

Dated 20 December 2024

OLD OAK AND
PARK ROYAL DEVELOPMENT CORPORATION (1)

AND

ARK ESTATES 3 LIMITED (2)

**DEED OF VARIATION OF A SECTION 106
AGREEMENT**

relating to the former Renault Retail Group site
on the south side of Western Avenue, Park
Royal, Acton, London



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THIS DEED is made on 20 DECEMBER

2024

BETWEEN:

- (1) **OLD OAK AND PARK ROYAL DEVELOPMENT CORPORATION** of One West Point, 7 Portal Way, North Acton, London, W3 6RT (the "OPDC"); and
- (2) **ARK ESTATES 3 LIMITED** (Company Number 12777470) of Spring Park, Westwells Road, Corsham, Wiltshire, United Kingdom, SN13 9GB ("Owner").

RECITALS

- (A) By virtue of The Old Oak and Park Royal Development Corporation (Planning Functions) Order 2015, the OPDC is the local planning authority for the area in which the Site is located for the purposes of Part 3 of the 1990 Act and is the local planning authority by whom the obligations contained in this Deed are enforceable.
- (B) The Owner is the registered owner of the freehold interest in the Site with title absolute under title number MX318943. The Owner enters into this Deed in its capacity as freehold owner.
- (C) This Deed is supplemental to an agreement dated 10 November 2023 and made between (1) OPDC and the Owner pursuant to section 106 of the Town and Country Planning Act 1990 (defined below as "**the Original Agreement**") which relates to a full planning permission granted pursuant to allocated reference number 22/0059/FUMOPDC (defined below as "**the Original Planning Permission**").
- (D) On 30th August 2024 the OPDC validated an application under Section 73 of the Town and Country Planning Act to vary Conditions 2 (approved plans and documents), 3 (development parameters), 5 (contaminated land site investigation), 6 (Construction and Environmental Management Plan), 7 (Construction Logistics Plan), 8 (circular economy details), 10 (Secured by Design), 11 (hard and soft landscaping), 12 (cycle parking), 19 (external lighting), 20 (green roofs), 21 (vehicular access), 22 (car parking implementation), 27 (vehicular access restriction), and 30 (energy statement) of the Original Planning Permission (defined below as the Section 73 Application).
- (E) At a meeting of its Planning Committee on 14 November 2024 the OPDC resolved to approve the Section 73 Application subject to the completion of this Deed to secure that the Section 73 Permission is subject to all of the planning obligations and contributions which were secured in the Original Agreement.
- (F) Accordingly, the parties have agreed to enter into this Deed with the intention that the obligations and contributions contained in the Original Agreement as amended by this Deed shall be enforceable by the OPDC against the Owner and its successors in title following the grant of the S73 Planning Permission.

THE PARTIES AGREE AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed the definitions contained in the Original Agreement apply to this Deed unless the context otherwise requires:
- 1.2 In this Deed the following words and expressions shall have the following meanings unless the context otherwise requires:

Original Agreement

an agreement dated 10 November 2023 and made between (1) OPDC and the Owner pursuant to section 106 of the Town and Country Planning Act

1990 and which relates to the Original Planning Permission;

Original Planning Application

the application for full planning permission for the Development submitted to the OPDC and allocated reference number 22/0059/FUMOPDC details of which are the redevelopment of the site to provide a data centre (Use Class B8) with associated energy and electrical infrastructure, visitor reception building, security gatehouse, plant, boundary enclosures, car and cycle parking; hard and soft landscaping; and associated alterations to vehicular access arrangements including creation of new access from Concord Road and new access from Western Avenue slip road; and associated external works;

Original Planning Permission

the planning permission granted pursuant to the Original Planning Application;

Section 73 Application

the Section 73 application to vary Conditions 2 (approved plans and documents), 3 (development parameters), 5 (contaminated land site investigation), 6 (Construction and Environmental Management Plan), 7 (Construction Logistics Plan), 8 (circular economy details), 10 (Secured by Design), 11 (hard and soft landscaping), 12 (cycle parking), 19 (external lighting), 20 (green roofs), 21 (vehicular access), 22 (car parking implementation), 27 (vehicular access restriction), and 30 (energy statement) of the Original Planning Permission primarily to replace the approved sub-station/ancillary office building with a standalone sub-station building and to increase the size of the pocket park;

Section 73 Planning Permission

the planning permission to be granted pursuant to the Section 73 Application;

- 1.3 Where in this Deed reference is made to a clause, paragraph, Schedule, recital, plan, annex or appendix such reference (unless the context otherwise requires) is a reference to a clause, paragraph, Schedule or recital in this Deed or to a plan annex or appendix attached to this Deed.
- 1.4 Where in any Schedule or part of a Schedule reference is made to a paragraph such reference shall (unless the context otherwise requires) be to a paragraph of that Schedule or (if relevant) part of a Schedule.
- 1.5 References in this Deed to the Owner shall include reference to its successors in title and assigns and to persons claiming through or under it in relation to all or any part of the Site save where the context otherwise requires.
- 1.6 References to the OPDC shall include reference to any successor body exercising any of the powers currently vested in the OPDC in relation to this Deed.
- 1.7 Words including the singular meaning where the context so admits include the plural meaning and vice versa.

- 1.8 Words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies and other corporate bodies and also firms and all such words shall be construed interchangeably in that manner.
- 1.9 Words denoting an obligation on a party to do an act matter or thing include an obligation to procure that it be done and words placing a party under a restriction (including for the avoidance of doubt any obligation preventing or restricting Commencement or Occupation) include an obligation not to cause, permit, suffer or allow infringement of the restriction.
- 1.10 Any reference to a statute or a provision thereof or a statutory instrument or a provision thereof shall include any modification, extension or re-enactment thereof for the time being in force (including for the avoidance of doubt any modification, extension or re-enactment made prior to the date of this Deed) and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given thereunder or deriving validity therefrom.
- 1.11 The word "including" means including without limitation or prejudice to the generality of any description defining term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.
- 1.12 The clause and paragraph headings in the body of this Deed and in the Schedule hereto do not form part of this Deed and shall not be taken into account in its construction or interpretation.
- 1.13 References to the Site include any part of it.
- 1.14 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.

2 LEGAL BASIS

- 2.1 This Deed is made pursuant to:
- (a) Section 106 of the 1990 Act;
 - (b) Section 106A of the 1990 Act;
 - (c) Sections 1 and 201 of the 2011 Act; and
 - (d) all other powers so enabling.
- 2.2 The OPDC is the local planning authority having the power to enforce the planning obligations contained in this Deed in relation to the Site.

3 NATURE OF OBLIGATIONS

- 3.1 The obligations, covenants and undertakings on the part of the Owner in this Deed are planning obligations insofar as they are capable of being lawfully made pursuant to and for the purpose of Section 106 of the 1990 Act and are given so as to bind the Owner's interests in the Site and with the intent that they shall be enforceable by the OPDC not only against the Owner but also against any successors in title to or assigns of or transferees of the Owner and/or any person claiming through or under the Owner an interest or estate in the Site as if that person had been an original covenanting party and insofar as any such obligations, covenants or undertakings are not capable of falling within Section 106 of the 1990 Act the same are entered into as obligations, covenants or undertakings in pursuance of any other such enabling power.
- 3.2 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the OPDC of any of its statutory powers, functions or discretions.

4 CONDITIONALITY

Clause 5 of this Deed is conditional upon the grant and Implementation of the Section 73 Planning Permission.

5 OBLIGATIONS OF THE OWNER

5.1 The Owner shall give the OPDC not less than 14 days prior written notice of their intention to Implement the Section 73 Planning Permission and the Owner shall not Implement or permit Implementation of the Section 73 Planning Permission until such notice has been duly given in accordance with this clause.

5.2 The Owner hereby undertakes that if the Section 73 Planning Permission is Implemented the Owner will not Implement or permit the Implementation of the Original Planning Permission and will not resume or permit resumption of Implementation of the Original Planning Permission.

5.3 The Owner and the OPDC hereby agree that the obligations contained in the Original Agreement shall be varied as set out in the Schedule and in all other respects the Original Agreement (as varied by this Deed) shall continue in full force and effect.

6 MISCELLANEOUS PROVISIONS

6.1 This Deed shall be registerable as a Local Land Charge by the Council.

6.2 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

6.3 Clause 5 of this Deed shall cease to have effect if the Section 73 Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the parties) it is modified by any statutory procedure or expires prior to Implementation.

6.4 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or that part of the Site in relation to which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.5 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Original Planning Permission or the Section 73 Planning Permission) granted (whether or not on appeal) after the date of this Deed.

7 LEGAL FEES

The Owner shall pay to the OPDC on completion of this Deed the OPDC's reasonable legal fees incurred in the drafting negotiation and execution of this Deed.

8 GOVERNING LAW

This Deed and any dispute, controversy, proceedings or claims of whatever nature arising out of or in any way relating to this Deed or its formation (including any non-contractual disputes or claims) shall be governed and construed in accordance with English law.

9 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Any person who is not a party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

10 COUNTERPARTS

This Deed may be executed and delivered in counterparts, each of which is an original and which, together, have the same effect as if each party had signed the same document.

In witness whereof this Deed has been executed as a deed and delivered on the date first above written.

THE SCHEDULE

VARIATIONS TO THE ORIGINAL AGREEMENT

1 VARIATIONS TO DEFINITIONS AND INTERPRETATION

- 1.1 In Clause 1 of the Original Agreement the definition of "Development" and "Planning Permission" shall be deleted and replaced with:

Development means the development permitted by the Planning Permission or a Varied Planning Permission or the Section 73 Planning Permission; and

Planning Permission means the Original Planning Permission and/or the Section 73 Planning Permission;

- 1.2 In Clause 1 of the Original Agreement the definition of "A40 Service Road Access" shall be deleted and replaced with:

A40 Service Road Access means the A40 (Western Avenue) service road access shown on Drawing No MUR-0496-SW-GL-DR-L-000002-P08 in Schedule 1;

- 1.3 In Clause 1 of the Original Agreement the definition of "Concord Road Footway" shall be deleted and replaced with:

Concord Road Footway means the footway along the east side of Concord Road shown on Drawing No. NWA-0496-SW-ZZ-DR-A-90-004 – P01 in Schedule 1 as shown edged red on the Concord Road Footway Plan;

- 1.4 In Clause 1 of the Original Agreement the definition of "London Living Wage" shall be deleted and replaced with:

London Living Wage the hourly rate of pay calculated and published from time to time by the GLA as being a wage that is sufficient to give a worker in London and their family enough to afford the essentials and to save, the current rate at the date of this Deed being £13.85 per hour;

- 1.5 In Clause 1 of the Original Agreement the definition of "Public Open Space" shall be deleted and replaced with:

Public Open Space the landscaped open space fronting the A40 shown on Drawing No. Pocket Park Landscape Sketch MUR-0496-SW-GL-DR-L-000004-P04 in Schedule 1;

- 1.6 The following definitions shall be added to Clause 1 of the Original Agreement:

Original Planning Permission the planning permission granted by OPDC and allocated reference number 22/0059/FUMOPDC;

Section 73 Application the Section 73 application to vary Conditions 2 (approved plans and documents), 3 (development parameters), 5 (contaminated land site investigation), 6 (Construction and Environmental

Management Plan), 7 (Construction Logistics Plan), 8 (circular economy details), 10 (Secured by Design), 11 (hard and soft landscaping), 12 (cycle parking), 19 (external lighting), 20 (green roofs), 21 (vehicular access), 22 (car parking implementation), 27 (vehicular access restriction), and 30 (energy statement) of the Original Planning Permission primarily to replace the approved sub-station/ancillary office building with a standalone sub-station building and to increase the size of the pocket park; and

Section 73 Planning Permission

the planning permission to be granted pursuant to the Section 73 Application.

2 VARIATION TO CLAUSE 17 INDEXATION

- 2.1 References to "Planning Permission" in Clause 17 of the Original Agreement shall be deleted and replaced with "the Original Planning Permission" so Clause 17 reads:

"17 INDEXATION

Where in this Deed any sum or value is to be paid or is otherwise referred to then unless stated to the contrary such sum or value shall be increased (as the case may be) by the percentage change in the RPI from the committee date when it was resolved that the Original Planning Permission should be granted subject to a Section 106 agreement until the date each payment is due (or the date that it becomes necessary to calculate such sum or value) to be calculated by reference to the most recently published figures for the RPI prior to the committee date when it was resolved that the Original Planning Permission should be granted subject to a Section 106 agreement and prior to each payment date."

3 SUBSTITUTION OF PLANS IN SCHEDULE 1

- 3.1 The following plans annexed to this Deed at Annexure 1 shall replace the corresponding plan in Schedule 1 of the Original Agreement.

Plan in Schedule 1 of the Original Agreement (referred to below as "the Original Drawings"

Replacement Plan Annexed at Annexure 1 (referred to below as "the Replacement Drawing"

Drawing No 1612/005 Rev C Front Eco Park Landscape Vignette

Drawing No MUR-0496-SW-GL-DR-L-000004-P04

Drawing No. 1613/001 Rev K Landscape Masterplan

Drawing No MUR-0496-SW-GL-DR-L-000002-P08

Drawing No. NWA-0495-SW-DR-A-90-004 Concord Road Footway Plan

Drawing No NWA-0496-SW-ZZ-DR-A-90-004 – P01

4 VARIATION TO SCHEDULE 6 TRAINING AND SKILLS

- 4.1 In paragraph 2.1(a) of Schedule 6 of the Original Agreement the number of apprenticeships to be providing "being not less than 38" shall be deleted and replaced with "being not less than 33"
- 4.2 In paragraph 2.1 (b) of Schedule 6 of the Original Agreement the reference to paid work placements "being not less than 19" shall be deleted and replaced with "being not less than 16".

- 4.3 In paragraph 2.1(c) of Schedule 6 of the Original Agreement the reference to unpaid work placements "being not less than 19" shall be deleted and replaced with "being not less than 16".

EXECUTED as a DEED by affixing the)
Common Seal of the)
OLD OAK AND PARK ROYAL)
DEVELOPMENT CORPORATION in the)
presence of:

[Redacted]

Authorised Officer

Name (BLOCK) [Redacted]

Position *DIRECTOR OF PLANNING*

Authorised officer: [Redacted]

Name: [Redacted]

Position: *Head of Planning - Development Management*



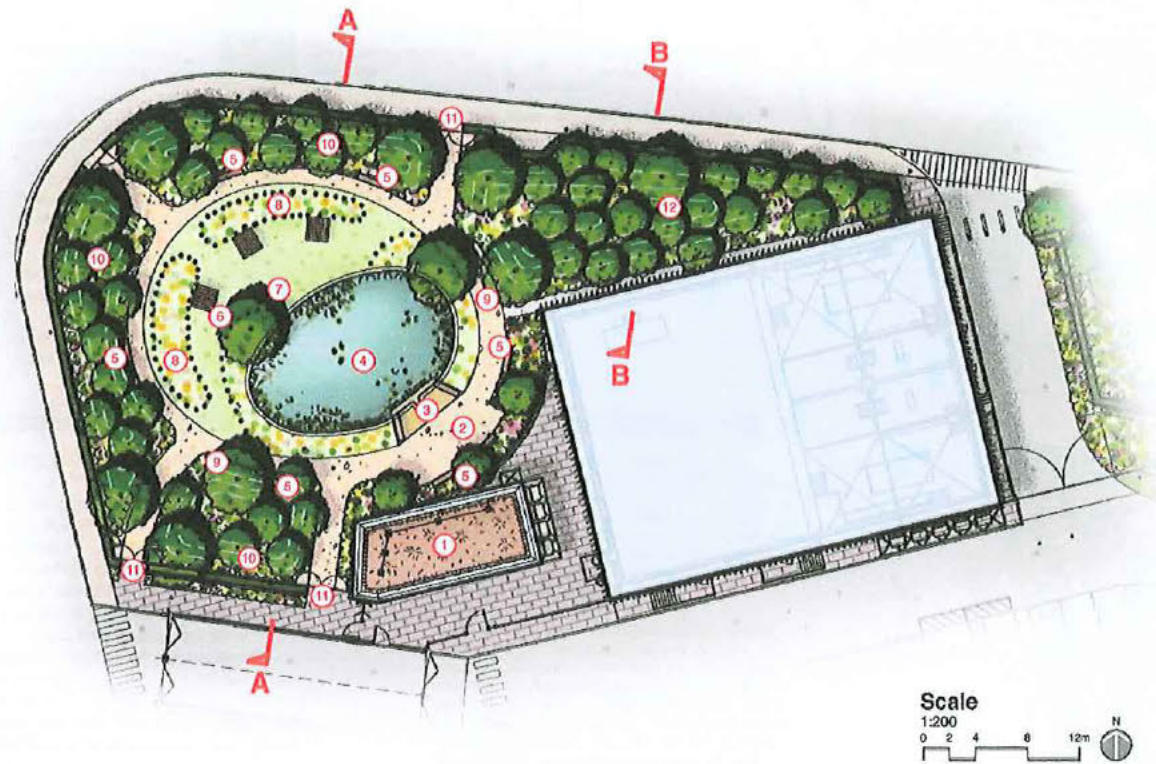
EXECUTED as a DEED by ARK ESTATES 3
LIMITED

Acting by two Directors or a Director and
Secretary

Director.....

Director/Secretary.....

ANNEXURE 1
REPLACEMENT PLANS



Landscape Images



SUDs pond with viewing deck



Picnic tables



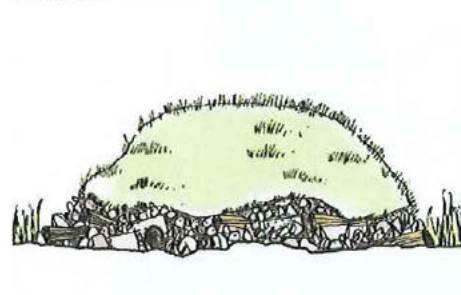
Amenity lawn



Wildlife and biodiversity



Slightly mounded planting beds



Hibernacula



Educational signage



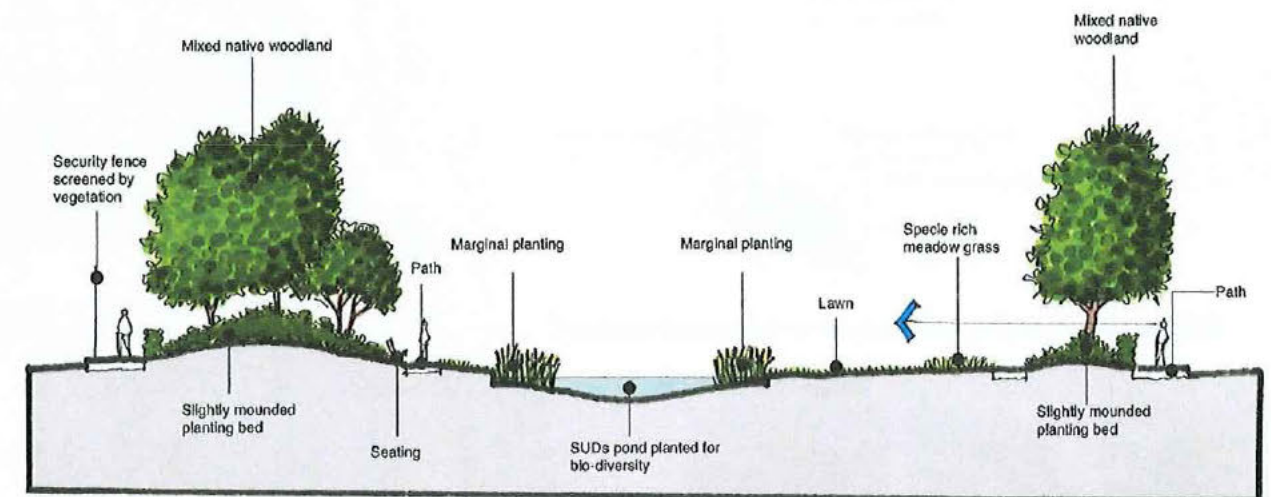
Insect hotel



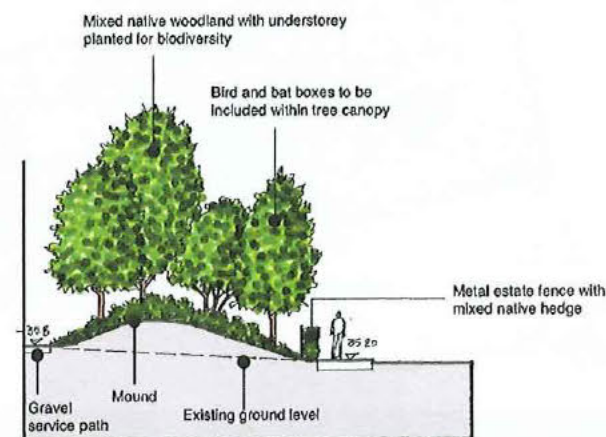
Bird and bat boxes

Landscape Elements

1. Combined cycle bins, kiosk building with passive surveillance of park
2. Al fresco terrace
3. Timber deck over looking pond with Informative signage
4. SUDs pond with permanent water planted for bio-diversity
5. Seating
6. Picnic benches
7. Amenity lawn
8. Meadow grass
9. Path network
10. Mounded planted beds with mixed native woodland planting
11. Metal estate gates
12. Mixed native woodland with understorey planted for biodiversity

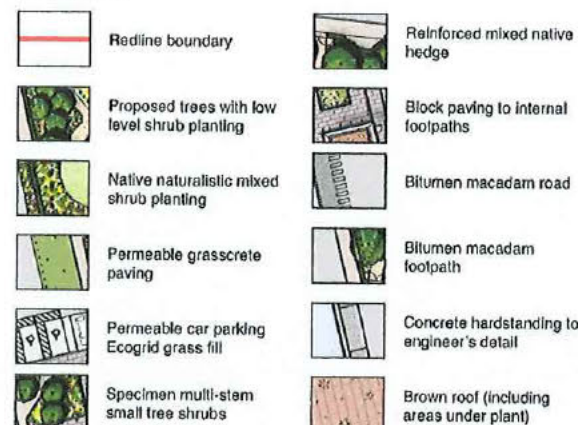


Section A-A - 1:100



Section B-B 1:100

Legend



Landscape Elements

- Lorry layby prior to entry within secure zone
- Security fencing with specie rich grass
- Reception building
- Staff parking
- Main secure site entrance
- Emergency site exit
- Low level shrub planting with high canopy native tree planting to allow for clear eye level visibility and passive surveillance
- Visitor parking
- Brown roofs
- Retaining wall with ground cover planting
- Viewing deck with seating and educational signage
- Feature hedge gateway with 1.2m high gate
- SUDs pond planted for bio-diversity
- Eco pocket park
- Preformed mixed native reinforced hedge to boundary 1.2m high



Educational signage



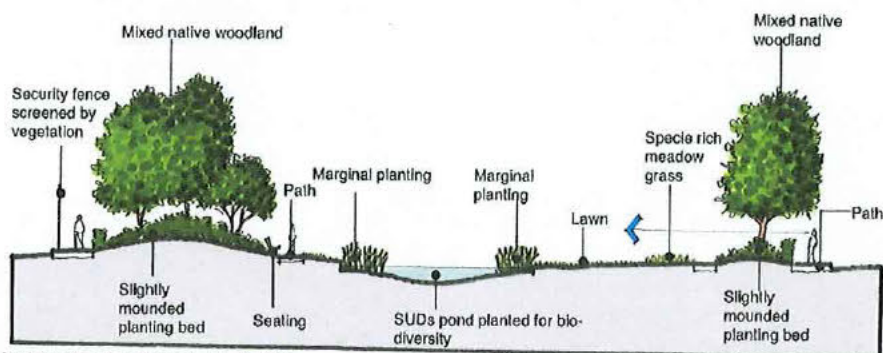
Bio-diverse roof to cycle store



SUDs Pond planted for biodiversity



Viewing deck

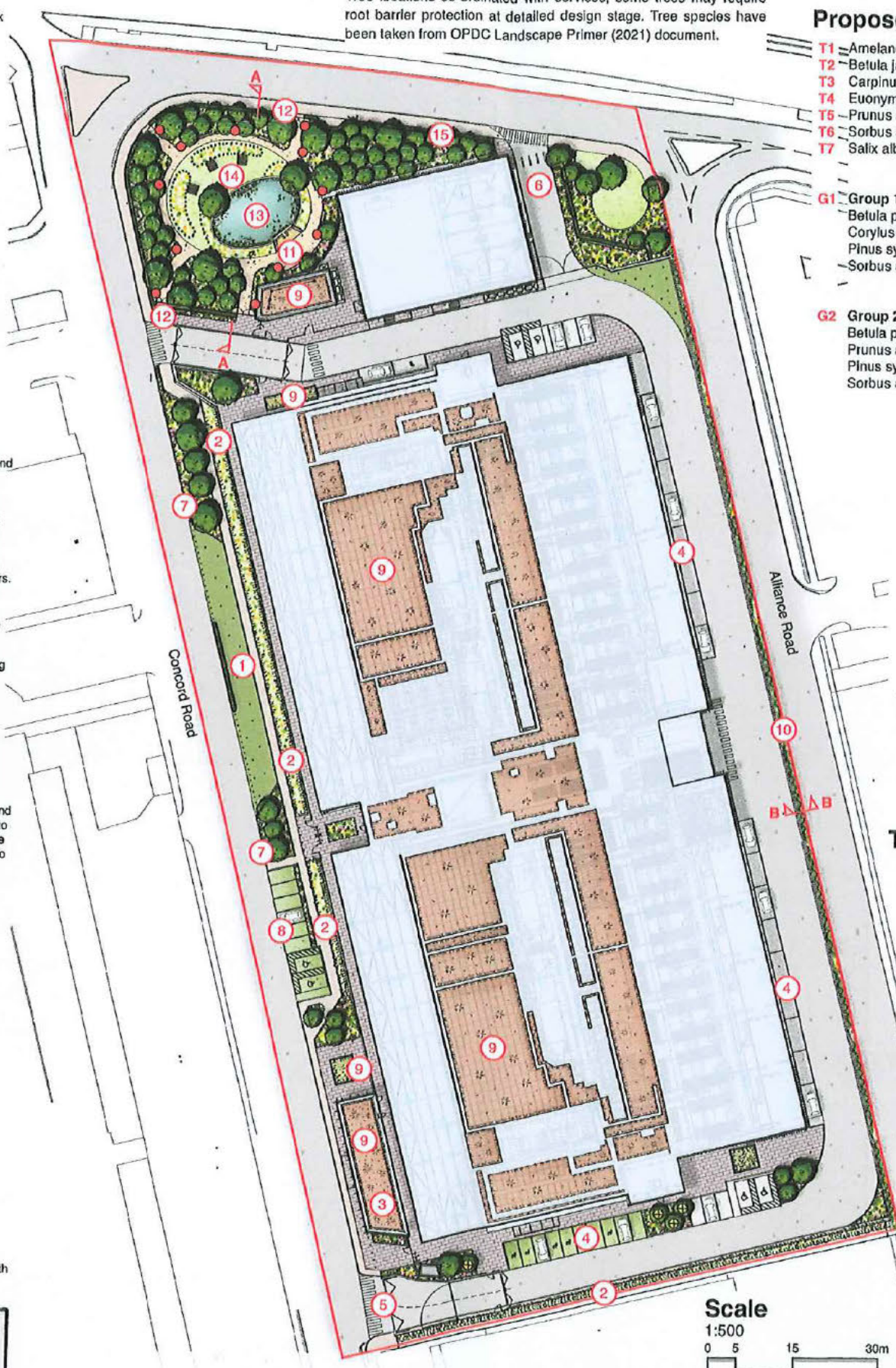


Indicative Section A-A - 1:200

Landscape Plan

Note:

Tree locations co-ordinated with services, some trees may require root barrier protection at detailed design stage. Tree species have been taken from OPDC Landscape Primer (2021) document.



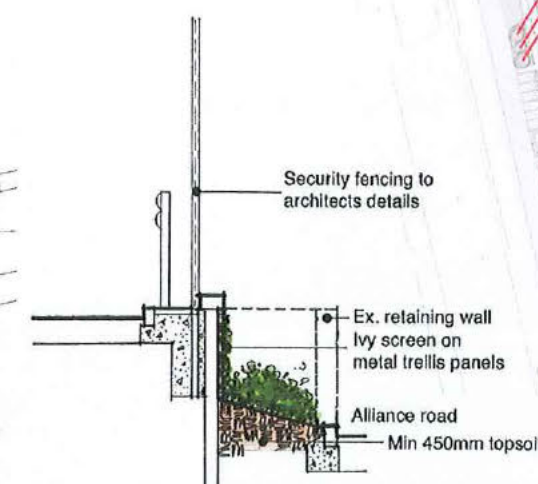
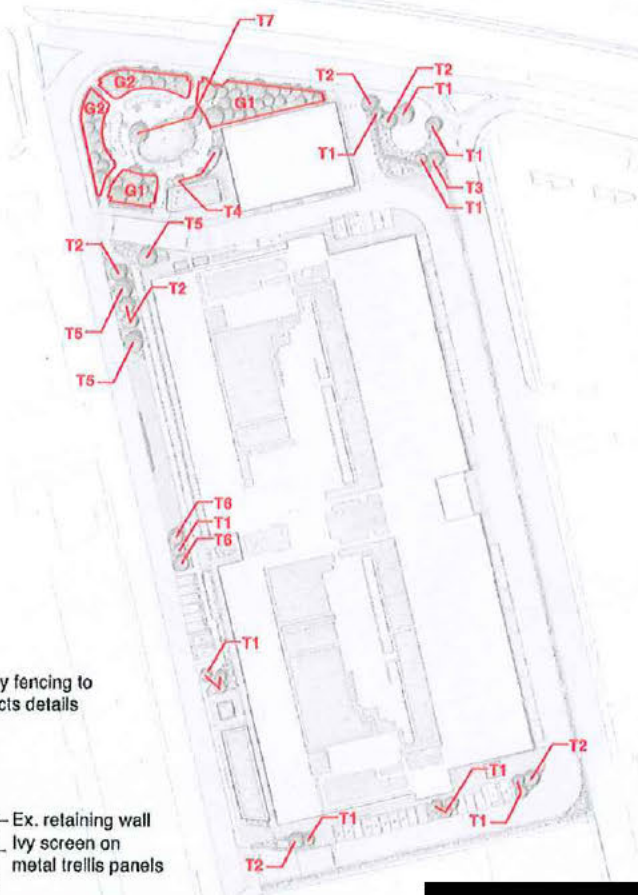
Tree Location Plan

Proposed Trees & Multi-stems

- T1 Amelanchier lamarckii (multi-stem)
 T2 Betula jacquemontii (multi-stem)
 T3 Carpinus betulus
 T4 Euonymus uropaeus
 T5 Prunus avium 'Plena'
 T6 Sorbus aria 'Lutescens'
 T7 Salix alba (pollarded)

- G1 Group 1
 Betula pendula
 Corylus avellana (multi-stem)
 Pinus sylvestris
 Sorbus aucuparia

- G2 Group 2
 Betula pendula
 Prunus avium
 Pinus sylvestris
 Sorbus aucuparia



Typical Illustrative Retaining Wall Section B-B

Tree Images



Amelanchier lamarckii (multi-stem)



Betula jacquemontii



Carpinus betulus



Betula pendula



Sorbus aria



Salix alba (pollard)



Pinus sylvestris



Mixed native hedge

Scale

1:500

0 5 15 30m





PLAN 3

