
A levy-based approach to nutrient neutrality

The problems with nutrient neutrality are not its existence, but the time taken to navigate an imperfect system. Here we outline a plan for a Nutrient Levy Contribution System. Through this system, developers will pay a levy charge at the point of receiving full planning permission. Levy payments will be pooled in Catchment Nutrient Mitigation Funds. These funds will enable the strategic procurement of nutrient mitigation to meet the needs of new development in each 'nutrient sensitive' catchment area. Payment of the levy will discharge a developer's requirements in relation to nutrients, removing the delays associated with developers procuring nutrient mitigation themselves.

The proposed levy system incorporates marketplace dynamics and a method to ensure onsite mitigation is prioritised. The levy system will also allow for more strategic allocation of resources to nutrient mitigation schemes, with the potential to derive greater additional benefits from the deployment of these schemes. Our proposals incorporate more robust mechanisms for monitoring, reporting and verification of mitigation schemes and safeguards should mitigation schemes underperform due to factors outside of the control of mitigation scheme providers.

We believe that together, the proposals outlined below will result in a nutrient neutrality system that works for developers, mitigation scheme providers and, critically, will drive better environmental protection. Furthermore, if new catchments are impacted by nutrient neutrality, the Nutrient Levy Contribution System will provide an immediate response to ensure housebuilding can continue while ensuring that the environment is protected in the long-term.

Issues with the current nutrient neutrality system

Nutrient neutrality is already facilitating the delivery of thousands of more sustainable new houses, but the current nutrient neutrality system could be improved. Improvements to the system should allow housebuilding to happen more quickly, with reduced costs and risk for developers, while still delivering environmental improvements. Below we outline the key friction points in the current nutrient neutrality system.

The requirement to secure mitigation prior to receiving planning permission

- At present, new developments require mitigation to be secured prior to grant of planning permission.
- This is required at any stage in the planning process, from outline planning permission onwards.
- Meeting this obligation requires both mitigation supply within a defined geography and for mitigation to be paid for prior to a development progressing through planning.
- The defined geographies are sometimes very limited. In affected river catchments, the requirement for mitigation schemes to remove nutrients upstream of the point of additional nutrient inputs may not be possible. This reduces mitigation opportunities, resulting in smaller mitigation markets and higher prices due to a lack of competition.
- The need to secure mitigation prior to achieving full planning permission ties up available mitigation ahead of when it is actually required. This adds cost and risk to both development projects and mitigation schemes.

Geographical disparities in mitigation requirements

- Per-house mitigation requirements can vary by as much as 40x due to the wastewater treatment works (WwTW) a house connects to.
- Some developments will be prohibitively expensive to mitigate.
- This issue is felt most acutely in more rural areas.

Monitoring, reporting and verification, and enforcement

- Mitigation schemes are currently being secured by Section 106 agreements with Local Planning Authorities (LPAs).
- These legal agreements tend to require monitoring/measurement of mitigation scheme performance and reporting of monitoring results to the LPA.
- LPAs tend to have enforcement and step in rights through a Section 106 agreement should a scheme be evidenced as not being maintained or is underperforming.
- It is not clear whether LPAs will have the resources to verify monitoring results and take the required enforcement action should a mitigation scheme fail.

A levy-based funding mechanism

We believe that any legislative efforts from Government in relation to nutrient neutrality should be focussed on reforming the system to speed up housebuilding while still protecting the environment. New legislation should also futureproof against the expansion of nutrient neutrality should new areas be designated as 'nutrient sensitive'.

A levy-based nutrient neutrality system would provide the most comprehensive approach to delivering nutrient neutral development in a way that works for housebuilders and the environment. Below we outline how a Nutrient Levy Contribution System could operate.

Governance body requirements

Overarching governance body requirements

1. It is proposed that the Nutrient Levy Contribution System is a mechanism for funding local Catchment Nutrient Mitigation Funds.
2. These Funds will be administered at the scale of a nutrient sensitive catchment area.
3. It is suggested that Natural England would be a suitable body to own the governance and operations of the Mitigation Funds.
4. Natural England collect Nutrient Levy Contributions from housing developers and use these to purchase mitigation. Purchases can be from the private market, Natural England's own mitigation scheme, other public sector schemes (i.e., LPA-run mitigation schemes) and third sector schemes.
5. The nutrient mitigation market will become, in effect, a monopsony market (single buyer, with multiple sellers). However, the Nutrient Levy Contribution System will not preclude mitigation schemes being created and traded outside of the Levy System in the same manner as the current nutrient neutrality system operates¹.

¹ The Thame Basin Heaths Special Protection Area mitigation scheme provides an existing example of very similar system that facilitates the provision of mitigation from recreational impacts from residential development. See: <https://www.bracknell-forest.gov.uk/planning-and-building-control/planning/planning-policy/supplementary-planning-documents/thames-basin-heaths-special-protection-area-supplementary-planning-document>

6. The governance body can choose to set strategic priorities for the disbursement of developer contributions onto mitigation schemes (see below).

Practical requirements for the governance body

1. The Catchment Nutrient Mitigation Funds will subsume the responsibility for legally securing the delivery of mitigation schemes, noting that this role currently sits with LPAs.
2. Each Mitigation Fund will also have the responsibility for technical approval of mitigation schemes, a role that currently sits between Natural England in an advisory capacity and LPAs as the Competent Authority.
3. Mitigation Funds will include mechanisms for measurement/monitoring, reporting and verification (MRV) of mitigation schemes. At present these responsibilities tend to sit with LPAs though it is unclear whether sufficient funding is available to deliver MRV on all private schemes in perpetuity.
4. Due to inherent uncertainties in the amount of mitigation that will be delivered from nutrient mitigation schemes, the Mitigation Fund will have a mechanism that allows it to make up for any shortfalls in mitigation delivery should MRV show that a scheme is underperforming.
5. There will be a requirement to determine how developer contributions to the Catchment Mitigation Funds will be secured, as this normally would be done using Section 106 agreements. In the present case, it is suggested that the Nutrient Levy Contribution System will be administered by Natural England, creating a consideration around how to legally secure developer contributions and route them to each Mitigation Fund.

The requirements for housing developers

1. All developments in affected nutrient sensitive catchments have a pre-commencement planning condition to either:
 - a. Pay the Nutrient Levy Contribution to the Catchment Nutrient Mitigation Fund; or
 - b. Show that they have achieved nutrient neutrality through an alternative mitigation strategy.
2. When applying to the Catchment Nutrient Mitigation Fund:
 - a. Housing developers calculate the nutrient impact of a proposed development using the relevant Natural England nutrient budget calculators.
 - b. The nutrient budget calculation is adjusted to account for any onsite mitigation measures, e.g., Sustainable Drainage Systems (SuDS).
3. The nutrient budget calculations are submitted with the application to the Catchment Nutrient Mitigation Fund, with the nutrient budgets used to determine how much mitigation each Fund needs to purchase.
4. Nutrient Levy Contributions will be independent of a development's nutrient budget. Contributions will be calculated on a fixed, price per housing unit basis, with a discount for single-occupancy units.
5. The payment rate per unit will be fixed at the outset, based on a formula that accounts for the present cost of mitigation.
6. The payment rate can incorporate a regional multiplier to consider both housing and land values, and the cost of creating nutrient mitigation schemes.

Collection of developer contributions

1. Developers will pay contributions into the Nutrient Levy Contribution System at the Discharge of Conditions stage of the planning process.
2. This payment could be made as part of s106 contributions and will discharge a developer's requirements in respect of nutrient mitigation.
3. Developer contributions will be routed to the relevant Local Catchment Mitigation Fund.

Disbursement of developer contributions

1. Catchment Nutrient Mitigation Funds will disburse developer contributions from the Funds onto mitigation schemes.
2. The amount of mitigation the Mitigation Funds need to purchase will be determined using nutrient budgets for developments contributing to the Funds (as above).
3. Mitigation Funds will purchase from scheme providers, with the price paid for mitigation set at a value per kg of nutrient mitigation provided.
4. The price per kg of nutrient mitigation will have a ceiling aimed at being high enough to ensure a Catchment Mitigation Fund can meet the mitigation requirement for all housing to be delivered in year one, plus the forecast mitigation requirement for the following year. This will provide certainty to scheme providers while the market is in its infancy.
5. When scheme providers apply to a Catchment Mitigation Fund, they will also submit technical documentation associated with the scheme to show how it will deliver the quantity of mitigation being offered for purchase.
6. Once a Catchment Mitigation Fund has purchased mitigation for one year ahead, Natural England will review the ceiling price to determine whether it can be lowered.
7. Natural England will have criteria for purchasing mitigation, including:
 - a) A preference for more cost-efficient compensation schemes (a reverse auction mechanism could be used to select schemes to purchase from).
 - b) Consideration of a spatial strategy to allocate mitigation to more at-risk areas where possible.
 - c) An aim to align mitigation schemes with wider nature recovery programmes.
 - d) A preference for purchasing mitigation from accredited providers.
8. Where possible Natural England will publish a buying strategy forecast a year in advance to enable providers to develop schemes to mirror demand, with particular reference to spatial and volume requirements.
9. Natural England can purchase mitigation from their own schemes if they meet the criteria.
10. Each Catchment Nutrient Mitigation Fund should be pump primed by money from the Government, e.g., Natural England's Nutrient Mitigation Scheme or the DLUHC Local Mitigation Scheme.
11. Developer contributions will be collected to support ongoing provision of the scheme. These contributions are to be ringfenced for investment into nutrient mitigation schemes.

Other practical considerations

Incentivising onsite nutrient mitigation

1. There is a risk that the Nutrient Levy Contribution System would disincentivise investment by developers in better SuDS designs that provide nutrient mitigation benefits.
2. This risk could be ameliorated by reducing developer contributions pro rata in line with the % reduction in mitigation requirements achieved using onsite mitigation methods.
3. A standardised methodology for calculating the impact of onsite mitigation solutions should be provided².

Mitigation solution frameworks and standards, and provider accreditation

1. At present, constructed wetlands are the only mitigation solution that have a Natural England approved framework for deployment.
2. There are number of other mitigation solutions that have been proposed but a lack of clear guidance on how to deploy them.
3. The Nutrient Levy Contribution System should provide a menu of mitigation solutions with frameworks for their delivery to help scheme providers develop good mitigation schemes.
4. Using outcomes from MRV of deployed schemes, frameworks should be iterated until there is enough certainty that allows a standard to be produced, detailing how to specify a type of mitigation solution.
5. Mitigation scheme providers that are shown to consistently deliver schemes that meet the requirements of frameworks / standards can achieve an accreditation. Schemes from accredited providers will still need to be supported by full technical documentation, however Natural England can apply a 'trusted supplier' process in order to speed up scheme technical review and reduce Natural England resource requirements.

MRV, maintenance and mitigation shortfall risk management

1. The Nutrient Levy Contribution System should include a formal MRV requirement that is contingent on the type of mitigation solution.
2. Mitigation solution frameworks / standards should include monitoring and maintenance proscriptions.
3. Monitoring requirements will sit with the mitigation scheme providers and purchase prices for mitigation should make allowances for the ongoing costs of monitoring and scheme maintenance, with this allowance evidenced as part of the mitigation purchase process.
4. Scheme providers will report the outcome from monitoring and evidence of ongoing maintenance to the Catchment Nutrient Mitigation Fund.
5. Each Mitigation Fund will have a function to verify monitoring results and maintenance records. This could result in two scenarios:
 - a. Where a scheme is being poorly maintained, Natural England can take enforcement action.
 - b. Where a scheme is shown to be underperforming owing to factors outside of the scheme provider's control, Natural England can use any surplus funds

² A calculator that standardises calculations of the mitigation potential from SuDS is in development by an industry expert.

in a Mitigation Fund or, where there is no surplus, apply to Government for a grant to secure additional nutrient compensation to address the shortfall³.

Allowing for geographic limitations within nutrient sensitive catchment areas

1. As detailed above, there are geographic limitations on mitigation supply in some catchments and the per house mitigation requirement can also vary significantly between developments.
2. This issue is generally most acute in nutrient sensitive river catchments.
3. It is proposed that the Nutrient Levy Contribution System will make an allowance for averaging mitigation requirements at defined sub-catchment scales, based on an objective analysis of the scale of nutrient impacts that will arise from forecasted development.
4. Purchases of mitigation should be done in line with the spatial strategy criteria to target mitigation schemes at the most at-risk areas sections of a river.
5. Where developments may not be able to be mitigated upstream of their point of nutrient impact, there is an expectation that funds will be spent on mitigation in other areas. The area lacking mitigation are noted in the buying strategy forecasts for the following years and prioritised if mitigation in these areas subsequently comes forward.

Proposed levy costing model

1. The proposed costings below are based on in-depth knowledge of the cost of scheme creation and the current pricing of nutrient mitigation.
2. Reviews of pricing based on the supply and demand for mitigation, and the cost of procuring mitigation, will be incorporated into an annual price review. This allows the costing model to respond to market forces.
3. The suggested costs are balanced to reflect the cost of creating mitigation vs. a viable price for housebuilders.
4. Housebuilders have been paying £5-12k/house depending on the area. In some areas, these prices are only just viable. It is therefore suggested that a regional multiplier should be determined to reflect regional disparities in the cost of bringing mitigation forward vs. the cost of housing.
5. An initially fixed purchase price at a level that means most schemes should be profitable will encourage scheme deployment. When there is liquidity within a catchment mitigation market, prices will fall due to the preference for procuring mitigation from more cost-efficient schemes via a reverse auction process.
6. If Natural England has under-purchased mitigation due to any issues with forecasting future demand, it can use the reduced cost to top up mitigation without reducing the levy price for developers.
7. The 2030 Technically Achievable Limits (TAL) WwTWs upgrades in the Levelling-Up and Regeneration Act 2023 will reduce the per-house mitigation requirement. As upgrades will be carried out over a period of time, these reductions will provide a glide path from potential under mitigation at the start of the Nutrient Levy Contribution System to betterment and contributions to site restoration after the TAL upgrades have been completed.
8. Costs for producing nutrient mitigation vary and generally scheme providers are selling nitrogen (N) mitigation at a minimum of £2,500/kg N with the majority of

³ At present there is a lack of any mechanism to put additional mitigation in place should a scheme fail for reasons outside of a scheme provider's control.

trades at £3,500/kg N, while phosphorus (P) is being sold at rates between £60,000-£90,000/kg P, though in some areas trades have been made at rates > £90,000/kg P. The charging schedule shown in Table 1 has benchmarked potential levy charges at the lower end of current credit prices.

9. Scheme providers will almost always produce both N & P mitigation and normally a scheme will produce proportionally more N than P in terms the number of houses that can be mitigated. The reduced cost per kg in N & P areas (Table 1) is designed to reflect this dual provision.

Table 1: Proposed nutrient levy charging schedule

Area impacted by	Total cost/house	kg/house		£/kg		£/house	
		N	P	N	P	N	P
N only	£7,000	2	-	£3,500	£-	£7,000	£-
P only	£7,500	-	0.1	£-	£75,000	£-	£7,500
N & P*	£7,250	2	0.1	£1,750	£37,500	£3,500	£3,750

*In N & P catchments, we are forecasting an oversupply of N. In these instances, Natural England are not obligated to purchase the total amount of both nutrients produced by a mitigation scheme. If Natural England are buying both N & P, but the combined purchase value is lower than the equivalent value for selling P only, then P only pricing will apply.

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