

1.1 MAGISTRATES COURT of WESTERN AUSTRALIA  
1.2 (CIVIL JURISDICTION)  
2.1.1.1 GENERAL FORM OF AFFIDAVIT  
FORM 2

2.1 Registry: 3 Stephen street Bunbury, WA, 6230 2.2 Phone: Fax:	2.3 Case number: BUN/GCLM/316/2015
Claimant	2.4 Andrew Laughton
Defendant	2.5 Sharyl Marsh and James Glynn Marsh

I Andrew Laughton of No fixed address, but formally of 11b Keble Heights, Bunbury.

(full name and address) (occupation) Electrician

(\* Delete as applicable)

having been duly affirmed say on affirm the following:

1. I am the Claimant (*description of party*) in this case.

2. This affidavit submitted on 8 September 2016 is to appeal the decision handed down by the court on 17 August 2016 for the following reasons of law and fairness.

### 3. Issues of Law.

3.1. Under the MAGISTRATES COURT ACT 2004 -

[http://www.austlii.edu.au/au/legis/wa/consol\\_act/mca2004214/](http://www.austlii.edu.au/au/legis/wa/consol_act/mca2004214/)

3.2. - SECT 30 [http://www.austlii.edu.au/au/legis/wa/consol\\_act/mca2004214/s30.html](http://www.austlii.edu.au/au/legis/wa/consol_act/mca2004214/s30.html)

3.3. The Court's duties in respect of self-represented parties

3.4. The court had a duty to inform myself, as a self represented party, of the need to ask questions about intended evidence, and the consequences of not doing so. I was not even aware that I had the right to object to material being presented as evidence, nor did I know the consequences of not doing so.

4. **My statement of fact and law that was submitted on 8<sup>th</sup> August 2016** was totally ignored, and no reason was ever given for it to be ignored.

4.1. This is arguably the most important document in any court proceedings, and I feel that at least some reason should be given as to why it was ignored.

4.2. Instead a much earlier version of this same document submitted to the court on 22 February 2016 was used, and while I finally received a notice of what the defense was going to be on 11<sup>th</sup> August 2016, I believed this was obsolete.

4.3. **I did not know what the defense was going to be before I walked into the court room on 16<sup>th</sup> August 2016.**

**5. Plan showing contours of 14 Trinity rise.**

- 5.1. This document was not listed in the list of documents provided by the defense on 19<sup>th</sup> January 2016.
- 5.2. This document, and any others like it was requested by me on 25/1/2016. Reminders were given by email and other documents submitted to the court including a final request for documents on 8<sup>th</sup> August 2016, bullet point 4.6.
- 5.3. A copy of this document has never been provided, nor has any opportunity been given to examine it.
- 5.4. This document was submitted as evidence in court without me having the ability to read it, and I did not even know I may have had the ability to object to it being presented as evidence.
- 5.5. This document has the potential to determine the ground level at an unknown point in time, and is very important evidence.

**6. Folder of 48 documents from the city of Bunbury.**

- 6.1. I was given access to this folder between 9:45 am and 9:50 am on the morning of 16<sup>th</sup> August, when the hearing itself started at 10 am.
- 6.2. 10 or 15 min is not sufficient time to scan these documents, let alone read and consider if they are important.
- 6.3. As of the date of this appeal, I still do not know if I had the ability to delay the hearing or to object to these literally last minute documents.

**7. Folder of documents thought to be from the water board.**

- 7.1. I was given no access at all to this folder, but believe it to be correspondence from the water board.
- 7.2. As of the date of this appeal, I still do not know if I had the ability to delay the hearing or to object to these literally last minute documents.

**8. Plans, Diagrams, correspondence and emails held by Structerre Consulting Engineers.**

- 8.1. I have a pink A4 paper dated 10/08/2016 listing plans, diagrams, correspondence and emails held by Structerre Engineering. This has never been received, but may have been in the folder I was not given access to.
- 8.2. This potentially holds critical information about who accepted responsibility for the height of the new retaining walls at 14 Trinity Rise.

**9. Various Plans and Pictures of the property situated at 14 Trinity Rise College Grove.**

- 9.1. I have an extra pink A4 paper dated 10/08/2016 listing "Various plans and pictures of the property situated at 14 Trinity Rise". This has never been received, but may have been in the folder I was not given access to.
- 9.2. This has the potential to hold critical information about the ground level at the boundary retaining wall.

**10. Incorrect statements told under oath.**

- 10.1. Sharyl Marsh made at least three incorrect statements while under oath.
- 10.2. **The first statement** was that she did not hose me down. In point of fact she did deliberately aim a hose at me and wet me down. The owner / occupier of 15 Keble Heights was a witness to at least part of this incident.
- 10.3. **The second statement** was that the Marshes dug a hole behind the retaining wall, all the way to the base of the retaining wall and found no evidence of backing blocks. While it is theoretically possible to exploit the gap created by the face of the retaining wall moving away from the backing blocks, this gap would be very small, possibly enough to force a flat shovel blade down. However it is very doubtful that this would extend all the way to the base as claimed, and it would be impossible to do without finding any evidence of backing blocks. This needs to be confirmed by an independent person.

- a) I did not know photos of the top of this hole existed before the hearing, and did not know I could object to them.
- 10.4. **The third incorrect statement** was that the boundary retaining wall in question did not extend to the North between 12 Trinity Rise and 14 Trinity rise, and instead 12 Trinity Rise had a raised garden bed.
- a) This will be very easy to prove wrong with photos or inspection as it has not changed for over 20 years, and part of this retaining wall is visible to the Marshes every time they enter or leave their driveway.

11. **Sewerage manhole.**

11.1. The Courts decision depended heavily on a **confidential** email from the water board to myself stating that they did not think the height of the sewerage manhole had changed from original. **It made no reference to the ground level at any point in time, and only applied to the Manhole itself.** It also claimed that I could verify this at any time, however it did not provide me with any permission to enter my neighbors land, and I strongly doubt they have the authority to give this permission. For your convenience that email from 11/09/2015 is copied as the following point.

11.2.  
*Mr Laughton,*

*We have checked our infrastructure on the easement at 14 Trinity Rise and are confident that it has not moved or been raised since 1991.  
This also reflects the information on Buildernet and the fact there are no updated ascons. When installed, the top of the man hole was 39.94 AHD, should you wish to survey the height, you are welcome do so.*

*Regards,*

**Dave Taylor**

*Civil Team Leader  
South West Region*

**Water Corporation**

**T: (08) 9725 5113**

[Dave.Taylor@watercorporation.com.au](mailto:Dave.Taylor@watercorporation.com.au)

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

- 11.3. Any admission on my part about this email is only that Dave Taylor appears to have written it, not that it was correct as a point of fact.
- 11.4. As can be seen by photos submitted as evidence, the manhole is below the third course of bricks from the top, while at the same time the sewerage point closest to the damaged retaining wall is clearly above this third course of bricks, and the third sewerage point is at a different level again.
- 11.5. Clearly even if the manhole did have a reference to ground level, the other sewerage points do not.
- 11.6. **Any assumptions made by the court about the ground level are most likely incorrect as a point of fact..**

12. I have requested a transcript of the entire court proceedings, however as of the date of this document I have still not received it. I was under extreme stress at the time and it is

*AJ*



possible I made a couple of minor errors, and missed out on other relevant points. I am submitting this now as I do not want to miss the deadline to appeal the decision.

SWORN

At Albany this Thursday the 8<sup>th</sup> day

of September 2016 in the presence of

  
.....

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

  
.....

Deponent

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

Tick [ü] appropriate box

Lodged by	<input checked="" type="checkbox"/> Claimant or claimant's lawyer <input type="checkbox"/> Defendant or defendant's lawyer <input type="checkbox"/> Other			
Address for service	laughton.andrew@gmail.com			
Contact details	Telephone: 0409 931 559	Lawyer's ref:	Fax:	E mail: laughton.andrew@gmail.com

as at 01/09/2008

**Geoffrey Gordon McNeill JP**  
**Justice of the Peace**  
Western Australian Reg. No: 29418