Consultation on Land Remediation Relief (LRR)

Date: 17 September 2025

Introduction

The submission is jointly prepared by the British Property Federation (BPF) and The Association of Real Estate Funds (AREF) – both organisations will be merging alongside the Investment Property Forum (IPF), into a new organisation, Real Estate:UK (RE:UK) from 2026.

The British Property Federation (BPF) represents the real estate sector – an industry which contributed more than £116bn to the economy in 2020 and supported more than 2.4 million jobs. We promote the interests of those with a stake in the built environment and represent a broad range of investors, owners, managers and developers of real estate as well as those who support them. Our members include the largest UK residential and commercial landlords and have hundreds of billions of pounds of assets under management, including over 100,000 privately rented homes and hundreds of millions of square feet of commercial real estate space. Their investments help drive economic success, provide essential infrastructure and create great places where people can live, work, and relax.

The Association of Real Estate Funds (AREF) represents the UK real estate funds industry and has around 50 member funds with a collective net asset value of approximately £50 billion under management on behalf of their investors. AREF is committed to promoting transparency in performance measurement and fund reporting through the AREF Charter, the MSCI/AREF UK Quarterly Property Funds Index and the AREF Property Fund Vision Handbook.

We strongly support the Government's aspiration to deliver more housing through brownfield development. Brownfield land is often in inner city and town locations, which typically already offers access to established infrastructure and transport links. The more we can capitalise on these locations for new housing, the more we can make the most of our existing infrastructure – and at the same time, alleviate the pressure on greenfield land to meet our housing need. We therefore welcome the focus in the consultation on examining how land remediation relief (LRR) can better support this objective - ensuring that brownfield land does indeed become the first port of call for developers. It is also a very timely consultation given the challenges facing development viability at present – an effective and impactful tax incentive, especially for lower value land will be an important part of the solution to address our development viability challenges.

It is worth highlighting that most of our members are longer term investors in property – and in a residential context, will typically invest in rental asset classes like Build to Rent (BTR) and Purpose Built Student Accommodation (PBSA). This asset class has grown significantly in the last decade, delivering 18,000 new housing units last year – and often leading with BTR as a catalyst for wider brownfield regeneration projects. With the right fiscal and regulatory support, this sector has the potential to contribute 10% of this country's housing supply by the end of the Parliament. It is therefore essential that, when developing tax policy to support housing supply, that the incentives are equally effective for longer term investors in rental accommodation – as well as more traditional 'build to sell' business models.

Furthermore, in the context of brownfield development especially, in order to support the Government's National Planning Policy aspirations to deliver higher density housing, especially around our transport infrastructure – it is important that our tax incentives are also aligned with this objective to support higher density housing developments.

We recognise that the Consultation is very much a first step, designed to provide the Government with information as to the efficacy of LRR in its current form as an incentive for brownfield development. We very much believe that reforms are needed to ensure that LRR can play a far more impactful role in

supporting new housing delivery and making better use of brownfield sites. We look forward to working with the Government on future improvements to this important relief.

We set out number of general comments in the executive summary below, before turning to the specific questions posed in the Consultations in the appendix.

For more information on this response, please contact Rachel Kelly, Rkelly@bpf.org.uk.

Executive Summary

Taking account of the responses to the specific questions asked in the Consultation, we recommend that the Government undertake a full review of LRR to ensure that it is impactful in relation to development of brownfield sites. This review should consider all relevant matters, including the scope of the relief (both in terms of eligible land and qualifying works); how the relief is given (including timing); the rate at which relief is given and the extent to which the current conditions are appropriate in terms of incentivising the use of brownfield sites for housing and other development projects. We set out below some key points that we consider should be borne in mind in carrying out such a review.

In addition, given that such a review will take time, we suggest some possible changes to LRR (as now) that could be made in the short-term to enhance its efficacy as an incentive whilst the review is ongoing. Most of these suggested changes - particularly those set out in 3.1 to 3.3 below - should be relatively straightforward to legislate for given that reference can be had to similar provisions elsewhere (in relation to both LRR and capital allowances).

1. **LRR needs to work for all types of investors.** To be effective as an incentive, LRR needs to work for all types of investors and developers. Although house builders are clearly a key constituency for the relief, institutional investors (such as pensions funds and sovereign wealth funds) also have the potential to contribute significantly to housing supply – particularly in the form of build to rent homes. Other policy initiatives by the Government are seeking to encourage increased investment in real assets by Defined Contribution (DC) pension schemes, particularly through long-term assets funds (LTAFs) and the Local Government Pension Scheme (LGPS). In its current form, LRR is unlikely to incentivise such investors, whether investing directly or as participators in a collective investment vehicle, given their status as tax exempt. Therefore, we recommend that the Government consider alternative means of providing LRR, including the introduction of an "above-the-line credit", so that LRR ls also able to operate as an effective incentive for such investors.

2. **LRR criteria needs to be more explicitly targeted at the investment Government wants to encourage - namely Brownfield Land**. When it was introduced in 2001, and then amended in 2009, the then Government positioned LRR as necessary to address market failure in relation to bringing back into use land that had been blighted by either previous use for industrial purposes or long-term dereliction. Now, in 2025, the Government objective (as reflected in the Consultation) is to encourage investment in brownfield sites generally. Some of these sites will be "contaminated" (as defined within LRR), although for the reasons set out in response to questions 2 and 5 this may not be known at the time of site selection. We therefore recommend the Government revisit the scope of LRR. In particular, we suggest that the provisions relating to "derelict land" be repealed, and that the relief should be available in respect of brownfield sites generally, with the extent of the relief limited solely by reference to the definition of specified "qualifying remedial works" (to include, but not be limited to, works within "relevant contaminated land remediation"). This would have the benefit of providing developers with certainty that, should certain types of work be needed, LRR would be available.

3. **Short term changes needed to make LRR more effective in advance of longer-term reform:** In relation to LRR in its current form, we recommend that the Government consider the following changes in the short term, to make it more impactful as an incentive to brownfield development:
    - **3.1.** include an option for (trader) developers to claim LRR in the accounting period in which qualifying costs are incurred (following the approach in section 1147 CTA 2009), instead of (as now) having to wait until after the development is completed (and sold): the relief is more likely to be effective if it is more closely matched with the timing of the expense (see further response to question 5 below);
    - **3.2.** provide for LRR to be available in relation to remedial work in relation to mineshafts (see further response to question 4 below);
    - **3.3.** include a provision based on section 270DB Capital Allowances Act 2001 so that developers under forward sale agreements are able to access LRR where their acquisition of a major interest in land is dependent on completion of all works (see further response to question 5); and
    - **3.4.** amend s1150 CTA 2009 (the "polluter pays" principle) so that it is better targeted, and in particular does not preclude developers from accessing relief simply because commercial arrangements mean that a polluter with whom they are unconnected retains an interest in the site (see further response to question 4).

4. **Guidance updates:** We also recommend that HMRC work with stakeholders to review and update the guidance contained in HMRC's Corporate Intangibles and Research and Development Manual in order to better help taxpayers navigate some of the complexities of the relief in relation to the types of situation developers may face in practice when undertaking remedial work (see further responses to questions 7 and 16).

5. **Other tax policy levers to support high density housing delivery on brownfield sites:** While we support measures to reform LRR to better support these objectives, it will not be a silver bullet to address our wider development viability challenges – and the Government's mission to deliver 1.5 million homes this Parliament. We support the Government's wider efforts on reforms to the planning system, pension reform, and regulation to better support these objectives – in addition, more work is needed on tax policy – in particular, to better support higher density housing developments. We provide more detail in response to question 14 in the appendix, but would draw out the following:
    - **5.1. SDLT – a tailored approach is needed for high density housing like Build to Rent** – a more tailored approach is needed to ensure we are better supporting the viability of high density housing developments.
    - **5.2. Council tax on new developments or refurbishments should better support faster build out rates** – council tax is charged on empty units from 3 months after development is complete. This is woefully inadequate for large scale build to rent developments, which can take upwards of a year, even 2 years to fully become fully leased. Council tax should ideally not be charged on newly developed empty units, to ensure it better support developments which offer faster build out rates.
    - **5.3. A holistic approach to support long term investment in rental homes** - there are other elements of the tax system which generally provide a more favourable outcome for commercial property investments over residential investment – VAT on repairs and maintenance, and capital allowances (including structures and buildings allowance) are two examples. Given large scale and institutional investment have the potential to deliver 10% of the Government's housing targets through the development of high-quality rental homes, like BTR - a more holistic review of how our tax system supports long term investment in rental housing is needed.

Consultation on Land Remediation Relief (LRR)

Appendix: Response to consultation questions

General

Question 1: What are the main factors that businesses consider when selecting a site for development?
• What role does tax (in particular LRR) play?
• If LRR is factored into decision making, how is it considered in the site selection and development process?
• How do businesses establish the amount of contamination or dereliction and, with that, the costs that would be eligible for LRR compared with overall costs on site? How does LRR help with any uncertainty around this?

Fundamentally, the key question for a business determining whether a site is suitable for development is whether the project is economically viable or not. They will need to take account of numerous factors, including:

- projected income/returns
- expected costs
- likelihood of planning consent,
- availability of funding,
- expected timings (which will affect financing costs), and
- likely demand.

This is not an exhaustive list but gives a sense for the number of considerations which go into assessing the viability of a development. A viability appraisal would typically be carried out on a relatively prudent basis, and as such, an incentive would only be factored in where there is a high level of certainty over how much will be received.

For the reasons set out in this paper, LRR is not typically factored into many investment appraisal – primarily because the scope of the relief is limited (see further questions 4 and 5) – but also, where it is in point, the lack of certainty around what expenses might qualify (noting that, at the time the investment appraisal is being undertaken, the investor may not yet have a full picture as to the extent of the remediation works that will be needed). Therefore, in order for a reformed LRR to be effective, the relief should be broader in scope, with the aim of providing investors with a higher level of certainty around what works (and therefore expenses) will qualify than is currently the case.

In addition, there are a number of investors for which LRR does not act effectively as an incentive because of their tax status – including, for example. (tax-exempt) pension funds and certain tax transparent investment vehicles (particularly where their investors include tax-exempt entities and/or income tax payers). For this reason in particular, we consider the Government should consider alternative means of providing a reformed LRR, including conferring relief by way of an "above-the- line" credit (whether for some, or all, investors), as is generally now the case for R&D relief.

<u>Question 2</u>: What are the main barriers to development on i) Brownfield sites, and ii) in particular, contaminated and long-term derelict land? To what extent/how does LRR help with these versus other options, such as grants?

Brownfield land
Brownfield land development will often be in town centre/inner city locations with other buildings and people living or working nearby, generally making these developments quite complex and logistically challenging.

In addition, it is often hard to estimate the costs associated with a brownfield land development accurately. In particular it can be hard to make an accurate estimate of the costs involved in clearing a site or indeed to find out what state the site/foundations are in until after work has commenced. This can be exacerbated if, once work has started, unexpected sources of contamination are found (particularly if contamination is below-ground): see below.

This is the case even where the development involves retaining and refurbishing an existing building as the costs of this can be hard to estimate (noting that in some cases, refurbishment can be even more costly than simply demolishing the existing building and starting again).

Contaminated and long term derelict land
*A*t the outset of a development project, it can be difficult to estimate with certainty the level of work and resources needed to remove any contamination to which a site is subject. Plus, cost estimates at this stage can only take account of "known" sources of contamination, with "unknowns" only becoming apparent once the developers are on site and so able to investigate the site fully.

Role of LRR and grants
Given both the costs of remedial work, and the uncertainty inherent is estimating them at the outset of a project, the availability of support, whether by way of tax relief (such as LRR) or a grant can be helpful – in that it can help ameliorate some of the risk the developer takes on in any project that involves, as a first step, making "good" a contaminated or previously developed site.

As a tax relief (such as LRR) works differently to a grant, it is not possible to comment on how the two types of support compare in the abstract. Generally, a grant will be needed when a project is not financially viable for the private sector to deliver - however, the benefits of a tax relief like LRR versus a grant as an incentive to a particular developer would largely come down to:

a) how much certainty the taxpayer has that they will receive the support the incentive is intended to provide
b) when the benefit/funding provided by the incentive will be available - as the closer in time that the relief/grant is "matched" to when the expense is incurred, the more beneficial the support will be.
c) Other relevant factors could include the nature of any conditions that apply to the available incentives and (as referenced above) the tax profile of the developer (which could, for some, mean that a tax relief in the form of an enhanced deduction from profits has no benefit).

<u>Design of the Relief</u>

<u>Question 3:</u> To what extent are the right projects able to access LRR, given the structure and design of the relief?

As it is not clear what is meant by "right project" our comments in response to this question relate to brownfield development generally.

Currently, as referenced above, the manner in which LRR is provided (by way of an additional deduction from a person's taxable profits with, in certain cases, a payable tax credit available) means that it is not effective as an incentive for certain types of investor in UK land for projects involving development of brownfield sites. This means that work by such investors that would otherwise meet the LRR conditions (and so presumably are the "right projects") are excluded from the relief.

For this reason, we recommend that the Government consider alternative forms of delivery of LRR that could provide a more effective incentive for such investors, for example, changing LRR to an above-the-line tax credit.

We comment below, in our response to questions 4 and 5, on specific aspects of the structure and design of the relief that may limit access to LRR in practice.

Question 4: ***We have heard representations that the following aspects of the design of LRR act as an impediment to incentivising development of contaminated or derelict land, which we are seeking views on in particular:***
i. activities/elements that aren't covered by LRR
ii. the types of works that are included in the definition of 'derelict land'
iii. the impact of the date from which land must be derelict to be considered eligible
iv. the number of additional sites that would become viable if the date were changed from 1998 to a fixed date (for instance, 10 years) prior to today, aligning with the original legislation
v. the 'continuous use' requirement, which disqualifies land from LRR that has been in productive use for more than seven days a year.
vi. the exception from LRR where a company or connected party was responsible in any way for causing the contamination or dereliction or such a company holds an interest in the land (the 'polluter pays principle') – in particular where the owner retains a reversionary interest

As can be seen from our comments below, certain aspects of the design of LRR can, in practice, lead to uncertainty both as to whether LRR is available at all or, even if available, as to the amount of expenditure eligible for relief. This uncertainty detracts from its efficacy as an incentive. We comment below on each of 4(i), (ii), (iii), (iv) and (vi).

Activities/elements not covered by LRR
(a) The relief, which was designed to incentivise the clean-up and redevelopment of contaminated land, applies to works to remedy certain specific types of contamination only. Since 2009, the relief cannot apply to work relating to mineshaft grouting (given LRR is not available for remedial work relating to contamination caused by air) - here, in some regions of the UK, the existence of mineshafts can be a significant issue when preparing land for future building.

(b) The nature of the relief, in relation to whether contamination provides "relevant harm," means that there is a risk that the ability to claim relief for works on "new" types of contaminant can be uncertain - and in some cases not available. Although, in some cases, it may be possible for HMRC to update its guidance - as was done in 2009 in a "change of view" on Japanese knotweed (see CIRD6020) - in "grey areas" this is less than ideal (as taxpayers cannot rely on HMRC guidance). If legislation is needed to allow for the "new" contaminant, the applicable Parliamentary processes for regulations mean that there will be a time delay (possibly months, but potentially longer) before a change can be made (even with the regulatory power provided in s1145(3) CTA 2009).

(c) The conditions to be met for LRR are linked to "contamination" (as defined) and "dereliction" of sites. Although both these states are relevant to brownfield land, there can be other significant remediation costs that need to be incurred in order that a brownfield site is "ready" for construction. We have been provided with a copy of the response of The Fiscal Incentives Group Limited to the Consultation, and refer you to

their response to question 2 that lists some of the types of work that may be needed, for which LRR is not available under current rules.

(d) In addition, particularly for sites in urban areas, the recent changes to landfill tax rates will impact the cost of remediation works (given the need to transport site waste offsite): although landfill taxes paid in relation to waste resulting from works within the scope of LRR are, from a commercial perspective, part of the overall cost of those works, but excluded from the relief. We therefore recommend that Condition F in section 1144(6A) CTA 2009 be repealed.

(e) Given the requirement that staffing costs must be costs paid to staff "directly and actively engaged" in remediation, a developer is not able to claim LRR in relation to overhead costs, notwithstanding that a proportion of those costs may be attributable to land remediation works.

Derelict land - types of work
Where the relevant land is "derelict", qualifying works are defined (in secondary legislation) specifically as works that involve removal of buildings and supporting structures (e.g. foundations, basements, underground utility services - see CIRD62035). The requirement for the site to be cleared of such structures for LRR to be available encourages a developer to completely clear a site (demolishing all existing buildings) which is the least sustainable option where (some or all) of that pre-existing building infrastructure may be able to be refurbished (and so repurposed) within the new development). We therefore suggest the Government consider amending the relief so that it can accommodate refurbishments of existing buildings on otherwise "derelict" land.

Period for which land needs to have been derelict
(a) In relation to 4(iii), the requirement that land has been derelict (as defined) since the earlier of 1998 and the date of acquisition was introduced in 2009: at that point, the requirement could be met if land had been derelict for only 11 years. As this date range has not been updated, the legislation potentially requires land to have been derelict for up to 27 years if relief is to be available. We would recommend that, if this requirement is to remain, the Government revisit the length of time for which land needs to have been derelict if LRR is to be potentially available.

In this regard we note that where land has been derelict for a significant period of time, it is likely that other factors (not just its "contaminated" state) impact its viability for development - so that eligibility for LRR is rather academic.

(b) In relation to 4(iv), although we do not have the data to comment on the proposal to change this time period to 10 years, we consider, as a matter of principle, that the specifics of this condition should be aligned with the policy that underlay the legislation when initially enacted in Finance Act 2009. However, there is a risk that by including an arbitrary time period in which land has to have been derelict as a pre-condition, this could create a counter intuitive incentive to delay to proceeding with a potential development if that timeframe is close to being met. This may therefore suggest considering an alternative condition for determining the condition of the land within the ambit of LRR: one possibility would be to provide that land is "in scope" if it has a "Brownfield Passport" (assuming that the Government introduces this), which would have the benefit of linking the relief more closely to the other steps being taken by the Government in this area (with reliance placed on the other conditions - particularly as to "works" - to ensure LRR remains targeted at remediation and/or other specified works (rather than general redevelopment activity)). See also our response to questions 5 and 10.

(c) In any event, there is a questions as to whether the relief should distinguish between "derelict land" (however long its dereliction) and contaminated relief: creating a single (merged) relief, directed at the cost of works undertaken to remediate the types of contamination applicable to brownfield land would ensure

the relief was targeted at the type of activity the Government is looking to encourage, but would also provide a welcome simplification.

"Polluter pays" principle
We understand that there are a number of difficulties in practice with accessing LRR as a result of this condition.

First, it is not uncommon for land to be acquired in a "corporate wrapper" (so, rather than buy the land itself, the developer acquires shares in a company that owns the land). This means that, at the time of a future development, the developer and the owner of the land would be "connected". This could lead to evidential challenges in demonstrating that the contamination does not result from something done (or not done) by that owner in the past, impacting the ability to access LRR in the context of a "normal" commercial acquisition route.

Secondly, in relation to some developments, the original owner of the land retains the freehold, with the developer being granted a (long) leasehold interest. We understand from members that this is often the case where land is owned by a local authority. If the pollution was "caused" by the freeholder, then s1150(2) CTA 2009 would prevent the developer obtaining relief even though the "polluter's" retained (reversionary) interest in the land is limited because of the long lease granted to the developer (which will often operate as a so-called "effective freehold", given both the rights conferred and its term). A similar issue arises where a developer acquires land subject to existing occupational leases. If an existing tenant's activities cause contamination, then because they then have a relevant interest in land, s1150(2) CTA 2009 would again appear to be in point.

In this context, a particular issue is the lack of any ability to dis-aggregate - or rather separate out - different sources of contaminant. For example, assume that, when the developer acquires the site, there is an existing tenant (to which the developer becomes landlord) that is causing pollution. On investigating the site, the developer discovers asbestos in certain existing buildings (unrelated to the activity of the tenant). We understand from members that in such circumstances the developer is not able to claim LRR in relation to dealing with the asbestos because of the "polluter pays" principle is invoked due to the tenant's activities.

Thirdly, as a practical matter, this requirement can lead to a developer having to carry out a detailed due diligence exercise (with timing and cost implications) to trace the history of the site, and the activities carried out on it, to identify if s1150 CTA 2009 applies.

We recognise the importance of preventing those that have caused pollution obtaining tax relief for "cleaning up" their land, but in the interests of simplification, we'd recommend that this requirement is amended so that it is better targeted at those actually responsible for the pollution only.

***Question 5:** Are there other aspects of the design that act as an impediment to incentivising the development of contaminated or derelict land?*

Ability to assess if land is contaminated pre-development
(a) One of the conditions for LRR is that the land in question is in a "contaminated state". For some developments, it would not be possible to identify whether or not the land is "contaminated" (as defined) until the development is underway - for example, asbestos issues might not be discovered until after development work has started. This means a person can embark on a development unaware that their project is eligible for LRR until after it is underway - i.e. some time after undertaking the investment appraisal of the project. As a result, although the developer may then be eligible to submit a claim for LRR (which may help mitigate the costs of dealing with the contamination), the relief would not have been

factored into their assessment of the viability of the project (and so, in such a case, would not have operated as an incentive, but more as "compensation" for having to have carried out the works). See also our response to question 12 below.

(b) In addition, given that the expression "land in a contaminated state" is defined broadly, (as it needs to encompass many different types of contamination), we understand that potential claimants would value clarity as to what is within scope (or not). It may be possible for some (common) cases where there is existing uncertainty to be addressed in regulations under s1145(3) CTA 2009; otherwise additional examples could be included in HMRC guidance to help potential claimants identify whether or not LRR is likely to be available.

Restriction on relief where expenditure "subsidised": There can be uncertainty as to the meaning of "subsidised" for the purposes of in s.1177(1)(b) CTA 2009 (we note that there was similar uncertainty in relation to R&D relief, resulting in litigation, prior to the introduction of new merged relief in Finance (No 2) Act 2023, when the exclusion of relief for "subsidised R&D" was repealed).

*Timing of relief v incurring expenditur*e
Where, as for LRR, additional tax relief is provided for particular expenditure (for LRR, an additional 50% of the costs of qualifying works), there is a clear intention that the Government is seeking to incentivise the incurring of that type of expenditure by ensuring taxpayers receive support, through the tax system, that should operate to (in effect) reduce the costs to them of carrying out the works - thereby supporting cashflow. As referenced above, in this context, timing matters - the closer in time that the relief/grant is "matched" to when the expense is incurred, the more beneficial the support will be. For companies that develop to invest, although there is a time lag (as referenced above), LRR is claimed in the accounting period in which the expenditure is incurred (whether the expenditure is income or, where s1147 CTA 2009 applies, capital).

For those companies that develop to sell (and so claim relief for remediation costs as trading expenses), the rules that relate to recognition of profits under UK GAAP means that relief for such costs is only given in the period of ultimate sale of the development (with such costs being brought into account as costs of sale in determining their trading profit). Depending on the scale of the development, this can be several years after the remediation work was carried out. Therefore, unlike the position for an investor developer, a developer operating on trading account (such as a house-builder) is not able to access (in effect) the working capital support that LRR is able to provide whilst the project is ongoing - which is the time at which such support is most needed. We recommend that the Government revisit the timing of LRR for (trader) developers: this could be by way of providing such companies with the ability to elect to access relief in the accounting period in which the qualifying works take place (borrowing from the approach adopted for (investor) developers in relation to qualifying capital expenditure). Introducing an election should also have the benefit of simplifying transitional arrangements as they might apply mid-project and would help to more closely align the position of property investors and traders involved in brownfield projects. Although we acknowledge that this may have an Exchequer impact, allowing developers to make such an election would not impact on the quantum of relief, but the timing - accelerating the point at which the (same amount of) relief is given.

Nature of relief
(a) For LRR to operate as an incentive at the outset of a project, its value must be capable of being measured with certainty at the time the developer is undertaking their investment appraisal of a project. However, the nature of the relief (an additional deduction against profits) means its value has a degree of unpredictability - given that the existence of any tax benefit from LRR depends not only on the timing of the expenditure to which it relates but also to the developer's other income/expenses at that time. This makes it difficult to model the relief accurately, impacting its efficacy as an incentive. This is compounded in relation to those who develop to sell by the fact that relief for qualifying expenditure against trading

income will only be given at the end of a project (as part of cost of sales when calculating trading profits on ultimate sale - see above), which in some cases could be several years after the expenditure was incurred. This means that, at the time the expenditure is incurred, the relief will generally be discounted (to reflect the time value of money); further, any subsequent change in corporation tax rates could also impact the value of the relief when it is finally given.

(b) Although loss-making companies are able to access relief under LRR as a payable tax credit (where the applicable conditions are met), for many developers this option is unlikely to be available - namely, those that have an existing property business of which the particular brownfield site is just part. This potentially has a distorting effect - as the benefit available to a developer in relation to the same activity may vary simply because of who they are (i.e. whether a new business or a mature property business). In addition, although it may be possible for a mature business to decide to establish a single purpose vehicle to carry out a particular project (which may increase the likelihood of accessing a payable tax credit), there may be other issues that make this route unattractive - particularly linked to finance terms (where debt funding is required) and relationships with contractors).

Taking account of the above, our members suggest that the Government consider alternative means of providing LRR, including as an above-the-line credit (as recently done in relation to R&D relief for SMEs). Providing relief as an above-the-line credit has the benefit, because of the impact on accounts, of making the relief more visible to decision-makers at the time they are considering the viability of a particular project as well as providing greater certainty as to the (actual) rate of relief available in practice (meaning its impact will be easier to model).,

In addition, although not raised specifically in the consultation, given the Government's objective of encouraging development of brownfield sites as part of its plan to get Britain building again, we recommend it consider as part of its review of LRR whether the rates at which LRR is available are at a level to be effective as an incentive to investors in the "right projects" (noting that, as set out at CIRD68025 "the amount of the payable tax credit has been unchanged since the introduction of Land Remediation Relief").

Meaning of "contaminated or derelict land":
The Consultation reflects the Government's policy aim of ensuring that brownfield land is the first port of call for development. However, to the extent that LRR is seen as a possible policy approach to achieving this objective, the restriction on relief to land that is either in a contaminated state or is derelict may limit its efficacy as not all brownfield land is "contaminated" (or indeed "derelict") as defined.

Although, as referenced above, the Government could adapt the definition of "derelict land" (meaning that more brownfield land should be in scope), or alternatively, (as referenced in response to question 4(iv)), Government could consider linking the relief more directly to sites that it is looking to encourage the development of through the planning system - such as the Brownfield Passport policy.

This would also have the benefit of making it more straightforward for taxpayers to identify that their land is eligible for relief - and thereby provide a greater degree of certainty.

It would also offer a simplification given that the condition relating to eligibility of land (within LRR) would be met through satisfaction of the planning process (in relation to the passport): although, in practice, HMRC are willing to accept risk assessments carried out for planning purposes as evidence of eligibility for LRR, this is not reflected in statute and in any event may not apply in all cases.

This could be in addition to granting eligibility to the relief if a site meets other conditions/hallmarks, to provide for sites which should be eligible, but for a local authority list not being up to date.

Interest in land
The legislation requires the claimant to have acquired a "major interest" in any contaminated land. In relation to some developments, the original owner of the land retains the freehold, granting the developer a building license for the period of the development, with the grant to the developer of a long leasehold interest (or indeed acquisition of the freehold) being conditional on completion of the works. In such a case, although the developer "will" ultimately acquire a major interest, it has not acquired one at the time of carrying out any remediation works and so is excluded from LRR solely because a "forward sale" arrangement (rather than outright sale) was the contractual arrangement entered into by the parties (for purely commercial considerations). For capital allowance purposes, section 270DB CAA 2001 applies to such arrangements to treat the developer as having an interest in land when it incurs expenditure: consideration should be given to including a similar deeming provision for LRR.

***Question 6*: How complex is the relief to claim? To what extent does administrative complexity of claiming the relief hinder the relief from achieving its objectives?**
Claims for LRR require both an understanding of the conditions set out in the legislation as well as of the project in respect of which it is being claimed (to understand the nature of underlying contamination and the works needed to remediate), in particular in order to be able to access the information and evidence necessary to support any claim. Although some developers would process claims in-house, it is not uncommon for taxpayers to feel they need to turn to specialist advisers to assist them with their claims given this is a specialised area.

***Question 7*: To what extent does the legislative complexity of the relief hinder it from achieving its objectives?**
See responses to questions 1, 4 and 5. We consider that this is an area where HMRC guidance (in the form of its published manuals) can be particularly useful to taxpayers, helping them navigate their way through the legislation and resolve areas of uncertainty (particularly where that "uncertainty" relates to a fact-pattern that is not unique to them). However, to be useful, the guidance needs to not only be clear but be kept up-to-date[1] and needs (realistic) examples of common situations developers may face when undertaking remedial work.

In this context it might also be helpful to extract the guidance on land remediation relief from the Corporate Intangibles Research and Development Manual and establish a stand-alone manual for LRR.

IMPACT OF THE RELIEF

***QUESTION 8*: WHAT ROLE DOES THE CREDIT ELEMENT OF LRR PLAY IN INFLUENCING DECISIONS IN SITE SELECTION/PROCEEDING REMEDIATION WORKS?**
We are not in a position to answer this but refer you to our general observations on the extent to which LRR influences decisions.

***Question 9*: In general, what proportion of overall costs tend to be eligible for LRR?**
We do not have access to relevant data to answer this.

In any event, the amount of qualifying expenditure required to de-contaminate a site will be fact-specific to the particular site and the nature of the contamination, so an "average" value is not likely to be particularly helpful.

[1] According to the "updates" page of the Corporate Intangibles Research and Development Manual (CIRD), it seems that since I January 2022, there have been only two updates to the LRR sections: the first to change references to two SIs and the second (n July 2024) to (it seems) add page references to the contents page at CIRD61000.

***Question 10*: How much eligible land is there? How does this compare to when the relief was first introduced?**

We do not have access to relevant data to answer this. We note however that, given the challenges discussed above in identifying whether land "is in a contaminated state" before work is started, as well as the evidential challenges in demonstrating land has been derelict for the required statutory period, it may be difficult in any event to get reliable figures of how much land is within scope of LRR.

However, given the focus of the consultation is on LRR's role in boosting development of brownfield land, we note that local authorities should have data about available brownfield sites through their brownfield registers: aggregating this data could provide a "working" estimate of land potentially within scope of LRR (which could be compared with the position in 2017 when registers were first required to be published).

In this context, we have recommended above that the Government should consider changing the scope of the relief so that it applies to qualifying works on "brownfield sites" - or 'previously developed land' under the National Planning Policy Framework - instead of, as now, "contaminated" of "derelict" land. This would simplify the relief, in terms of identifying at the outset whether specific land is within scope (such that the developer would have the assurance that if, on further investigation, they had to carry out qualifying works, LRR should be available). Adopting this approach would also link LRR to sites already identified in local authority brownfield registers (sites which are therefore) eligible for quicker planning decisions in principle. This would be a good way of more closely linking LRR to the sites that Government want to be developed, and should also have the benefit of enabling the Government to more easily monitor use of the relief (given that there would be a clearly identifiable "universe" of sites within scope) and therefore improve its data relating to use of the relief (and thereby its understanding of LRR's impact).

***Question 11:* Are there examples of contaminated and derelict land that has been developed as a result of LRR? Do you have a sense of how much contaminated or derelict land has been developed overall as a result of LRR?**

We do not have access to relevant data to be able to comment.

***Question 12*: Are there examples of where LRR has contributed to projects that would not have proceeded absent the relief? Similarly, are there examples of where LRR has contributed to projects that would have proceeded absent the relief?**

We do not have access to relevant data to be able to comment. However, as a general observation, as a commercial matter, given the various factors relevant to viability of a development project, we would expect it to be very unusual for a project to be proceeded with "just because" a tax relief was available (particularly, in relation to LRR, given the likelihood that the extent and nature of contamination may not be known at the outset of a project).

Similarly, although a decision to go ahead with a project may be made where it is not known if LRR will be available (or if expected to be available, the amount of relief), LRR is nevertheless valuable: it recognises the additional work (and costs) in remediation and in practice should help in the management of working capital (and so cashflow) through reducing corporation tax liabilities (and in some cases providing a payable tax credit) - which is of critical importance to successful management of a project. This benefit, which is provided through the operation of the corporation tax system, operates at the level of the developer (as a corporate entity), providing additional cash that can be used for development costs (whether through reducing cash that would otherwise be "spent" on corporation or other taxes, or through a cash receipt). This can be particularly helpful for those who develop to own (on investment account) given the ability to claim LRR on qualifying capital expenditure, thereby offering an ability to accelerate the timing of relief is given for qualifying costs.

<u>Question 13</u>: How does LRR compare with other forms of support for the development of Brownfield land, such as the Brownfield Infrastructure and Land Fund, and local government support? What benefits or drawbacks would, for example, a grant have compared with a tax relief to the same value?

While a grant would generally be necessary where a site is either unprofitable or significantly unviable, we recognise that grants are generally more costly for Government. Other factors which influence a cost/benefit analysis of grant versus tax relief include:

(a) ease of application process,

(b) the degree of certainty that the claim for the relevant relief/grant would be successful,

(c) the conditions to which a grant was made subject (including reporting conditions), and

(d) the likely timing of receipt of the benefit provided (in cash terms).

<u>Question 14</u>: What impacts do interactions between LRR and other forms of support, such as government grants, have?

This question seems to assume that the options for encouraging brownfield development are either LRR or some form of Government/local Government grant. Although LRR is targeted directly at the costs of bringing contaminated/derelict back into use, there are other tax costs impacting the viability of development on brownfield sites, particularly in relation to the provision of housing (whether for sale or under build to rent), regardless of whether the land is contaminated or not.

If the Government is looking to LRR to support a policy for increased residential development on brownfield sites, we recommend consideration should also be given to possible changes to other taxes, in particular:

1. **SDLT: A tailored approach is needed for BTR housing, to ensure that high density housing, particularly in low value land areas, is not inadvertently penalised**. We would recommend that targeted approach to better support high density housing is introduced – and consider that an enhanced support would also be justified to support brownfield sites.
2. **Council tax:** Council tax on vacant units adds a significant cost to new developments of build to rent housing because high density developments like build to rent will 'flood' a market with more homes that can be absorbed by the market at the same time. For context, the current 3 months grace period from practical completion in no way accommodates the time taken to fully let-out a large build to rent development (which can be closer to 2 years for a large development). This unavoidable council tax charge on newly developed empty homes should be removed to support the viability of high-density housing developments which are built out at speed, like BTR.
3. **VAT and capital allowances – we need a holistic approach to support long term investment in rental homes:** There are other elements of the tax system which generally provide a more favourable outcome for commercial property investments over residential investment – VAT on repairs and maintenance, and capital allowances (including structures and buildings allowance) are two examples. Given large scale and institutional investment have the potential to deliver 10% of the Government's housing targets through the development of high-quality rental homes, like Build-to-rent - a more holistic review of how our tax system supports that long term investment in rental housing is needed.

<u>ROBUSTNESS AGAINST ABUSE AND ERROR</u>

<u>Question 15</u>: What is your understanding of why customers and/or their agents may make errors when submitting claims for LRR or the LRR tax credit?

We are not able to comment but assume HMRC should have data from its compliance activities to assist in understanding the nature of, and therefore reasons for, common errors by taxpayers.

***Question 16*: Are there any changes that could be made to the LRR guidance or rules to help prevent errors when making LRR claims, and/or make the process more straightforward?**

To help minimise possible errors in claims for LRR, it is important that there is clear guidance available for taxpayers and their agents relating both the relief itself (and in particular, the conditions) and the process for claiming it. A clear exposition of when relief is available in relation to a project, with realistic examples, should help to reduce the risk of claims being made for projects and/or expenditure that are not eligible; whilst guidance on the claims process should help minimise administrative errors in the claim process itself. We would recommend that HMRC consider setting up a working group (involving tax professional bodies and specialist advisers on LRR) to review the current guidance and identify possible changes.

The benefit of clear guidance, coupled with say an (appropriately targeted) information and education campaign about the relief, may also serve to increase awareness of LRR and encourage take-up by eligible taxpayers — and potentially therefore also improve its effectiveness as an incentive by alerting those who, although eligible, are currently not aware that their project(s) are in scope.

As referenced above in relation to question 7, the guidance on LRR could be moved from the Corporate Intangibles Research and Development Manual into a stand-alone manual for LRR.

***Question 17*: Are there fraud risks associated with LRR, particularly with the payable tax credit part of the relief?**

As demonstrated in relation to R&D relief, a tax incentive that can result in a cash payment being received by the claimant can be attractive to fraudsters, particularly if the relief is available on a "process now, check later" basis. We assume that as a result its existing compliance activities, HMRC have data to assist in understanding the extent of any specific fraud risk in relation to LRR and actions that may need to be taken to counter that risk. If changes to the relief could potentially make it vulnerable to fraudulent claims, then appropriate measures should be considered to safeguard LRR from such abuse - basically to ensure that only genuine claims are paid out (these could include increased compliance checks (particularly where there is a new claimant) and/or requirement for supporting evidence for claims). Any such measures, however, should be proportionate to the risks.

***Question 18*: What additional processes could help to reduce error or fraud without introducing disproportionate administrative burdens?**

We are not able to comment on this. We would emphasise however the need to ensure that any measures included to protect the Exchequer from LRR being abused would need to be proportionate so as not to have the (unintended) consequence of deterring legitimate claims.

In this context, we note that, in 2022, new compliance measures relating to R&D claims were introduced to tackle the scale of error and fraud relating to R&D relief. These included the need to provide advance notice of a claim being made (as well as specified information about that claim). Although it may not be possible to carry this directly over to LRR, given the different nature of the reliefs, nevertheless a requirement that claimants provide additional information about their claim (whether at, or before, the time the claim is made in their tax return) may be an appropriate means of providing greater Exchequer protection. In addition, again with reference to R&D relief, the Government is currently consulting on introducing a new assurance/clearance process for R&D claims. Whilst (as above) R&D relief and LRR are not directly comparable, those measures (as well as HMRC"s experience of their impact in practice - both for the Exchequer and for taxpayers) may suggest other possible actions that could be taken to reduce the risk of error and fraud in relation to LRR (to the extent HMRC's experience of LRR suggests an issue here).

Finally, should the Government take forward its proposal for providing clearances to give advance tax certainty for major projects, we'd encourage LRR to be within scope of this clearance process.