

1A. Affidavit (r. 23A)

District Court of Western Australia		Appeal No / Action No: 10 of 2017
Held at Perth ^{1A} <i>Bunbury</i>		AFFIDAVIT ¹
FILED 23 JAN 2017 REGISTRY OFFICE DISTRICT COURT BUNBURY	Parties	Andrew Laughton *Appellant/Plaintiff Sharyl Marsh and James Marsh *Respondent/Defendant *delete inapplicable and/or add full party details
	Person making affidavit	Andrew Laughton
Date of filing		
Date made		
Purpose ²	Affidavit to support appeal against decision on BUN/GCLM/316/2015 for reasons of Fact, Law and Fairness.	
Filed by	Andrew Laughton. Claimant.	
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I, Andrew Laughton, of no fixed address, electrician, [affirm in accordance with the Oaths, Affidavits and Statutory Declarations Act 2005] as follows —

Andrew Laughton

[Signature] u.P.
28933.

Notes to Form 1A —

- 1A. If not held at Perth, state the location of the relevant registry.
1. The affidavit must comply with the RSC Order 37.
2. Example: To support summons by plaintiff dated 1 May 2010 for summary judgment.
3. The index must comply with the RSC Order 37 rule 2(7). Form 1A contains in italics an example of an index.
4. Page 1 must be on a separate sheet of paper from the above.
5. The *Oaths, Affidavits and Statutory Declarations Act 2005* Part 3 sets out the requirements for affidavits and who are authorised witnesses for affidavits.

1 MAGISTRATES COURT ACT 2004 - Sect 30

1.1 http://www.austlii.edu.au/au/legis/wa/consol_act/mca2004214/s30.htm

1.2 For convenience this is copied as the next point.

1.3

MAGISTRATES COURT ACT 2004 - SECT 30

30. *Court's duties in respect of self-represented parties*

In a case where a party is self-represented, the Court must inform the party of—

(a) *the need, when cross-examining a witness called by another party, to ask the witness about any evidence of which the witness or the other party has not previously had notice that the self-represented party—*

(i) *intends to adduce; and*

(ii) *intends to allege will contradict the witness's evidence;*

and

(b) *the consequences of not doing so.*

1.4 I was not given an opportunity to object to material being presented as evidence, nor was I aware that I had the right to object, nor did I know the consequences of not doing so.

2 My statement of fact and law that was submitted on 8th August 2016 was totally ignored, and no reason was ever given for it to be ignored.

2.1 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.

2.2 An earlier version was written in an attempt to find out why the Marshes were objecting to an apparently clear cut case against them. All my attempts at establishing agreed facts were refused.

2.3 This much earlier version of the document submitted to the court on 22 February 2016 was used instead of the currant version from 8th August.

2.4 The defence to the 22 Febuary version was received on 11th August 2016, but this was obsolete before it was received.

2.5 **I did not know what the defense was going to be before I walked into the court room on 16th August 2016, and I did not know my statement of fact and law was going to be ignored.**

3 Plan showing contours of 14 Trinity rise.

3.1 This document was not listed in the list of documents provided by the defense on 19th January 2016.


3.2 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 8th August 2016, bullet point 4.6.

3.3 A copy of this document has never been provided, nor has any opportunity been given to examine it.

3.4 This document was submitted as evidence in court without me having the ability to read it, or the opportunity to object to it.

3.5 This document has the potential to determine the ground level at an unknown point in time, and is very important evidence.

3.6 If I had of known of its existence I would have been able to get a relative height referance for the known contours on the boundry retaining wall, and the height of the sewerage manhole would have become relevant.



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4 Folder of 48 documents from the city of Bunbury.

- 4.1 I was given access to this folder between 9:45 am and 9:50 am on the morning of 16th August, when the hearing itself started at 10 am.
- 4.2 10 or 15 min is not sufficient time to scan these documents, let alone read and consider if they are important.
- 4.3 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.
- 4.4 As of the date of this appeal, I have been denied further access to these documents from the defence, and the court only has a copy of what was submitted as evidence.

5 Folder of documents thought to be from the water board.

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

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

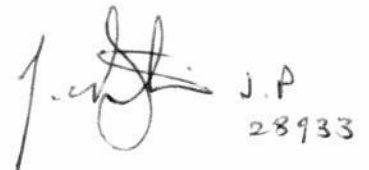
- 6.1 I have a pink A4 paper dated 10/08/2016 listing plans, diagrams, correspondence and emails held by Structerre Engineering. This has never been received, but may have been in the folder I was not given access to.
- 6.2 This potentially holds critical information about who accepted responsibility for the height of the new retaining walls at 14 Trinity Rise, and for not complying with the building regulations, which in turn has resulted in the damage and this court case.

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

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

8 I was never given the opportunity to interview my primary witness.

- 8.1 There are at least two sides to every story, before entering the court I was expecting to be able to present my side of the story, the defence to be able to present their side of the story, for us both to be able to clarify any possibly misleading information given.
- 8.2 By denying me the opportunity to interview my primary witness, myself, I was denied the ability to present my side of the story, or to present any evidence to back it up.
- 8.3 The defence was given the opportunity to interview everybody.



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9 Incorrect statements made under oath by Sharyl Marsh.

9.1 The statement 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.

9.1.1 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.

9.1.2 Access to confirm this detail has been denied.

9.1.3 I did not know photos of the top of this hole existed before the hearing, and did not know I could object to them.

9.1.4 This is relevant because it implies that the retaining wall was not built to the appropriate standards, which I believe is false.

9.2 The statement was that the boundary retaining wall did not extend to the North between 12 Trinity Rise and 14 Trinity rise, and instead 12 Trinity Rise had a raised garden bed.

9.2.1 This will be very easy to prove false with photos or inspection as it has not changed for over 20 years, and at the Northern end of the retaining wall, where the ground level goes below the top of the retaining wall, the retaining wall is visible to the Marshes every time they enter their driveway and they need to turn to avoid hitting it every time they leave their driveway.

9.2.2 This is relevant for the following reasons:

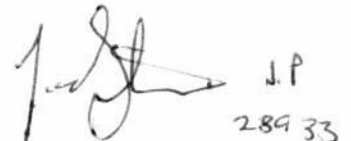
9.2.2.1 As can be seen by both the building permit and photos submitted as evidence, the retaining wall extends from the Southern boundry of 13 Keble Heights, past 15 Keble Heights, and extends along the entire length of 14 Trinity Rise to Trinity Rise itself.

9.2.2.2 Along 13 Keble Heights and most of 15 Keble Heights the ground level is equal to the height of the boundry retaining wall.

9.2.2.3 Close to 14 Trinity Rise the ground level raises to 700mm above the height of the retaining wall, and this level continues through to the driveway on 14 Trinity Rise.

9.2.2.4 The ground level along the majority of the boundry retaining wall between 12 Trinity Rise and 14 Trinity Rise is 700mm higher, and a post and rail retaining wall has been erected on the sewerage easment, against building regulations, to help stop this extra 700mm of sand from damaging the fence.

9.2.2.5 I believe this false statement severely damaged my claim by making it seem that 12 Trinity Rise was built much higher than it is, and that the raised ground level was the original ground level.



10 Sewerage manhole.

- 10.1 The Courts decision depended heavily on an email from the water board to myself stating that they did not not think the height of the sewerage manhole had changed from original.
- 10.2 It made **no reference to the ground level at any point in time**, and only applied to the Manhole itself.
- 10.3 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.
- 10.4 For convenience, that email from 11/09/2015 is copied as the following point.
- 10.5
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: tel:(08) 9725 5113 (08) 9725 5113
Dave.Taylor@watercorporation.com.au

- 10.6 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.
 - 10.7 As can be seen by photos submitted as evidence, this manhole is at a different height to the other sewerage referance points, and even if the manhole did have a reference to ground level, the other sewerage points do not.
 - 10.8 As can be seen by photos submitted as evidence, the Manhole in question is about 10 to 15 Meters away from 11 Keble Heights.
 - 10.9 **Any assumptions made by the court about the ground level are most likely incorrect as a point of fact.**
- 11 I cannot afford \$1,000 for a copy of the entire transcript, the points above are taken from notes made shortly after the trail and from memory and I believe them to be accurate. I have received a copy of the decision itself and there are several errors of fact, law and fairness as listed in the following points;



12 Page 90, second last paragraph.

- 12.1 These statements make the assumption that the ground level was not raised to the height(s) of the sewerage infrastructure.
- 12.2 The statements also assume that the ground level at the boundry was not raised to the height(s) of the sewerage infrastructure, where the evidence presented clearly showed it has been.
 - 12.2.1 The contours show sloping ground, with a fall of about 200mm for every horizontal meter.
 - 12.2.2 The photos given as evidence show level ground.

13 Page 90. Last paragraph.

- 13.1 the contours at that point was 10 meters high and the retaining wall was only 1.7 meters high.
 - 13.1.1 This paragraph does not make sense.
 - 13.1.2 Did the court expect the retaining wall to be 10 meters tall ?
 - 13.1.3 This shows a basic lack of understanding of what they were looking at, and the referances used.
- 13.2 It is not common ground that the retaining wall was built too low. This statement conflicts with the first paragraph on page 92, and also the engineering report.

14 Page 94, paragraph 4, 5 & 6

- 14.1 These paragraphs assume that no engineering assessment needed to take place before constructing the Marshes new retaining walls. This is wrong as a matter of law. Also referred to on page 91, paragraph 1.
 - 14.1.1 Building Act 2011, section 77. Other land not to be adversely affected without consent, court order or other authority.
 - 14.1.2 The Marshes new retaining wall(s) are 2.7 meters from the original boundry retaining wall, and do adversely affect the original boundry retaining wall due to their foundation being 500mm too high.
 - 14.1.3 The eves of the house at 11b Keble Heights were level with the new ground level on the Marshes property, and the roof at one point is within 2 Meters of the boundary fence. It is not reasonable that the Marshes did not know there was a retaining wall between the roof and the boundary fence.
 - 14.1.4 The only unknown would have been the height of the retaining wall, and this would be very easy to determine by looking over the fence. The 700 mm difference between the new ground level and the the top of the retaining wall is obvious, and should have been known about.
- 14.2 The retaining wall on the abutting property has its foundation 500mm deeper than the Marshes new retaining wall, this by itself should have raised awareness.

15 Page 96. paragraph 3.

- 15.1 Allowable costs for some reason allow for a quote to install reinforced concrete, **but not for the reinforcement itself**, nor for any bracing to prevent further damage, nor to relocate the soakwell displaced by the new foundations.
- 15.2 The amount allowed for to replace the damaged boundary fence "averaged" costs between two different dates by the same company to do the same work. Inflation only ever goes up over time, never down.
- 15.3 The court did not allow for the cost of the engineering reports, the witness costs or costs of attending the court from interstate.



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16 Page 97, paragraph 4 regarding the default judgment.

- 16.1 At the default judgment hearing there was an argument using a previous case as a precedent and involved the court approving a default decision despite irregularities. This decision effectively introduced an extra requirement, which in that case was not met. It did not effectively nullify any laws.
- 16.2 In this case, that extra requirement was met, but the original requirement appears not to have been considered, effectively nullifying any laws about deadlines if there is a plausible case.
- 16.3 The default judgment failed because "The defendant was busy". Not because someone died, or was in hospital, but because they were "busy".
- 16.4 Some paperwork was **40 days overdue**, some was **42 days overdue**, and they **missed the deadline to appeal the default decision by 10 days**.
- 16.5 I would suggest to the court that them being "busy" should be at their own expense, not at mine.

17 Relating to point 13. I assumed the court would have the general knowledge to be able to read the evidence put before it, or to at least ask if they did not understand what they were looking at. Given the statements made in the judgement an explanation about contour lines appears to be needed.

- 17.1 Contour lines show the level of the ground at a given height.
- 17.1.1 If someone is moving along a contour line, they are traveling at the same height or level.
- 17.1.2 If someone is crossing contour lines at an angle, they are either moving up or down, depending on the direction of travel.
- 17.2 The contour lines drawn up over 20 years ago for the boundary retaining wall simply picked a convenient reference point and gave it a convenient integer value high enough not to need to show negative numbers.
- 17.2.1 Any other values are relative to this reference point.
- 17.3 Any sewerage point references need to be relative to each other over a wide area, and so the most convenient reference point happens to be expressed as AHD (Australian Height Datum).
- 17.4 I do not know what reference any contours shown on 14 Trinity Rise uses, as I have yet to be given access to this document.
- 17.5 I do not know what reference any contours drawn for the new retaining wall at 14 Trinity Rise uses as I have yet to be given access to this document.
- 17.6 It is possible to convert any contour lines to any reference by simply finding the height the reference points are to each other, but this cannot be done with no access to the documents to find their reference points.

[Signature of person making the affidavit]

[Signature of authorised witness]

Authorised witness

John Charles BATES
Justice of the Peace
No. 28933

[Name of authorised witness]

[Qualification of authorised witness] ⁵

J.P. 28933

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4. 1. 2016
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