can't say that.

HER HONOUR: No.

LAUGHTON, MR: No. What would you say is normal industry practice - sorry - I will start again. What would you estimate the weight of those blocks to be - of the blocks on the new retaining wall on the Marshes' property?---The - the density of reconstituted limestone blocks is in the order of - - -

MORISON, MR: Your Honour, this hasn't arisen from - this doesn't arise from cross-examination.

HER HONOUR: Yes.

MORISON, MR: It's just further evidence-in-chief.

HER HONOUR: It is a valid objection. It has to arise out of what Mr Woodhouse was asked in cross-examination - - -

LAUGHTON, MR: Yes. He was - - -

HER HONOUR: - - - and you're asking him for new information.

LAUGHTON, MR: It's not - yes. Okay. I will go straight to the information rather than the - yes. The - how do I put this? Is it possible to manhandle those blocks without any - without the use of machinery?---No.

Okay.

MORISON, MR: Your Honour, my objection, I must say, I have to withdraw, because I hadn't realised it was in connection with the issue of the use of machinery.

HER HONOUR: Okay.

LAUGHTON, MR: Yes. I was trying to - yes.

HER HONOUR: So you can ask again, if you want, the question of estimate of weight.

LAUGHTON, MR: No. Well, the answer is - that's - I know the answer to the first one. It's around 200 kilos, and it's just not going to be possible to - - -

MORISON, MR: Objection.

HER HONOUR: Again, you can't give that evidence from the bar table.

LAUGHTON, MR: Yes. Okay.

HER HONOUR: Okay.

LAUGHTON, MR: Yes. It's - it's sort of answered now anyway. In your opinion, is there any restrictions on vehicles going above sewerage lines of any sort?

MORISON, MR: Objection. Not within the qualifications of the witness.

HER HONOUR: Yes.

LAUGHTON, MR: Okay.

HER HONOUR: It is - specialist evidence is confined to the area of specialty?---Okay.

LAUGHTON, MR: I should have taken notes.

HER HONOUR: And it was also an extremely wide question.

LAUGHTON, MR: Yes. No. One of the statements was -was sort of very surprised, or acted very surprised, that machinery could go over the sewerage - - -

HER HONOUR: Well, Mr Woodhouse has already expressed a view about that - - -

LAUGHTON, MR: Okay.

HER HONOUR: - - - in respect to another matter. I don't know that you can really take it much further.

LAUGHTON, MR: Yes. Okay. I should have taken notes. Is there any relationship between the contour lines showing on the building plan and the AHD shown on the sewerage drains?---No.

No. Sorry. I've sort of gone blank. Yes. No further questions.

HER HONOUR: Thank you for your time today. You're free to go.

(THE WITNESS WITHDREW)

HER HONOUR: All right. That's actually already taken us to quarter past 4. How much more cross-examination have you got?

MORISON, MR: Say half an hour.

HER HONOUR: You can limit it to half an hour.

MORISON, MR: Not necessarily.

HER HONOUR: I'm just wondering whether it's best then to start afresh tomorrow.

MORISON, MR: I think so.

HER HONOUR: All right. That means your evidence of the cross-examination will continue tomorrow. It will start when we're fresh tomorrow. So you will still be in the witness box, and you shouldn't discuss your evidence with anyone tonight. Not that you would be likely to, but you have to not discuss it at all. Okay.

LAUGHTON, MR: Can I ask the concrete - - -

HER HONOUR: Yes. Yes. Yes. But don't tell him - you don't say, you know, "This is what we were chatting about" or anything. Just say, "Can you come tomorrow and - - -"

LAUGHTON, MR: Okay.

HER HONOUR: "- - - attend to your quote." Okay.

LAUGHTON, MR: Yes.

HER HONOUR: But you can't tell him because - anyway, his evidence is nothing really to do with the liability issue anyway. He just gave a quote to fix it.

LAUGHTON, MR: Yes. Yes. Yes.

HER HONOUR: Yes. So if you want him to come, we will interpose him tomorrow. But if you can't get him tomorrow, that's it, because you were - as Mr Morison said, you were told that you should get him here. Okay. All right. And then we've just got the one, potentially two - do you think we will finish tomorrow?

MORISON, MR: Yes. Yes. Yes.

HER HONOUR: Okay. All right. I can't - I've got three applications, and I presume I will have the rest in custody, so I think - I don't think we could get going before 10 tomorrow - - -

MORISON, MR: That's all right.

HER HONOUR: - - - because I have other cases. All right. Thank you. So back here tomorrow, 10 o'clock.

AT 4.16 PM THE MATTER WAS ADJOURNED UNTIL
WEDNESDAY, 17 AUGUST 2016

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