

## local planning guidance

This is one of a series of local planning guidance notes, amplifying local development plan policies and reflecting national guidance in relation to developments affecting Great Crested Newt (GCN) *Triturus cristatus* populations. This guidance note is intended to provide advice and guidance to developers, land owners, members and other local authority council officers when assessing development proposals involving, or in close proximity to GCN population, together with other material planning considerations.

# GREAT CRESTED NEWT MITIGATION REQUIREMENTS – Johnstown Newt Site SAC and the Wider Countryside.

This document will be treated as a material consideration in the determination of planning applications and relates to the following relevant policies of the adopted Wrexham Unitary Development Plan

The Great Crested Newt (GCN) is found in lowland habitats across northern Europe. This species of newt is widely distributed throughout most of England, but is rare in Cornwall, Devon and parts of Wales and Scotland. GCN are widespread within Wrexham County Borough particularly at Stryt Las and Hafod, both designated Sites of Special Scientific Interest (SSSI) and collectively as Johnstown Newt Site, a Special Area of Conservation (SAC) for their important GCN populations.

### Legislation and National, Regional and Local Planning Context

The Great Crested Newt is fully protected under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and Schedule 2 of The Conservation of Habitats and Species Regulations 2010 making it a European Protected Species (EPS).

Details of the legislation can be found at:

Wildlife and Countryside Act:  
[http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1981/cukpga\\_19810069\\_en\\_1](http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1981/cukpga_19810069_en_1)

The Countryside and Rights of Way Act:  
[http://www.opsi.gov.uk/acts/acts2000/ukpga\\_20000037\\_en\\_7#pt3-pb8-l1g81](http://www.opsi.gov.uk/acts/acts2000/ukpga_20000037_en_7#pt3-pb8-l1g81)

The Conservation of Habitats and Species Regulations 2010:  
[http://www.opsi.gov.uk/si/si2010/uksi\\_20100490\\_en\\_1](http://www.opsi.gov.uk/si/si2010/uksi_20100490_en_1)

Where EPS might be affected, local authorities must have regard to the Habitats and Species Regulations. This requires the planning system to effectively prevent harm to GCN including preventing the incidental capture, killing or injury, disturbance and the damage and destruction of their breeding and resting sites.

In accordance with the legislation, derogation or EPS licences can be issued by Natural Resources Wales (NRW) for developments that satisfy the following three tests:

- a) There are no feasible alternative solutions to the development that are less damaging.
- b) There are imperative reasons of overriding public interest (IROPI) for the development to proceed.
- c) The proposal will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status (FCS) in their natural range.

A local authority may only grant permission for a development if it considers that the derogation tests are satisfied such as it is likely that the applicant will be issued with an EPS license by NRW.

In addition, where harm is likely to be caused wholly or partly by activities as a consequence of the development (e.g. incidental to otherwise lawful activities), then those activities also need to be considered when deciding whether the derogation tests are satisfied.

Favourable conservation status for a species is defined by the British Standard<sup>1</sup> as when;

- a) population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats;
- b) the natural range of the species is not being reduced for the foreseeable future; and
- c) there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.

The species is also listed under the provisions of Section 42 of the Natural Environment and Rural Communities Act 2006, which requires competent authorities to have due regard to the presence of the species when carrying out any of their functions.

## National Planning Policy Guidance:

**Chapter 5:** Conserving and Improving Natural Heritage and the Coast, Planning Policy Wales (PPW, November 2016) and Technical Advice Note (TAN) 5: Nature Conservation and Planning (September 2009) provide the national planning framework for the consideration of protected species, including GCN's in the planning process. Paragraph 5.5.11 and 5.5.12 of PPW (protected species) are of particular relevance, as is section 6 (development affecting protected and priority habitats and species) of TAN5.

## Local Planning Policy

**Policy EC6:** Biodiversity Conservation of the current UDP [http://www.wrexham.gov.uk/english/planning\\_portal/plan\\_policy/wxm\\_udp.htm](http://www.wrexham.gov.uk/english/planning_portal/plan_policy/wxm_udp.htm) and policies within the emerging LDP provide the local planning policy context for decision making. Further guidance on biodiversity conservation is also provided in **Local Planning Guidance Note 32: Biodiversity and Development** (adopted March 2011) [http://www.wrexham.gov.uk/english/planning\\_portal/lpg\\_notes/lpg32.htm](http://www.wrexham.gov.uk/english/planning_portal/lpg_notes/lpg32.htm)

## The Need for Mitigation or Compensation

New development should seek to be as GCN friendly as possible. Often there is a requirement to provide mitigation or compensation areas to offset any loss of habitat arising from the development, this normally takes the form of off site habitat creation or enhancement but on site mitigation may also be suitable depending on the location, type and size of the development proposed (see section 4 below).

If developments affect a known breeding or resting site then an appropriate new habitat will have to be created prior to the destruction of the original aquatic or terrestrial habitat under an EPS license.

The majority of developments do not affect known sites but rather habitats of varying quality adjacent to, or in proximity to known sites. The likelihood of a terrestrial site being used by GCN is based on habitat quality and its proximity to a breeding pond. The principle issue is determining when mitigation or compensation is required and what this should entail in order that the Favourable Conservation Status (see definition in section 2) of the species is maintained. The scale of works required will be dependant on whether the land has "High" or "Low" potential for GCN to be present (see Great Crested Newt Conservation Handbook)<sup>2</sup>.

Where there are ponds in proximity to a development but no records known locally or via Cofnod (North Wales Biological Record Centre), then appropriate surveys of these sites would be expected to determine the potential of the site. GCN likelihood mapping can also be used to assess the need for surveys. These maps are available from Cofnod or Amphibian and Reptile Conservation (ARC).

Where the development is in proximity to the Johnstown Newt Site Special Area of Conservation (SAC) then in accordance with the Habitats Regulations there is an additional requirement to assess the direct, indirect and in combination effects to ensure that there is no likely significant effect upon the sites integrity (Habitat Regulations Assessment or HRA).

## Development Types and Mitigation or Compensation Provision

This section provides guidance on the types of mitigation / compensation required as a result of certain types of development. It is split into two sections. Section a) refers to GCN populations

<sup>1</sup>Biodiversity – Code of practice for planning and development BS 42020, August 2013

<sup>2</sup>Great Crested Newt Conservation Handbook (2001), Tom Langton, Catherine Beckett and Jim Foster.

outside of designated sites and section b) relates to development in or adjacent to Johnstown Newt Site SAC with GCN's as the Designated Feature.

*a) Development affecting GCN populations outside designated areas:*

The likelihood of a site being a known GCN resting site is based on habitat quality and its proximity to a

breeding pond. Loss of potential terrestrial habitat due to development may or may not affect the overall FCS of the species. This can be assessed by using a modeling tool which is available from ARC. The model can predict the effect that removing portions of habitat or creating barriers will have on meta-populations of GCN.

**Table 1 - Categories of development and the typical type and amount of mitigation / compensation required as a result of that development**

Development type	Major Development	Minor Development	
	Outline/Reserved Matters Approved Matters/etc Mineral & Waste, Transport applications etc	Up to 10 dwellings	Extension/ Conservatory/Garage
A1 Directly affects known GCN breeding/resting site	Like for like principle; Need to provide replacement habitat capable of its purpose e.g. breeding pond prior to destruction of existing. So that the favourable conservation status of the population is maintained.		
B1 Adjacent to and up to 250m from known GCN breeding ponds. <i>Refer to local knowledge, Cofnod and "likelihood maps" see appendix 3</i>	Mitigate for loss of habitat type on a like for like basis – Refer to the management costs table within appendix 1.	Undertake Reasonable Avoidance Measures (RAMs) to prevent harm to GCN (see example in appendix 4).  This depends on suitability of site if poor e.g. hardstanding / amenity grassland then a note to applicant might suffice.	
C1 250-500m from known GCN breeding pond <i>Refer to local knowledge, Cofnod and "likelihood maps" see appendix 3</i>	Mitigation relevant to loss of habitat type on a like for like basis – Refer to the management costs table within appendix 1.	Note to applicant will generally suffice.	
D1 Over 500m from known GCN breeding pond	Mitigation generally not required unless key connecting habitats are affected.	N/A	

*b) Development in or adjacent to SAC's with GCN's as the Designated Feature (Johnstown Newt Site SAC)*

Regulation 61 of the Conservation of Habitats and Species Regulations 2010 (as amended) requires that any application likely to significantly affect a European Site is subject to an Appropriate

Assessment (AA) of the implications of the proposal on the site's conservation objectives. Before granting any permissions the local planning authority must ascertain that the plan or project does not have a likely significant effect, both alone or in combination with other plans or projects by first conducting a Test of Likely Significance (ToLS).

Habitat creation, enhancement and future management may be required to prevent any significant effect. Table 2, provides typical standard habitat creation and future management requirements to provide mitigation on different types of development. Reference is also made to Appendix 1: Management Costs, which outlines typical costs for providing such mitigation solutions.

The intensification of residential development within the Johnstown area, including the cumulative effect from small scale residential development is placing additional pressures on the FCS of the SAC. There are no specific studies which demonstrate that recreational pressure has an adverse impact

on amphibian populations, but casual observations indicate a potential link, and in the absence of evidence local authorities are required to be precautionary in their response.

Key habitat corridors which provide linkages between known populations and particularly the relatively isolated Stryt Las sites and the wider countryside beyond the settlements of Johnstown and Ponciau are of extremely high importance when considering the long-term viability of the GCN population of the Special Sites. These corridors which have been identified and illustrated in Appendix 2 should be retained and wherever possible their functionality increased and improved.

Table 2 - Development affecting designated sites with GCN as the main feature (Johnstown Newt Site)			
Development type	Major Development	Minor Development	
	Outline/ Approved Matters/etc Mineral & Waste, Transport applications etc	Up to 10 dwellings	Extension/ Conservatory/Garage
A2 Directly affects SAC or functioning of SAC with GCN as key feature	Like for like principle; Need to provide replacement habitat capable of its purpose e.g. breeding pond prior to destruction of existing, so that the “favourable conservation status” of the population is maintained. Also need to demonstrate through a “ToLS or AA that the development will not significantly affect the Conservation Features of the SAC.		
B2 Adjacent to, and within key ecological corridors associated with Johnstown Newt Site SAC	Mitigate for loss of habitat type on a like for like basis – <i>Refer to management costs within appendix 1.</i>  Also need to demonstrate through a ToLS or AA that the development will not significantly affect the Conservation Features of the SAC directly or indirectly.	Only need to undertake a ToLS dependant on suitability of site to be lost Undertake Reasonable avoidance measures (RAMs) to prevent harm to GCN (see appendix 4). This depends on suitability of site if poor e.g. hardstanding / amenity grassland then a note to applicant might suffice.	
C2 250m – extent of Johnstown SAC Buffer (appendix 2) <i>Refer to local knowledge, Cofnod and “likelihood maps” (see appendix 3)</i>	Mitigate for loss of habitat type on a like for like/50% basis – <i>Refer to Appendix 1 of management costs.</i>  Also need to demonstrate through a ToLS or AA that the development will not significantly affect the Conservation Features of the SAC directly or indirectly.	Unless the habitat lost represents key connecting habitat or important habitat type, test of significance is not required. Note to applicant will generally suffice.	

D2 Outside Johnstown Newt Site Buffer (see appendix 2)	Mitigation generally not required unless key connecting habitats are affected. Indirect effects of large developments e.g. increased recreational pressure need to be assessed	N/A	N/A
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**Provision of Mitigation/Compensation Land:**

**a) Alternatives to onsite GCN mitigation**

The local planning authority will assess proposals using a sequential methodology as described in BS 42020. The preferred options, in order of preference are:

- Onsite provision;
- A combination of onsite and offsite provision;
- Offsite provision but this must be close to the site; and
- A financial contribution towards strategic GCN mitigation/compensation in lieu of direct provision.

**b) Mitigation related to development size**

Developments of up to 10 dwellings are not normally required to provide mitigation land unless readily available as it would be inappropriate in relation to size constraints and the subsequent management of areas of limited value. Such developments will instead be expected to make a financial contribution to enhance existing populations. For development of more than 10 dwellings, like for like mitigation will be expected.

**c) Recreational Pressure**

It is expected that there will be additional requirements for developments adjacent to SACs to provide informal recreational areas to avoid increased pressures on the designated site.

**c) Planning obligations and commuted payments**

Developers will be required to enter into a Section 106 agreement and contributions will normally be paid to the Council on commencement of development. Alternatives will involve payment to an Independent Trust to provide strategic mitigation. Payments can be made as a one off or through an annual service charge on householders.

**d) Future Management**

In order to satisfy the ‘three tests’ and maintain FCS in the long term, areas of mitigation/compensation must be secured in perpetuity. It is important to ensure that financial and legal provision is made for the future management of the mitigation/compensation areas. NRW’s preferred option is for the area to be handed over or with a long term lease with sufficient resources to a Wildlife Trust or similar organisation. The resources may be provided up front or annually through a management company. Other options are listed in table 3.



**Table 3 Options to ensure long-term management**

Option No	Type	Positive	Negative
1	Transfer land and resources* to 3rd Sector (NWWT, Wild Ground, ARC)	Local or specialist expertise Estate management skills	Possible resource issue if adequate provision isn't provided;
2	Transfer land and resources* to LA e.g. Countryside Service	Local expertise Estate management skills	Possible resource issue if adequate provision isn't provided;  Risk of questioned regulation; Perceived dual funding (council tax and service charge);
3	Land retained by landowner with resources	Estate management skills	May lack specialist skills; Risk of inappropriate management;  No local accountability;
4	Transfer land to commercial land manager with resources collected annually.	Estate management skills	May lack specialist skills; Risk of inappropriate management;  No local accountability;  Need to engage or third sector organisations and/or contractors in management.
5	Transfer resources (and land) to Independent Trust	Development of strategic conservation action.	Establishment of independent trustees;  Need to engage third sector organisations and/or contractors in management.

\* Financial resources either provided as one off payments or annually through collection of service charge.



## Appendix 1

Management Costs (Excluding preparation of licences, reasonable avoidance measures, compliance audit etc.)

These costs are derived from the costs agreed at the Hafod Land Tribunal 2006 and up to date management costs incurred by Flintshire Countryside Service.

Component	One off cost	Recurring cost	Time (yrs)	Cost £/ha	
1.Land Acquisition	√		1	£3750/ha	£ 3750 poor quality farmland £7500 high quality farmland
<b>2. Habitat Creation*</b>					
2.1.Ponds 10x10m minimum size	√		1	2500 (with liner)	(£1250 with liner TEP) (2 per ha)
2.2.Planting	√		1	£1.50 per plant (=£300/ha) +£100/day	includes stake and maintenance (max 25% per ha = 200 plants)  200 planted per day
2.3.Grassland/ meadow planting	√		1	£1000/ha* £250/day	Wildflower seeds (not always appropriate) Tractor seeding/scarifying etc
2.4.Hibernaculum (50m <sup>2</sup> )	√		1	£100	1 per pond Reduced costs if materials available.
2.5.New Fencing	√		1	£7/m	400m/ha (£2800)
<b>3. Management</b>					
3.1.Pond management		√	*25	£100/yr/pond	£45/yr/pond – TEP 5 year cycle management of pond and pond edge (5m) eg scrub control.
3.2.Planted trees/ shrubs		√	*25	£600/yr/ha	NRW maintenance costs is £1000/ha for years 2 and 3 only.
3.3.Grassland – mowing once per annum		√	*25	£480/yr	Flintshire Countryside Service Etna cut and bail 1ha =£400/yr
3.4.Fence maintenance		√	*25	£1.30/m/yr or £112/yr	400m/ha – fencing replaced on 12-15 year cycle.
4 Monitoring & Surveillance		√	*25	£200/site/	2 visits per year
5. Wardening		√	*25	£150/day	4 days/month includes overheads/vehicle/maintenance
6. Contingency		√	*25	£2500/pond Cost as 2.1	Lump sum based on repeat pond construction and fish removal.

The costs within this table may be subject to change dependant on inflation and the fluctuation of actual costs. \*25 years or the life of the development.

## Example situation

For the creation a hectare of high quality fenced mitigation land containing 2 ponds and hibernacula and a mix of shrub and grassland creation the initial creation cost is £16295. For continued management and monitoring of the site the annual cost will be £2500 thereafter or based on 30 homes per ha £83.33 per property. These costs are a basis for negotiation as situations vary widely, but for this situation are broken down as follows;

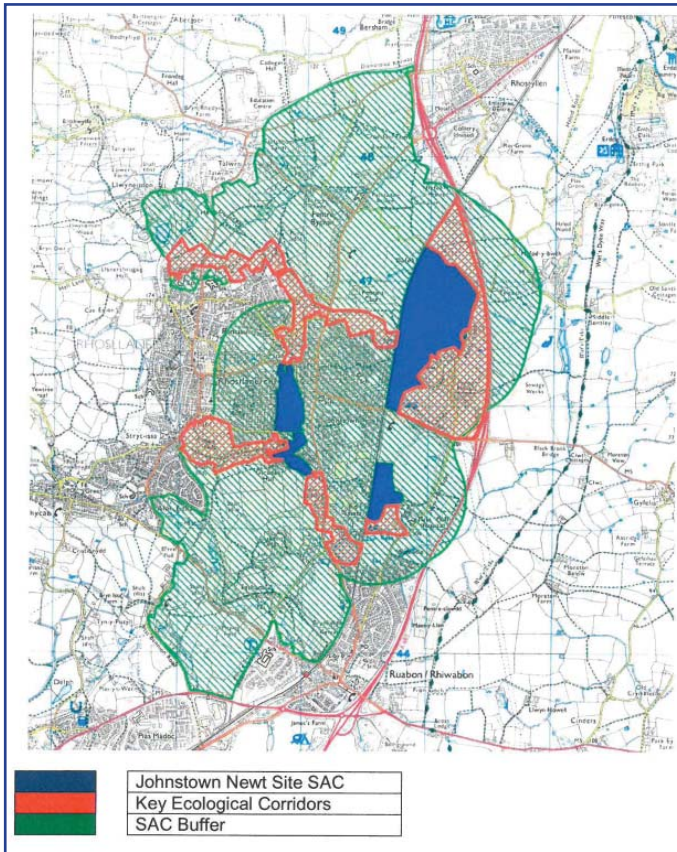
Land acquisition		£7500
Habitat Creation	Ponds	£5000
	Planting	£170
	Grassland/meadow planting	£625
	Hibernaculum	£200
	Fencing	£2800
		<b>£16295.00</b>
Management	Pond Management	£200
	Planted trees/shrubs	£240
	Grassland	£240
	Fencing	£520
Monitoring and Surveillance		£400
Wardening		£900
		<b>£2500.00</b>





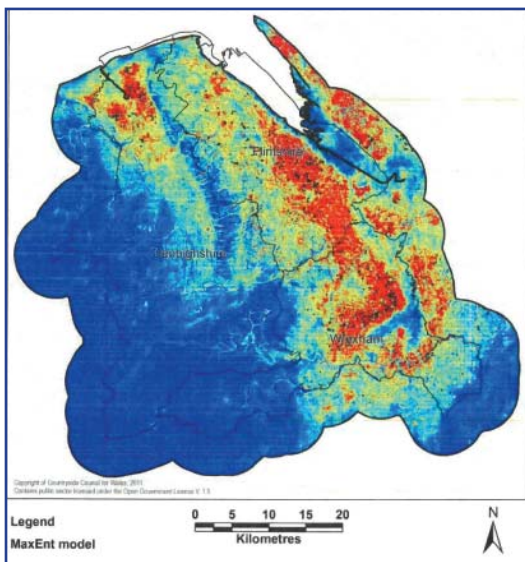
## Appendix 2

Map showing the extent of Johnstown Newt SAC and buffer.



## Appendix 3

Map showing Great Crested Newt likely presence, provided by ARC



## Appendix 4

Example Reasonable Avoidance Measures

- As part of the site induction process, all staff working on site will be made aware of the potential presence of Great Crested Newts on site and their status as a UK and European Protected Species.
- Areas of tall rough grassland and scrub will be trimmed to a height of 150mm. All arising will be removed and these areas will then be left undisturbed for at least 48 hours.
- During the works, materials such as stacks of bricks, wood, tiles etc. must not be stored directly on the ground around the building as there will be a risk of GCN seeking shelter within the stacks; the materials should be stored on wooden pallets or on trailers (or elevated by similar means) so that GCNs will not crawl into them.
- All trenches, or holes should not be left open overnight. They should either be backfilled or covered and the edges sealed to prevent amphibians getting trapped overnight. They should be checked in the morning prior to work restarting.
- If a great crested newt is identified during any of the above operations, development may need to be suspended until a development licence is obtained.

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