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REPTILE MITIGATION STRATEGY

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CAERPHILLY COUNTY BOROUGH COUNCIL

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VERSIONING AND QUALITY ASSURANCE

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B					

DISCLAIMER

This document has been prepared by Wildwood Ecology Limited for Caerphilly County Borough Council solely as a Reptile Mitigation Strategy . Wildwood Ecology Limited accepts no responsibility or liability for any use that is made of this document other than by the Client for the purposes for which it was originally commissioned and prepared.

The evidence which we have prepared and provided is true, and has been prepared and provided in accordance with the guidance of The Chartered Institute of Ecology and Environmental Management's Code of Professional Conduct. We confirm that the opinions expressed are our true and professional bona fide opinions.

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1 INTRODUCTION

- 1.1 In Autumn 2020 Wildwood Ecology was commissioned by the client to provide a Reptile Mitigation Strategy, for the site centred at ST 23374 91331.
- 1.2 Previous preliminary roost assessment and bat roost characterisation survey at the site (in 2020) have noted the presence of scrub and grassland around the built areas.
- 1.3 As there is the chance that reptile species (more common species such as common lizard and slow worm are most likely) may be present onsite, a precautionary method statement is required to be in place to ensure that there are no impacts on reptile species during works to demolish the existing buildings, or subsequently during any redevelopment.

Purpose of this report

- 1.4 The purpose of this report is to provide a record of the strategies employed to avoid killing and/or injury of reptiles on this site.

2 REPTILE MITIGATION STRATEGY

- 2.1 This section of the Reptile Mitigation Strategy (RMS) outlines appropriate protective measures and mitigation for reptiles at risk of harm from activities associated with site clearance and construction. The mitigation strategy consists of a phased methodology for reptile exclusion at the site. In addition, the strategy considers the needs of other protected species and the enhancement of any retained habitat (Edgar et al., 2010; Froglife, 1999, Gent & Gibson, 2003).
- 2.2 The RMS is a precautionary measure with no known populations of reptiles onsite, and is confined to preventing impacts during demolition works.
- 2.3 The extent of redevelopment is not currently known, and so a revised strategy may be required at a later date depending on the ability for onsite habitat retention.

Enhancement of new habitat

- 2.4 There will be areas of continued suitable habitat onsite (boundary scrub and grassland margins) for use by reptiles (grassland and scrub) with brash and cuttings provided to enhance the habitat available for use.
- 2.5 The retained areas will be left to grow, forming tussocky areas, and will not be cut back (other than to prevent scrub encroachment).

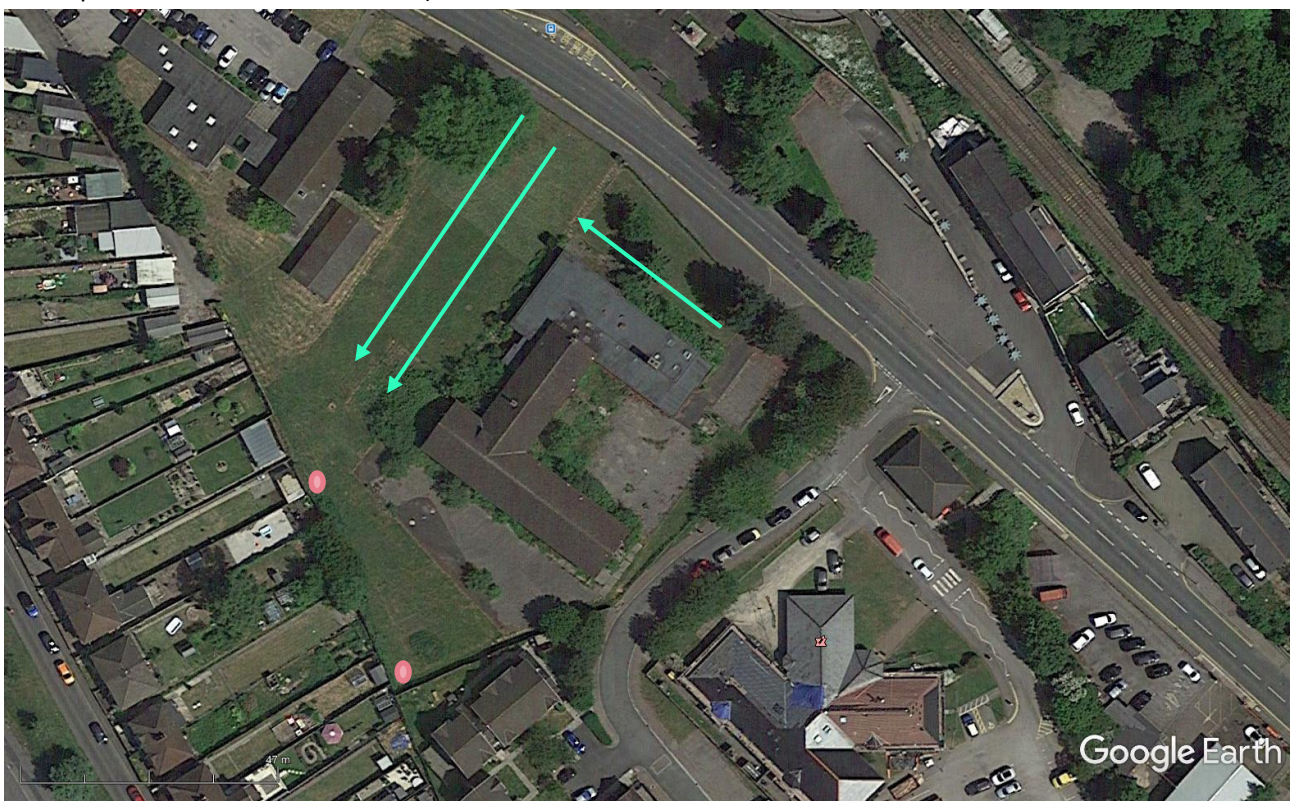


Figure 1 – Pink filled circles are locations for habitat piles consisting of brash and grass cuttings layered over each other. Green arrows denote general movement of cuts, towards undisturbed and retained habitats at the southern end of the site

- 2.6 The areas enhanced for use by reptiles will be retained and maintained (with management of the site completed in line with reptile presence – see below) for at least 5 years post works, unless an updated document is agreed to reflect development proposals. NB this may require translocation procedures to be agreed, with receptor site identified and enhanced.

- 2.7 Post-demolition, the site will be maintained using grass cuts during the active reptile season, to no lower than 100mm height. This may be carried out using strimmers in the first instance if the grassland areas are above 150mm sward height, and then subsequently using mowers with the height of the blades set at 100mm.
- 2.8 The margins and scrub around the boundaries will be retained and only trimmed back to prevent bramble encroachment.
- 2.9 Some arisings will be added to brush piles to enhance them further for reptile use.

Vegetation management

- 2.10 This part of the strategy is required to encourage reptiles away from certain areas of the site and into others, prior to demolition.
- 2.11 Vegetation (namely the scrub around the buildings) within the proposed development footprint will be cut with hand-held machinery (i.e., strimmers or brush cutters) to a height of 150mm, outside of the bird breeding season. The hand-held tool use will be useful also to aid avoidance of species such as hedgehog, and invasive species present at the site.
- 2.12 Then (at least 48hrs later) the vegetation will be cut again, this time down to ground level. No cuttings or chippings will be left on site.
- 2.13 The two-stage cut is appropriate within the active reptile period (considered approximately April to September), however a modified one-stage cut to just above ground level (retaining leaf litter and roots until after the temperatures have warmed up in April) is possible in the Winter period.
- 2.14 The footprint of the development impact area will be retained at scorched earth/ ground level vegetation until demolition is commenced. This is to prevent re-colonisation of the area by reptiles.
- 2.15 The direction of movement of cuts will be as shown in Figure 1.
- 2.16 If reptiles, hedgehogs and/or nesting birds are observed then works must stop and advice sought from a suitability qualified ecologist (Wildwood Ecology may be contacted at any time - 02920 022 320).
- 2.17 An experienced ecologist will advise the vegetation management work in liaison with the groundwork contractor, and will provide a pre-commencement tool-box talk to all contractors.
- 2.18 NB Where non-native invasive species are found onsite control measures will be implemented to eradicate any such species and prevent the spread to other sites nearby. Some non-native invasive species arisings are classed as controlled waste and will be required to be removed accordingly.

3 TIMETABLE OF WORKS

Date	Activity	Details
Before the start of the onsite vegetation management process –Early 2021	Enhancement of new habitat areas onsite	Tool-box talk; creation of brash piles
Tool box talk	Onsite vegetation management	Cut vegetation directionally towards south, to desired sward height as per methodology above. Arisings used to add to habitat piles.
Once vegetation is cut	Demolition	Demolition and work within “scorched earth footprint”
Post-works	Monitoring and management	Management implemented to prevent scrub encroachment yet allow margins to grown and form tussocky areas.

4 REFERENCES

- ARG UK (2018) *Reptile Survey and Mitigation Guidance for Peatland Habitats: Advice Note 10*
- Edgar, P., Foster, J., Baker, J. (2010) *Reptile Habitat Management Handbook*. Bournemouth: Amphibian and Reptile Conservation.
- Froglife (1999) *Reptiles survey: An introduction to planning, conducting, and interpreting surveys for snake and lizard conservation*. Froglife Advice Sheet 10. Froglife, Halesworth.
- Gent, T., Gibson, S. (2003) *Herpetofauna Workers' Manual*. Peterborough: Joint Nature Conservation Committee.
- Natural England (2011) *Technical Information Note TIN102, Reptile mitigation guidelines (withdrawn)*.
- Reading, C.J., (1996) *Evaluation of Reptile Survey Methodologies*. English Nature Research Report No. 200. English Nature, Peterborough.
- Sewell et al. (2013) *Survey protocols for British herpetofauna; Version 1.0*. Amphibian and reptile conservation; Durrell Institute of Conservation and Ecology (DICE); University of Kent; University of Sussex.

APPENDIX I: PLANNING POLICY AND LEGISLATION

The following local and national planning policy and both primary and European legislation relating to nature conservation and biodiversity status are considered of relevance to the current proposal.

Planning and biodiversity

Local Authorities have a requirement to consider biodiversity and geological conservation issues when determining planning applications under the following planning policies.

Planning Policy Wales (2018) and Technical Advice Note 5 (2009)

Planning Policy Wales (Edition 10, December 2018) sets out the land use planning policies of the Welsh Government, integrating with the Environment (Wales) Act (2016). The advice contained within Planning Policy Wales (PPW) is supplemented for some subjects by Technical Advice Notes (TANs).

TAN 5 (Welsh Government, 2009) specifically provides advice about how the land use planning system should contribute to protecting and enhancing biodiversity and geological conservation. The TAN provides advice for local planning authorities on the key principles of positive planning for nature conservation; nature conservation and Local Development Plans; nature conservation in development management procedures; development affecting protected internationally and nationally designated sites and habitats; and development affecting protected and priority habitats and species.

Under Section 2.4 within the TAN 5, 'when deciding planning applications that may affect nature conservation local planning authorities should':

- Pay particular attention to the principles of sustainable development, including respect for environmental limits, applying the precautionary principle, using scientific knowledge to aid decision making and taking account of the full range of costs and benefits in a long term perspective;
- Contribute to the protection and improvement of the environment, so as to improve the quality of life and protect local and global ecosystems, seeking to avoid irreversible harmful effects on the natural environment;
- Promote the conservation and enhancement of statutorily designated areas and undeveloped coast;
- Ensure that appropriate weight is attached to designated sites of international, national and local importance;
- Protect wildlife and natural features in the wider environment, with appropriate weight attached to priority habitats and species in Biodiversity Action Plans;
- Ensure that all material considerations are taken into account and decisions are informed by adequate information about the potential effects of development on nature conservation;
- Ensure that the range and population of protected species is sustained;
- Adopt a step-wise approach to avoid harm to nature conservation, minimise unavoidable harm by mitigation measures, offset residual harm by compensation measures and look for new opportunities to enhance nature conservation; where there may be significant harmful effects local planning authorities will need to be satisfied that any reasonable alternative sites that would result in less or no harm have been fully considered;

Legislation and biodiversity

Certain species of animals and plants found in the wild in the UK are legally protected from being harmed or disturbed. These species are listed in the Wildlife and Countryside Act 1981 (as amended) or are named as European Protected Species (EPS) in the Conservation of Habitats and Species Regulations 2017 (as amended). These two main pieces of legislation have been consulted when writing this report and are therefore described in detail within this section.

Other relevant legislation and policy documents that have been consulted include – The Environment (Wales) Act 2016; The Countryside and Rights of Way Act 2000; The Hedgerow Regulations 1997; Biodiversity Action Plans, both UK-wide (UKBAP) and Local plans (LBAPs), and The National Planning Policy Framework (NPPF). There is also legislation that legally protects certain animals - for example, the Protection of Badgers Act (1992) protects badgers and their setts, and the Deer Act (1991) places restrictions on actions that can be taken against deer species.

Environment (Wales) Act 2016

Section 6 of the Act places a duty on public authorities to 'seek to maintain and enhance biodiversity' so far as it is consistent with the proper exercise of those functions. In so doing, public authorities must also seek to 'promote the resilience of ecosystems'. The duty replaces the section 40 duty in the Natural Environment and Rural Communities Act 2006 (NERC Act 2006), in relation to Wales, and applies to those authorities that fell within the previous duty.

Public authorities will be required to report on the actions they are taking to improve biodiversity and promote ecosystem resilience.

Section 7 replaces the duty in section 42 of the NERC Act 2006. The Welsh Ministers will publish, review and revise lists of living organisms and types of habitat in Wales, which they consider are of key significance to sustain and improve biodiversity in relation to Wales.

The Welsh Ministers must also take all reasonable steps to maintain and enhance the living organisms and types of habitat included in any list published under this section, and encourage others to take such steps.

Wildlife & Countryside Act 1981 (as amended)

The Wildlife & Countryside Act 1981 (as amended) [WCA] is the primary legislation for England and Wales for the protection of flora, fauna and the countryside. Part I within the Act deals with the protection of wildlife.

Most European Protected Species offences are now covered under the Conservation of Habitats and Species Regulations (as amended) (see below), but some 'intentional' acts are still covered under the WCA, such as obstructing access to a bat roost.

The WCA prohibits the release to the wild of non-native animal species listed on Schedule 9 (e.g. Signal Crayfish and American Mink). It also prohibits planting in the wild of plants listed in Schedule 9 (e.g. Japanese Knotweed and Rhododendron ponticum) or otherwise deliberately causing them to grow in the wild. This is to prevent the release of invasive non-native species that could threaten our native wildlife.

The provisions relating to animals in the Act only apply to 'wild animals'; these are defined as those that are living wild or were living wild before being captured or killed. It does not apply to captive bred animals being held in captivity.

There are 'defences' provided by the WCA. These are cases where acts that would otherwise be prohibited by the legislation are permitted, such as the incidental result of a lawful operation which could not be reasonably avoided, or actions within the living areas of a dwelling house.

Licensing: certain prohibited actions under the Wildlife and Countryside Act may be undertaken under licence by the proper authority. For example, scientific study that requires capturing or disturbing protected animals can be allowed by obtaining a licence – e.g. bat surveys.

Conservation of Habitats and Species Regulations 2017 (as amended)

The Conservation of Habitats and Species Regulations 2017 (as amended)(which are the principal means by which the EC Habitats Directive is transposed in England and Wales) update the legislation and consolidate all the many amendments which have been made to the Regulations since they were first made in 1994.

These regulations provide for the:

- protection of European Protected Species [EPS] (animals and plants listed in Annex IV Habitats Directive which are resident in the wild in Great Britain) including bats, dormice, great crested newts, and otters;
- designation and protection of domestic and European Sites - e.g. Site of Special Scientific Interest [SSSI] and Special Area of Conservation [SAC]; and
- adaptation of planning controls for the protection of such sites and species.

Public bodies (including the Local Planning Authority) have a duty to have regard to the requirements of the Habitats Directive in exercising their function – i.e. when determining a planning application.

There is no defence that an act was the incidental and unavoidable result of a lawful activity.

Licensing: it is possible for actions which would otherwise be an offence under the Regulations to be undertaken under licence issued by the proper authority. For example, where a European Protected Species has been identified and the development risks deliberately affecting an EPS, then a 'development licence' may be required.

Species protection

The following protected species information is relevant to this report. Legislation is only discussed in relation to planning and development; other offences may exist.

Badger

Badgers are protected in the UK under the Protection of Badgers Act 1992. Under the act it is an offence to:

- Wilfully kill, injure, take, possess or cruelly ill-treat¹ a Badger, or attempt to do so;
- To intentionally or recklessly interfere with a sett² (this includes disturbing Badgers whilst they are occupying a sett, as well as damaging or destroying a sett or obstructing access to it).

The legislation aims to protect the species from persecution, rather than being a response to an unfavourable conservation status, as the species is in fact common over most of Britain; it is not intended to prevent properly authorised development.

¹ The intentional elimination of sufficient foraging area to support a known social group of Badgers may, in certain circumstances, be construed as an offence by constituting "cruel ill treatment" of a Badger

² A sett is defined as "any structure or place which displays signs indicating current use by a Badger". Advice issued by Natural England (June 2009) is that a sett is protected as long as such signs remain present, which in practice could potentially be for some time after the last actual occupation by Badger.

Birds

In the UK, the provisions of the Birds Directive are implemented through the Wildlife & Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2017 (as amended). All wild birds, their nests and eggs are protected it an offence to:

- kill, injure, or take any wild bird;
- take, damage or destroy the nest of any such bird whilst it is in use or being built; or
- take or destroying an egg of any such wild bird.

The law covers all species of wild birds including common, pest or opportunistic species.

Special protection against disturbance during the breeding season is also afforded to those species listed on Schedule 1 of the Act.

Reptiles

Adders, slow worms, grass snakes and common lizards are protected against killing and injuring under Schedule 9 of the Wildlife and Countryside Act 1981 (as amended). This legislation makes it illegal to intentionally kill or injure a common reptile. As a result, reptiles must be removed from areas of development and relocated onto suitable release sites before any site works can commence.

Smooth snakes and sand lizards are European Protected Species under schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and Schedule 2 of the Conservation of Habitats and Species Regulations 2017 (as amended). This makes it illegal to carry out the following activities:

- Deliberately or recklessly disturb, capture or kill these animals;
- Deliberately or recklessly take or destroy eggs of these animals;
- Damage or destroy a breeding site or resting place of such a wild animal; or

Keep, transport, sell or exchange, or offer for sale or exchange, any live or dead animal, or any part of, or anything derived from such a wild animal.

Legislation and biodiversity

Certain species of animals and plants found in the wild in the UK are legally protected from being harmed or disturbed. These species are listed in the Wildlife and Countryside Act 1981 (as amended) or are named as European Protected Species (EPS) in the Conservation of Habitats and Species Regulations 2017 (as amended). These two main pieces of legislation have been consulted when writing this report and are therefore described in detail within this section.

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- Deliberately or recklessly take or destroy eggs of these animals;
- Damage or destroy a breeding site or resting place of such a wild animal; or
- Keep, transport, sell or exchange, or offer for sale or exchange, any live or dead animal, or any part of, or anything derived from such a wild animal.