From: Junie and Ian McCourt
Sent: Friday, 19 July 2019 5:57 PM
To: Building Confidence Response
Subject: Building Stronger Foundations Discussion Paper.

To whom it may concern,

In 1998 my wife and I, and another couple, Mark and Patricia Dawson, combined our resources to buy a four-bedroom dwelling in Pendle Hill NSW.
The property was rezoned R2 and in the middle of 2014 we signed a contract with Masterton Homes to design and build a duplex on the site.
The design wasn't completed until the end of that year. As the builder closes down over the Christmas period it wasn't until January 2015 that we made a submission to Holroyd (now Cumberland) Council for a D.A.
It was fifteen months (April 2016) before council approved our D.A.
The delays resulting from the time taken to develop the design and to get the D.A. from the council resulted in a 10% increase in our building costs because one of the contract clauses allowed for this if construction did not begin within 12 months of signing.
In May 2016 the tenants who were renting the original dwelling left and in June we began demolition. Construction however, did not commence until the end of January 2017. Rather than provide a list of all that was needed, Masterton informed us of one requirement at a time that we would then deal with, such as certification of the demolition, and then we would wait several weeks only to be told of another requirement. In this way, construction was delayed until December 2016 whereupon Masterton closed down for the Christmas break. This was extremely inefficient.
Construction finally began at the end of January 2017. It was contracted to be completed in December 2017 but was not done until September 2018. This brought us into a period of liquidated damages. The standard contract allowed for $50/day. We renegotiated this and eventually settled on $200/day. This meant we would receive $1000/week for every week the build ran past the contract completion time. This was far more than the $250/week we would have received but $300 to $400/week less than market value.
Handover was on 19th September 2018. When we had signed the contract we had been told that getting an occupation certificate for the development was a simple process of getting council to certify the building as meeting occupancy standards. As this was presented to us this way, we agreed to do it ourselves and avoid the cost of paying the builder.
The process of getting the "OC" turned out to be very difficult. After getting the keys on 19th September, we spent some time identifying any defects to add to the "90 day" list. In late November the certifier's inspector came to the property. He indicated that the stairs leading from one of the garages to the laundry behind it had risers that were too high and would have to be rectified before an OC would be issued. On 10th December 2018 we emailed our "90 day" list to Masterton along with a request that the stairs be corrected as soon as possible. We received no response at all from Masterton. They closed again for the Christmas break. Come 14th January we emailed them again without response. Finally, I rang the office repeatedly until I finally managed to speak with someone at the beginning of February. Finally, on the 5th February I received a phone call from our site supervisor concerning the issue with the stairs. He organised bricklayers to come out on the 8th to redo the steps. After this the steps had to be retiled and despite repeated complaints to the builder about how slow their response was, it was not until the 12th March that the tiling was completed. This was more than three months since we informed them of the problem.
The certifier's inspector came out shortly after and approved the work. We had obtained certification upon a final inspection from the engineers, that the hydraulics work was satisfactory

and passed this on to the certifier. Unexpectedly, the certifier then requested copies of the progress inspections done by the hydraulics engineers. After ringing the engineer we found out that our site manager had only called out the engineers for one of the three progress inspections of the hydraulics work. We immediately complained to Masterton that our site supervisor had failed to meet the contract conditions by violating the D.A. conditions. We then had to wait another three months for the builder to satisfy the certifier that standards had been met.
In June 2019, the certifier finally issued an interim occupation certificate allowing us to have the properties occupied. The final occupation certificate is provisional on our covenant and 88B being processed by council and the Land Titles Office so we could split the titles on the two duplexes. At this point the council inspector came out to inspect the site as part of this process. The inspector pointed out to us that the builder had built two retaining walls that crossed our boundary lines. The front wall encroached 3cms onto the nature strip and a section of one sidewall encroached 5cms into our neighbours property.
We are currently waiting to resolve this issue but it appears that we will, for the third time, have to pay for another valuation of the finished properties, as these are only good for three months. We have told Masterton that we would like to discuss compensation for the excessive time it has taken us to get an OC so the properties could be rented but as yet, they have not replied.
We are just about to receive our first income from rent off the property we developed.
To date, it has been five years since we signed the contract with Masterton. During that time we waited five months for our design to be finalised by Masterton's designer.
We then had to wait fifteen months for council to approve our D.A. This was an absurd amount of time and cost us a great deal of money. It took seven months before we heard anything from Holroyd and this was when they provided us with a "provisional" D.A. This was essentially a 30-page document full of reasons why our submission was considered inadequate. While some issues were reasonable and dealt with in good time, others were patently absurd. We were not allowed to have our driveways together even though several other duplexes in the same street did and others were to do so after our construction began. We were forced to keep one inconveniently located Cyprus pine on site even though the arborist's report made it clear that the tree was in poor condition and would most likely die during or after the completion of the build. The arborist's final report after completion recommended the tree be removed.
Our build went far over time largely because our site supervisor had over twenty other sites to supervise. He was rarely on site and almost never provided progress reports despite repeated requests (and guarantees from him) to do so. He allowed the bricklayers to take over nine months to complete their work.
Once the build was done it was nine months before we received even our interim OC. This was the result of problems resulting from mistakes the builder had made for which as yet, they have offered no compensation.
We have concerns about the standard contract. It should be mandatory that liquidated damages and cost increases for delays in starting be agreed to before the contract is signed. A 10% increase in costs should not be automatic for a twelve-month delay. If owners decide to acquire their own OC they need details regarding how this is done and if delays in getting it are the builder's fault, compensation should be mandatory.
The standard contract also contains a provision for a ninety-day period from handover during which time the owner has the opportunity to identify any problems with the build. Any issues are then passed on to the builder who then is expected make appropriate repairs. There is however, no specified time period to do this. While a builder may make assurances that the work will be done in good time, there is no requirement that they do so. This needs to be changed, a mandated time period and penalties should be introduced for lack of compliance.
Finally, councils need to be set times for issuing DAs for standard builds and standardize their requirements so all applicants are working to a common standard.

Kind regards,
Ian McCourt