

Accelerating the nutrient neutrality solution

Executive summary

- The new Government has committed to finding a solution that unlocks the building of homes affected by nutrient neutrality without weakening environmental protections.
- That solution is already in place in some parts of the country, through strategic mitigation schemes which reduce nutrient pollution across catchments, creating headroom to absorb the impacts of new development. These schemes are funded by developers purchasing mitigation credits.
- The Government can unlock more homes faster by extending this strategic mitigation approach. This can be swiftly achieved by:
 - Allowing temporary mitigation measures, financed by operational spending, to add to the supply of mitigation measures and rapidly increase the supply of mitigation credits.
 - Establishing a national nutrient taskforce to work with local partners to deliver strategic mitigation in nutrient affected catchments where it is not currently in place.
 - Offering all nutrient affected developers the chance to make a one-off, sizeable 'strategic mitigation contribution' at the point of planning consent, simplifying the process on the strength of the above increases in credit supply and strategic mitigation.
- These steps would effectively apply the strategic mitigation approach across England and accelerate housing delivery in affected areas, without regressing environmental protections.

Nutrient pollution: the problem for nature

Nutrient neutrality rules apply to only the most sensitive areas - nutrient-stressed freshwater catchments important for nature where critical environmental thresholds have already been breached.¹ The requirement to offset harm only comes into force where Special Areas of Conservation or Special Protection Areas, designated nature sites protected by the Habitats Regulations, are at risk of harm from added pollution from an associated catchment. Further pollution in these areas could cause these precious but fragile habitats unacceptable ecological harm, accelerating overall environmental decline and putting the Government's nature recovery targets out of reach. The current nutrient neutrality rules, founded on the Habitat Regulations, are critical defences against these outcomes.

Attempts by the previous Government to remove relevant parts of the Habitat Regulations would have opened the door to new waves of pollution. This act of environmental regression would have allowed developers to pollute without responsibility for mitigation, with the public bearing the costs through

¹ <https://publications.naturalengland.org.uk/publication/6248597523005440>

the consequent deterioration of the environment and the retrospective use of taxpayer funds to try and clean up the pollution.² The new Government's rejection of this approach is welcome.

The strategic mitigation solution

Recent years have demonstrated that nutrient neutrality rules can be compatible with new housebuilding, if mitigation is put in place. A growing mitigation market has allowed housing development to progress across a number of nutrient-stressed freshwater catchments. Developers purchase credits, which fund measures that reduce nutrient inputs into the catchment, lowering pollution and creating headroom which allows new homes to be built without increasing pollution overall. Increasingly, mitigation schemes are being delivered at a strategic level, across whole catchments, avoiding the delays inherent in a case-by-case approach and allowing economies of scale.

A strategic mitigation approach to nutrient neutrality is typically characterised by the following elements:

- A central mitigation pot: the money is paid into a central pot/source which develops solutions at scale.
- Standard price: developers purchase credits for a standard price based on catchment average, rather than negotiate site-specific mitigation agreements.
- Oversight: Natural England or a local authority oversees the scheme, ensuring that there is a supply of mitigation measures to meet demand for credits from developers across the catchment.

Strategic mitigation work in the Solent catchment illustrates the benefits of this approach. Collaborative work between local councils, developers, Natural England and Hampshire and Isle of Wight Wildlife Trust³ has led to hundreds of hectares of land entering regenerative agricultural management and habitat restoration schemes, reducing nutrient inputs from agriculture into the Solent, as well as creating more space for nature and restoring soil health.⁴

The headroom created by these projects and similar measures has allowed new housing to progress. In 2022, it was reported that around 16,000 homes could be delayed as a result of nutrient neutrality rules around the Solent. Strategic mitigation has now largely resolved this problem. January 2024 analysis by ENDS Report found that across 12 local authorities in the Solent Catchment Area⁵, a maximum of 932 homes could be considered as 'held-up' due to nutrient neutrality rules.⁶

² For more on the previous Government's approach see:

https://www.wcl.org.uk/docs/Levelling_Up_Bill_Briefing_nutrient_pollution_12.09.23.pdf

³ <https://www.push.gov.uk/our-partnership-and-nutrient-neutrality/>

⁴ <https://www.hiwwt.org.uk/news/hampshire-and-isle-wight-wildlife-trust-responds-kings-speech-2024>

⁵ <https://www.push.gov.uk/partnership/members/>

⁶ <https://www.endsreport.com/article/1857197/neutral-numbers-homes-held-nutrient-neutrality-new-levelling-act-means>

The use of strategic mitigation schemes in a growing number of nutrient-stressed freshwater catchments is the route whereby Habitat Regulations can be upheld, pollution increases prevented and housebuilding enabled.⁷ This trajectory is bolstered by helpful measures included in the Levelling Up & Regeneration Act 2023 which require water companies in 16 nutrient stressed catchments to upgrade their wastewater treatment works before 1 April 2030, to reduce the amount of nutrients in treated water discharged into the catchment.⁸ This will further reduce nutrient levels, creating additional headroom to accommodate new development.

Additional benefits – delivering nature targets

A further significant benefit of a more strategic approach to mitigation is that it also offers an opportunity to deliver strategically for nature.

Local Authorities are in the process of developing Local Nature Recovery Strategies, introduced via the Environment Act 2021. These strategies set out nature priorities for an area and identify opportunities for recovering and enhancing biodiversity. Similarly statutory River Basin Management Plans, often underpinned by detailed Catchment Action Plans owned by Catchment Partnerships, set out requirements for the enhancement of the water environment in line with objectives set under the Water Framework Directive Regulations and legally-binding targets on water pollution set under the Environment Act. The Environment Act also established critically important targets to halt and reverse the decline of species, with reference to a specified list of plants and animals, a large proportion of which are associated with the water environment.

A strategic approach to nutrient mitigation offers the opportunity to scope and deliver measures to help achieve Environment Act targets at the same time as meeting mitigation needs, informed by LNRS priorities and WFD objectives - for example, by seeking opportunities to undertake schemes that enhance chalk streams, or improve conditions for endangered species such as Atlantic Salmon.

Such opportunities can enable deliverers to secure additional funding including through BNG, ELMS, and private green finance, using this to stack nature benefits on top of nutrient reductions. A case by case approach offers few such opportunities, and so means that Government finances directed towards nature recovery will need to do much more of the heavy lifting.

⁷ For further examples, see

https://www.wcl.org.uk/docs/delivery_of_nutrient_mitigation_schemes_TWT_Link_briefing_04.09.24.pdf

⁸ <https://naturalengland.blog.gov.uk/tag/levelling-up-and-regeneration-act/>

The problem of pace

ENDS Report analysis suggests that around 50,000 new homes nationwide remain delayed by nutrient neutrality rules, down significantly from 2022 estimates.⁹ Even without further policy intervention, this progress will continue. The growth of the mitigation market, and strategic mitigation schemes in particular, will reduce pollution levels in nutrient stressed catchments affected by the rules, boosted by wastewater treatment upgrades by 2030, steadily allowing development to proceed and in time resolving all nutrient neutrality hinderances to new homes.

The new Government has however expressed its desire to see new housing built at scale and at pace, and has a target of delivering 1.5 million new homes by 2030. To align the current steady progress of strategic mitigation progress with this tight timetable will require some non-legislative changes to current policy.

Both of the public funding streams which currently underpin the strategic mitigation approach, Natural England's Nutrient Mitigation Scheme and the Local Nutrient Mitigation Fund that local authorities can bid into to fund local mitigation strategies, come with constraints which affect the pace of delivery.

Natural England's Nutrient Mitigation Scheme allows developers in the Poole Harbour and Tees catchments to purchase credits for developments awaiting planning permission, to offset pollution from the development should permission be granted (if permission is refused, the developer receives a refund for the credits). The supply of available credits is dependent on the supply of capital mitigation measures, namely how much land in the respective catchments can be put to uses that result in fewer nutrient inputs. This significant land use change requires capital spending. As such, the supply of these capital mitigation measures is not always certain and speedy, constraining the availability of credits. Credits are offered in rounds, depending on levels of supply.¹⁰

Strategic mitigation strategies funded by the Local Nutrient Mitigation Fund face similar constraints. Local authorities receiving money from the Fund are required to first identify capital mitigation measures, usually centred around land use changes, before offering developers the opportunity to purchase credits. Successful bids to round 1 of the Fund were only announced in December 2023, so all recipient local authorities are still at this mitigation-identifying stage¹¹, and will not offer credits until sufficient mitigation measures from permanent or near-permanent land-use changes are found.¹² Due to the complexity inherent to land ownership and management, it takes time to identify and secure land for the delivery of mitigation measures.

⁹ <https://www.endsreport.com/article/1857197/neutral-numbers-homes-held-nutrient-neutrality-new-levelling-act-means>

¹⁰ <https://www.gov.uk/government/publications/natural-englands-nutrient-mitigation-scheme-for-developers>

¹¹ <https://www.gov.uk/government/publications/letter-from-minister-for-housing-planning-and-building-safety-on-nutrient-neutrality-december-2023/letter-from-minister-for-housing-planning-and-building-safety-on-nutrient-neutrality-december-2023>

¹² For an example of this stage, see the current work of the Norfolk Nutrient Mitigation Fund, financed through Round 1, focused around a call for capital mitigation projects: <https://www.nmfnorfolk.co.uk/>

Current coverage of strategic mitigation schemes constitutes a further delivery constraint. In total 27 freshwater catchments are affected by nutrient neutrality rules.¹³ 8 of these catchments (including Poole and the Solent) have received strategic mitigation support through round 1 of the Local Nutrient Mitigation Fund¹⁴ and will use this support to develop or sustain strategic schemes. To these 8 can be added the strategic mitigation scheme on the Tees, currently supported through solely the Nutrient Mitigation Scheme. Beyond these areas, most nutrient-stressed catchments do not currently have strategic mitigation schemes in place, or under development. Round 2 of the Local Nutrient Mitigation Fund closed in April 2024 and should offer support to some of these catchments.

Strategic mitigation is steadily unlocking homes delayed by nutrient neutrality rules, but mitigation supply constraints and current patchy coverage means that the pace of this solution does not yet match the Government's tight timetable for housing delivery.

Accelerating the pace of strategic mitigation

Changes to the terms of the Nutrient Mitigation Scheme and the Local Nutrient Mitigation Fund, and the creation of new national delivery taskforce, could act as a catalyst for the swifter progression of development in nutrient stressed catchments.

The Ministry for Housing, Communities & Local Government and the Department for the Environment, Food and Rural Affairs should first issue a joint statement that, for both the Nutrient Mitigation Scheme and local strategies financed by the Local Nutrient Mitigation Fund, **temporary mitigation measures requiring operational rather than capital spending should be accepted as a bridging solution**. There are an increasing number of effective, nature-friendly temporary mitigation measures coming on stream, from the use of organic fertiliser on farmed land¹⁵, to riparian buffers¹⁶ and freshwater structures mimicking beaver activity (known as the Beaver Dam Analogue approach)¹⁷. Allowing the inclusion of these temporary, operational measures in strategic mitigation supply banks for the first time, where evidence of the nutrient reductions they deliver is sufficiently robust, would swiftly and significantly increase the supply of mitigation measures and with it the supply of credits.¹⁸

Allowing temporary mitigation measures to expand the supply of mitigation credits would be a catalyst intervention, designed to help secure the rapid expansion of strategic mitigation schemes. In time, as land-based measures came forward, temporary mitigation measures would be retired in favour of these

¹³ <https://www.gov.uk/government/publications/nutrient-pollution-reducing-the-impact-on-protected-sites/nutrient-pollution-reducing-the-impact-on-protected-sites>

¹⁴ <https://www.gov.uk/government/publications/letter-from-minister-for-housing-planning-and-building-safety-on-nutrient-neutrality-december-2023/letter-from-minister-for-housing-planning-and-building-safety-on-nutrient-neutrality-december-2023>

¹⁵ See - <https://www.agritech-uk.org/companies/biocore-agri/>

¹⁶ See - <https://www.greenshank-environmental.com/nutrient-neutrality>

¹⁷ See - <https://www.greenshank-environmental.com/schemes/kent-phosphate-scheme>

¹⁸ <https://www.greenshank-environmental.com/blog/why-we-need-clarity-and-ambition-for-nature-based-solutions>

permanent measures. Temporary measures would provide an initial spark for the expansion of strategic mitigation across all nutrient stressed catchments, providing time for slower, steadier long-term land-based solutions to come forward. They provide a bridging solution, to help align the pace of strategic mitigation rollout to the Government's development timetable. The price of credits paid by developers would cover contributions to both immediate temporary measures and the permanent, land-based solutions they bridge to.

Bringing temporary measures into play now will also mean that their role within strategic mitigation would be well-established by 2025-2030, when they will be extensively used. This forecast use is due to the wastewater treatment work upgrades required by the Levelling Up & Regeneration Act, which are scheduled to take place between 2025 and 2030. There will be a requirement throughout that period for temporary mitigation, to help sustain mitigation efforts until the upgrades are completed. For example, a development taking place in 2025 in a catchment where works are scheduled to be upgraded by 2027 will need to provide 'full' mitigation only for 2 years; we can expect temporary solutions to be well suited to this.

To further boost strategic mitigation, a national nutrient taskforce should be created, to work with local partners to extend strategic mitigation to cover catchment areas not covered by the Nutrient Mitigation Scheme or local schemes financed by the Local Nutrient Mitigation Fund. This taskforce could be located with MHCLG and be modelled on the taskforce established by the Deputy Prime Minister in July to promote the development of new towns.¹⁹ The national nutrient taskforce could bring together local authorities, developers, mitigation providers, Natural England and National Park Authorities (where appropriate) in catchments still needing a strategic approach, to drive the development of schemes modelled on the success of partnership working around the Solent²⁰ and swiftly unlock local supplies of mitigation credits. It could become a model for new strategic ways of joint-working between local authorities, developers and environmental bodies to deliver for nature.

Crucially, central Government leadership could also bring in local representatives of the water and agricultural industries into these partnerships, presenting further opportunities for nutrient pollution reductions across catchments to create further headroom for development. Water companies in particular should offer infrastructure improvements to help with this, such as connecting more off-grid homes to mains sewage and ensuring better treatment of these waste outputs to reduce nutrient content reaching the catchment. On the agriculture side, farm support measures within Environmental Land Management schemes (potentially through new water friendly farming packages), and enforcement of breaches of the farming rules for water, will deliver pollution reductions. National oversight coordinating local delivery, across a range of sectors, could aggregate such pollution reductions at a significant scale, boosting the supply of mitigation credits. It could also secure improvements in places where nitrogen and/or phosphorus pollution is causing wider problems, such

¹⁹ <https://www.gov.uk/government/news/expert-taskforce-to-spearhead-a-new-generation-of-new-towns>

²⁰ <https://www.push.gov.uk/our-partnership-and-nutrient-neutrality/>

as pollution in Lake Windemere impacting on public enjoyment of a National Park,²¹ helping to reduce the social, economic and health impacts of pollution across the board.

The interventions of the taskforce could serve as a catalyst for improved water quality, and could aim not just to mitigate nutrient pollution harms, but to actually restore freshwater and marine protected sites, drawing together development, farming and water industry tools to help achieve this.²² The taskforce could pioneer new national-level coordination of significant quantities of funding from the private sector, for deployment behind strategic interventions to advance nature recovery.

The increase in coverage of the strategic mitigation driven by a national taskforce is likely to also further boost mitigation supply by allowing best practice approaches as to how to swiftly and effectively increase credit supply to be shared across different catchments. National oversight by MHCLG could also enable opportunities to borrow credits between catchments to be seized, in adjoining catchments which feed into the same protected site. For example, part of the nutrient reduction achieved by land-use change on a large farm in one catchment could be temporarily accounted to the next door catchment where land-use changes are slower to come forward, being 'repaid' when measures do mature in the second catchment. This should only be the case where the respective catchments flow into and effect the same protected site. In most cases this will be a coastal or marine Special Protection Area or Special Area of Conservation, where multiple catchments provide freshwater inputs.

The increases in credit supply achieved by the inclusion of temporary mitigation measures and by the expansion of strategic mitigation to new areas could then enable a third change - a more-upfront credit system for all developers. With credit supply more assured across the country, ***time-limited credit rounds should be replaced by a fixed opportunity for developers to make a 'strategic mitigation contribution' for a project when consent is granted.*** This opportunity should be made available to all developers in all nutrient stressed catchments at all times. Once the contribution is made, the developer would be able to progress with post-consent work just as they would with a project outside of a nutrient stressed catchment. The contribution would then be processed through the Nutrient Mitigation Scheme, or local mitigation strategy (including those overseen by the national nutrient taskforce), to help fund mitigation measures. The supply of mitigation measures will have to be sufficient to allow mitigation to be upfront – that is in place before occupation of the development is completed. The two measures set out above will help to secure the level of mitigation supply required for this.

This is the simple, straightforward approach that Natural England recommended during the debates around the previous Government's attempt to change nutrient neutrality rules. Writing to parliamentarians in September 2023, Natural England stated that "*upfront, fixed rate contributions from*

²¹ See <https://www.cumbriawildlifetrust.org.uk/blog/stephen-trotter-ceo/windemere-iconic-lake-trouble>
Beyond Lake Windemere, there is considerable overlap between National Parks and areas of high nutrient pollution. Allowing pollution to continue in these areas risks adverse impacts for public recreation and UK tourism.

²² Recent work in the River Eden catchment to go beyond nutrient mitigation to achieve restoration provides a model for this sort of wider work, see p18-22 of:
https://www.lakedistrict.gov.uk/data/assets/pdf_file/0021/520932/MSRFIN~1.PDF

developers could be faster and offer more certainty in enabling planning permissions to be granted and support emerging green finance markets.”²³

A component of the strategic mitigation contribution fee could also be ringfenced for central Government, to ensure full repayment of the initial investment of taxpayer money in the new nutrient mitigation taskforce, and the Nutrient Mitigation Scheme and Local Nutrient Mitigation Fund. Similarly, the fee could include recompense for additional local authority and Natural England resourcing, provided upfront by central Government to help ease the progression of the new strategic approach. Given that the new strategic mitigation contribution system would create a swift, uncomplicated ‘pay and go’ process for developers, to address potential pollution caused by their development, this increased price of credit purchase can be justified on both commercial and environmental grounds.

This package of additions to existing Government schemes would address the main constraint to the acceleration and expansion of the strategic mitigation approach; insufficient supply of mitigation measures. The first two changes would significantly and swiftly increase this supply (and with it the supply of mitigation credits) and allow for the third change; a simplification of the process for developers, all without reinventing the wheel. This evolution in approach could be achieved by departmental direction rather than legislation, allowing for changes to come forward and succeed faster than any attempt to change the Habitats Regulations, which would require parliamentary scrutiny and provoke fierce opposition. The limited additional outlay of public money required to establish the national nutrient taskforce, and additional resourcing for local authorities and Natural England to help the new system bed in more widely, could be recovered after a few years through increased strategic mitigation contributions for developers.

Strategic mitigation schemes are already unlocking nutrient delays and enabling new housing, whilst preserving critical environmental protections. Deliverable, cost-effective additions to these schemes would allow them to accelerate and expand, hastening new housing delivery in catchments affected by the nutrient neutrality rules without increasing pollution, in line with Government ambitions.

²³ <https://www.theguardian.com/environment/2023/sep/12/ministers-ignored-natural-england-advice-plans-rip-up-pollution-laws>

Note: The reasonable doubt test

The current requirement for capital-only, permanent mitigation measures in strategic schemes is the result of a safety-first approach to the implementation of the Habitat Regulations. The relevant part of the Habitat Regulations state that a local planning authority must not consent to a development if there is reasonable doubt about its impact on the integrity of a site protected by the regulations. From 2022, planning authorities focussed on having permanent mitigation measures in place before offering credits as an attempt to pass this reasonable doubt test.

The evolved landscape in 2024 means that there are now other routes to pass the test. The proven success of strategic mitigation in the Solent and other catchments, the 2030 legal date for wastewater treatment upgrades to take place by and the envisioned significant increase in the scale of mitigation measures delivered by the above policy recommendations, mean that a strategic mitigation contribution approach, if adopted in full and including a requirement for mitigation to be in place before occupation, could reasonably be said to assure the integrity of a site covered by it.

Wildlife and Countryside Link (Link) is the largest nature coalition in England, bringing together 83 organisations to campaign for the natural world.

This briefing is also supported by the following organisations:

The Wildlife Trusts
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