

**Reference: ANON-AQTS-32N9-5**

**Matter 14: Biodiversity and the Natural Environment**

**Policy NE16 – Nutrient Neutrality: Water Quality Effects on SPAs, SACs and Ramsar Sites of the Solent and River Itchen**

**Q1. Would policy NE16, in referring to ‘development’ rather than ‘overnight development’ be clear in its purpose and requirements, so as to ensure effectiveness?**

Partially – refinement is needed.

Natural England’s guidance typically applies nutrient neutrality requirements to development resulting in additional overnight accommodation, which generates foul water discharges. However, Policy NE16 must also account for non-residential development that contributes to nutrient loading through surface water runoff, particularly from impermeable surfaces (e.g. roads, car parks, large commercial units).

At Bushfield Camp, for example, the proposed multi-storey car park and associated hardstanding will likely generate nitrogen- and phosphorus-rich runoff, posing a risk to the River Itchen SAC. Limiting the policy to overnight development risks leaving such developments unassessed, despite their nutrient impacts.

Furthermore, the current approach of relying solely on residential development to mitigate nutrient loading places an unnecessary and disproportionate burden on one sector. This is not a sound or equitable approach.

Recommendation: Amend Policy NE16 to:

- Refer to: *"development that gives rise to nutrient or pollutant discharges, including overnight accommodation and surface water-generating infrastructure such as large-scale car parks, roads, or commercial hardstanding..."*
- Apply nutrient mitigation requirements across all sectors, with proportionality based on likely nutrient contributions.

**Q2. Would policy NE16(i) serve a clear purpose, avoiding unnecessary duplication of national policy?**

Yes – with refinement.

Policy NE16(i) plays a critical role in ensuring local implementation of the Conservation of Habitats and Species Regulations 2017 (as amended). While national legislation sets the overarching framework, NE16(i) provides the locally specific operational mechanism needed to protect the Solent and River Itchen catchments.

NE16(i) should explicitly:

- Require project-level Habitats Regulations Assessments (HRA);
- Specify that mitigation must be demonstrably additional, not part of statutory upgrades or baseline assumptions;
- Confirm that Natural England must agree all mitigation strategies at application stage.

This reflects legal precedent, including:

- The Dutch Nitrogen Case (CJEU, 2018);
- Wyatt v Fareham BC [2021] EWHC 1434 (Admin).

These cases confirm the need for certainty in nutrient mitigation and the necessity of Natural England's oversight.

Recommendation: Revise NE16(i) to state its purpose as: *"to operationalise the Habitats Regulations within the Winchester Plan area, ensuring all development within nutrient-sensitive catchments undergoes a project-level HRA, with mitigation that is demonstrably additional, secured for the lifetime of the development, and agreed with Natural England."*

**Q3. Given requirements in the Levelling-Up and Regeneration Act (LURA) for wastewater treatment works to be upgraded to the highest technically achievable 19 ED17 limits by 2030, would the policy be justified, effective and consistent with national policy?**

Not yet – clarification is required.

The LURA 2023 places a legal obligation on water companies to upgrade wastewater treatment works (WwTWs) by April 2030. These upgrades are:

- Already included in Natural England's nutrient calculator baseline;
- Not considered additional mitigation;
- Not available to offset new development under the Habitats Regulations.

Despite this, Winchester City Council's Cabinet Report CAB3470 suggests that credits may be generated from such upgrades. This raises serious concerns about double counting and non-compliance with national guidance.

Recommendation: Add the following clause to Policy NE16:

*"Nutrient mitigation required for new development must be additional to the statutory wastewater treatment works upgrades mandated by the Levelling-Up and Regeneration Act 2023 and included in Natural England's nutrient calculator baseline. Reliance on these baseline upgrades for offsetting new development's nutrient impacts is prohibited and will be considered double counting."*

Request clarification from the Council on how it ensures that statutory upgrades are not used inappropriately as mitigation, particularly in light of Report CAB3470.

**Q4. Would policy NE16(iii), for the purposes of effectiveness, require further detail in relation to requiring a positive contribution to the Local Recovery Network?**

Yes – clarification and strengthening are needed.

Policy NE16(iii) should ensure that nutrient mitigation schemes also deliver biodiversity net gain (BNG) and support the Local Nature Recovery Strategy (LNRS). This is especially important for off-site mitigation and land-use change schemes.

Recommendations:

- Align with the LNRS, ensuring mitigation supports landscape-scale restoration;
- Require nutrient mitigation schemes to also deliver BNG using recognised metrics;
- Define a “positive contribution” using measurable outcomes, such as habitat area, connectivity, and species targets;
- Prioritise strategic ecological restoration and integration with the Local Nature Recovery Network.

Suggested Policy Text:

*“Off-site nutrient mitigation must contribute measurably to the Local Nature Recovery Network and align with the objectives of the Local Nature Recovery Strategy. Schemes should, where feasible, deliver biodiversity net gain, improve ecological connectivity, and support the strategic restoration of habitats across the district.”*

**Q5. Would the policy provide appropriate clarity in relation to strategic nutrient solutions available to developers as part of the planning process, so as to ensure effectiveness?**

No – more clarity and transparency are needed.

Developers require accessible and up-to-date information on mitigation options, including:

- Available schemes and credit volumes;
- Eligibility criteria and pricing;
- How to engage with Natural England;
- On-site vs off-site mitigation routes.

Recommendations:

- Signpost developers to Winchester City Council and PfSH for credit availability and scheme information;
- Encourage early engagement with Natural England, including the Discretionary Advice Service (DAS);
- Promote on-site solutions like wetlands or SuDS where feasible;
- Encourage integration with BNG and LNRS objectives;
- Commit to a publicly accessible mitigation register.

Suggested Supporting Text Addition:

*“Applicants must confirm nutrient neutrality through on-site or off-site mitigation. Where strategic schemes are used, credits must be verified by Winchester City Council or PfSH. Applicants are encouraged to consult Natural England early, and to design schemes that deliver BNG and support the Local Nature Recovery Strategy.”*

**Q6. Would the policy and supporting text appropriately recognise the impacts of phosphates and nitrogen draining into the River Itchen and the need to agree nutrient mitigation schemes with Natural England?**

Not yet – further refinement is necessary.

Recommendations:

1. Highlight the Specific Requirements of the River Itchen SAC – NE16 must explicitly state that both nitrogen and phosphorus are pollutants of concern and must be addressed through mitigation.
2. Stress the Importance of Natural England’s Approval – All nutrient mitigation strategies, whether strategic or project-specific, must be agreed with Natural England to ensure compliance with the Habitats Regulations.

3. Detail the Ecological Sensitivities – Nutrient enrichment affects key features of the River Itchen SAC:

- *Atlantic salmon*, due to silted spawning grounds;
- *White-clawed crayfish*, sensitive to nutrient spikes;
- *Floating Ranunculus* beds, impacted by eutrophication and sedimentation.

4. Advocate for the Inclusion of the Recommended Clause:

*"Nutrient mitigation required for new development must be additional to the statutory wastewater treatment works upgrades mandated by the Levelling-Up and Regeneration Act 2023 and included in Natural England's nutrient calculator baseline. Reliance on these baseline upgrades for offsetting new development's nutrient impacts is prohibited and will be considered double counting."*

5. Request Information on a Publicly Accessible Register – Winchester City Council should establish and maintain a publicly accessible nutrient mitigation register detailing:

- Available and allocated credits;
- Locations of mitigation schemes;
- Long-term monitoring commitments.

Conclusion: Policy NE16 is a critical tool for securing nutrient neutrality and safeguarding the River Itchen SAC and Solent sites. However, the policy must be strengthened to ensure:

- Legal compliance with the Habitats Regulations;
- Alignment with LURA and national guidance;
- Effective mitigation planning across all development types;
- Transparent and scientifically robust credit management.

The proposed amendments and clarifications will ensure that NE16 is sound, justified, and effective.