The Problem

"*Safe, comfortable, and stable housing is important for social cohesion, family stability, and individual wellbeing.*" – New Zealand Productivity Commission

Today, the goal of owning one's own home is becoming harder to reach for too many New Zealanders.

Over the past 33 years, the prices of homes have dramatically increased in comparison to average incomes – making them much less affordable.

- In 1980 the ratio of median house price to median income was around 2 to 1
- In 1990 it was around 3 to 1
- Today it is 5.3 to 1

The Causes

- The Productivity Commission got it right when they said in their housing affordability report that it takes too long to build a house in New Zealand and it costs too much.
- Section prices have risen faster than house prices in the past 20 years.
- According to the Productivity Commission, land now accounts for 60 per cent of the cost of a new dwelling in Auckland.
- One of the leading causes of the rise in the price of land is the lack of supply.
- This lack of supply is artificial and caused by urban plans and regulation.
- Metropolitan Urban Limits create land scarcity in many New Zealand cities but nowhere is this more prevalent than in Auckland.
- Land two kilometres inside Auckland's Urban limit is 8.65 times more expensive than land two kilometres outside it.
- Urban limits and poor planning are often the result of central government laws and regulations, particularly, the Resource Management Act (RMA).

The Basic Fault

The RMA denies the Freedom To Build

Prior to the RMA, New Zealand's legal framework relating to land and development respected people's fundamental right to the secure possession of their property.

People could presume that they had the right to do what they liked with their land, within the law. The phrase 'the Englishman's home is his castle' epitomised this philosophy.

When the Crown did take land or infringe on what a person could do with their own land, it had to demonstrate that it was acting in the public interest. Adversely affected landowners had the right to be compensated for losses in the value of their properties.

By replacing freedom with permission

It requires landowners to obtain a building consent or a resource consent for almost anything they want to do with their property.

It forces them to pay for the privilege of applying for that consent, whether there is any valid ground for concern about compliance with the law or not.

The RMA created a particularly strong presumption against subdivision.

Specifically the RMA:

- **Deployed broad general terms that were new to the legal framework around property** These were poorly defined in the Act and had no objective and agreed meaning outside the Act. For example, section 5(1) introduces the concept of" sustainable management". Planners, economists and lawyers often disagree over what the term actually means.

  In many cases, expert opinion is determined by whether someone is being paid to support or oppose a particular proposed land use. Case law over the 23 year life of the RMA hasn't provided much assistance. Whether a proposed development or land use is consistent with "sustainable management" is in most cases merely a matter of subjective opinion.

- **Undermined the rule of law** by establishing a range of conflicting considerations in s5(2), and s(6), but giving no basis for determining how conflicts between them should be traded off.

- **Greatly undermined security in private property rights** by deleting both the injurious (i.e adverse) affection provisions in the Town and Country Planning Act and the provisions by which an aggrieved property owner might be able to force a local authority to buy his or her property or to change an unduly restrictive provision in a plan.

- **Further undermined security in private property** by eliminating the test of standing, thereby allowing any member of the public, including trade competitors, to hold up or thwart a desirable change in land use without being confronted with the costs they were imposing on the community.

- **Ignored the public interest** by failing to assess adequately the costs and benefits of any measure from a national interest perspective

In essence the Resource Management Act has created great legal uncertainty as to what New Zealanders can and cannot do with their own property. This simply empowers local authorities and dis-empowers property owners.

This is bad for investment, bad for community cohesion, and a guarantee that the RMA will be endlessly amended and tinkered with.

The degree to which the courts have responded to the RMA's undermining of the legal protection the courts traditionally afforded to landowners is indicated by the following statements, as reported by barristers Simon Berry and Jen Vella in a 2010 review:

- *"Once the Courts were most protective of private property both real and personal. This protection has understandably diminished in the area of planning and land use legislation: here the public interest in the control of land use prevails." JF Burrows, text on statutory interpretation (2009) at p 221.*

- *".. The RMA is not considered by this Court as a drastic erosion of the rights of property owners, and so to be construed restrictively to protect their rights. That judicial perspective has gone*." High Court: *West coast Regional Council v Royal Forest and Bird Protection Society*, 2006

- *"It is inherent in the nature of district plans that they impose some restraint, without compensation, on the freedom to use and develop land as the owners and occupiers might prefer." Environment Court New Zealand Suncern Construction Ltd v Auckland City Council (1996)*

- *"In general, where permission to develop land is refused, with the consequence that it is greatly reduced in value, the courts… have treated what had happened as a form of regulation rather than a taking of property." J McGrath in the Supreme Court, Waitakere City Council v Estate Homes Limited (2007)*

The Solution:

The only solution to high prices caused by an artificial scarcity of land for residential housing is to free up supply.

To do this we must remove the Resource Management Act's anti-development bias.

This would increase the supply of land for housing and stimulate house construction, causing house prices to gradually ease back relative to incomes as the housing stock rose.

Reversing the RMA's bias against development is a major reform. It would have profound positive implication for existing council and regional plans as these typically incorporate the bias against development and are therefore, in ACT's view, against human progress

ACT's proposed reform is to amend the RMA in order to create a presumption **in favour of private property rights**.

In the case of subdivisions, landowners would be much freer to build on their own land, except to the extent restricted by law.

A presumptive right is not an absolute right. Collective action (coercive and communally agreed) would still be permitted.

For example, private land could be taken for a public reserve without the consent of the owner and with the payment of fair compensation as is possible now. Neighbourhoods could still to preserve their local character, where both the costs and benefits are equally shared and the character protection is freely assumed. The burden of proof will fall on those who wish to take or impair someone else's property rights to show that it is necessary to do so in the public interest.

Land owners who believed they were adversely affected by some provision in a national environmental standard, or regional or district plan would have the right to require those responsible for that standard or plan to demonstrate that the offending provision was necessary in the public interest and that the issue of remedies had been addressed in a manner that respected private property rights.

ACT understands that to move quickly to ease supply constraints on land for housing there will need to be transitional arrangements.

The details of how these changes would be implemented are of a highly technical nature, and should be subject to examination by an expert group.

The Solution: Detailed Options

However, high level options for implementing the policy implementation would include:

- Amending the Purpose Clause so as to make it clear that the paramount purpose of the RMA is to improve the wellbeing of members of a community. Sustainable management and protecting the environment should be a means to that end rather than a goal.

- Amending section 6 to specify that the protection of private property rights is of prime national importance.

- Reversing the presumption against compensation in section 85, so that individuals who have their property rights taken or infringed can seek compensation.

- Amending section 32 to reintroduce a test of the necessity for a provision in terms of the public interest.

- Further amending section 32 to require that the assessment of costs and benefits to members of the community must be in accordance with the framework used for assessing the costs and benefits of central government laws and regulations.

- Reversing the presumption against subdivision in section 11(1) so that it asserts that subdivision is permitted unless expressly prohibited by some provision that satisfies the amended s32 test.

- Amending the right to charge applicants for resource consents under s36(4)(b)(i). so as to ensure the land owners do not end up paying more for a resource consent than the value that will be added to their property.

New Zealanders deserve to be able to afford their own home.

Reform the Resource Management Act and Restore the Freedom To Build