

## **LONDON CITY AIRPORT - VALUE COMPENSATION SCHEME**

### **Provision for compensation for loss of value of undeveloped sites which may be affected by the expansion of Public Safety Zones at London City Airport**

#### **A. Introduction**

London City Airport is required to put into place a scheme to compensate for the loss of value that may be caused to undeveloped sites affected by the extension of the Public Safety Zones ("PSZs") (from the "base case" PSZs which existed on 9 July 2009) due to the increase in annual aircraft movements at the Airport to 120,000, which was granted planning permission by London Borough of Newham on 9 July 2009. This compensation scheme is known as the Value Compensation Scheme ("VCS").

#### **B. Background**

1. Planning permission ("the Airport's Planning Permission") was granted on 9 July 2009 (reference 07/01510/VAR) by the London Borough of Newham for variation of conditions attached to previous planning permissions for the Airport to allow up to 120,000 total aircraft movements per year (with related modifications to other limits on aircraft movements).
2. The Airport's Planning Permission was subject to an agreement under Section 106 Town and Country Planning Act 1990 dated 9 July 2009 ("Section 106 Agreement"). Under the Section 106 Agreement the Airport is required to prepare and consult on a Value Compensation Scheme to compensate for value that may be lost at sites that are yet to be developed in the vicinity of the Airport and which could be affected by any expansion of the PSZs of the Airport, as a result of the Airport's Planning Permission. The VCS must then be approved by the Council and implemented. The operation of the approved VCS and adherence to the VCS is enforceable by the London Borough of Newham under the Section 106 Agreement.
3. PSZs around airports are reviewed periodically and also following a material change in circumstances such as (in this case) a permitted increase in aircraft movements.
4. The body responsible for implementing Department for Transport (DfT) policy on PSZs is the Civil Aviation Authority (CAA). Air travel is a low risk means of transport but as a precaution the CAA delineates PSZs at each end of a runway in order to control the number of people on the ground, in the vicinity of airports, who could be at risk of death or injury in the event of an aircraft accident on take-off or landing. The way this is achieved is to restrict new development within PSZs. The basic policy objective of the DfT (set out in DfT Circular 01/2010) is that there should be no increase in the number of people living working or congregating in PSZs and that, over time, the number should be reduced as circumstances allow. However, unimplemented planning permissions in PSZs do not need to be revoked or modified: paragraph 15, DfT Circular 01/2010.
5. PSZs are based on an objective assessment of the risk to an individual on the ground in the vicinity of an airport from an aircraft accident over the course of a year. They comprise an outer boundary which is the 1 in 100,000 risk contour and an inner zone, based on the 1 in 10,000 risk contour. Most existing developments within PSZs can remain there, but some types of new development are not permitted. To place the level of risk in context, the risk of fatality from all types of road accidents is about 1 in 16,800 each year and the risk of being killed accidentally in the home from all causes is about 1 in 13,000 per year. Further information on PSZs and the DfT's policy can be found in DfT Circular 01/2010, available on the DfT's website.
6. To understand the VCS it is important to appreciate the full extent of the PSZs which were current at the Airport at the time of the Airport's Planning Permission being granted (9 July 2009). These **"base case PSZs"** are shown on the attached plans 1 and 2.

7. Work undertaken during the course of the planning application indicated that there was a possibility that the base case PSZs could increase in extent as a result of planning permission being granted for additional aircraft movements and if that were to happen, the potential value of undeveloped sites in the vicinity of the Airport could be adversely affected. The purpose of the VCS, therefore, is to compensate for any adverse effect of this nature arising from the publication of the first revision of the base case PSZs which takes into account the Airport's Planning Permission granted on 9 July 2009.
8. On 15 March 2011 the CAA completed a comprehensive review of PSZs at London City Airport and published revised PSZs taking into account for the first time the implications of the Airport's Planning Permission for additional aircraft movements granted on 9 July 2009. These revised PSZs are shown on the attached plans 3 and 4. The areas of land over which the PSZs extend for the first time as a result of this revision (referred to in this document as the "Eligible Zone") is shown tinted pink on the attached plans 5 and 6.

### **C. The Value Compensation Scheme**

The Value Compensation Scheme (VCS) will operate as follows:

#### **1 Eligible Sites**

- 1.1 To be eligible for the VCS a site must have been undeveloped as at 9 July 2009 and must include land that is situated within the Eligible Zone. The boundaries of the site will then be determined by reference to the extent of adjoining land in the same freehold or leasehold interest under which the land in the Eligible Zone is held at the date of the Airport's Planning Permission. This means that assembly of land after 9 July 2009 will be disregarded for the purposes of identifying the Eligible Site. (The potential of that site to form part of a larger, assembled development site may however be relevant to the valuation process as described below.)
- 1.2 Sites which were undeveloped (and not part of a developed site) as at 9 July 2009 will be deemed to include:
  - Undeveloped sites without planning permission;
  - Undeveloped sites with the benefit of planning permission that remained unimplemented (as at 9 July 2009);
  - Sites with derelict or cleared buildings and structures (ie previously developed or "brownfield" land) without any lawful planning use;
  - Sites with only temporary use or temporary buildings which are required as a matter of law to cease or to be removed at the end of a temporary period.

This is an indicative list of sites and there may be instances where a site has more than one of these characteristics.

#### **2 Eligible Interests**

Any estate, right, or interest in an Eligible Site (as well as any charge over an Eligible Site), if in each case it existed on 9 July 2009, will be eligible for compensation under the VCS including:

- a freehold interest; and
- a leasehold interest.

#### **3 Eligible Claimants**

- 3.1 A claimant will only be considered for compensation under the VCS if:

- (a) on the date of publication of the revised PSZ he/she/it was the owner of an Eligible Interest in an Eligible Site and has either retained the Eligible Interest or in the event of the claimant having transferred that Eligible Interest, retained all rights to claim compensation under the VCS; or
- (b) he/she/it is a person to whom an Eligible Interest in an Eligible Site has been transferred and to whom the entitlement to claim (under the preceding paragraph (a)) has been assigned.

3.2 A claimant must be able to demonstrate eligibility in accordance with these criteria at the date of claim under the VCS and the date of payment of any compensation by the Airport. In both cases, however, a claim will not be accepted if a claim under the VCS has already been made either by the same claimant or by any other claimant in respect of the same Eligible Interest and (a) the previous claim is still under consideration by the Airport or (b) compensation in relation to such claim has been accepted or paid or is the subject of an offer open to acceptance. A claim will also be rejected where it is made within two years of another claim by the same individual claimant and the previous claim resulted in compensation being offered by the Airport but not accepted by that claimant.

3.3 The overriding principle is that the Airport will only pay compensation once in relation to each Eligible Interest.

#### **4 Scheme Start and Close**

4.1 Claims under the VCS cannot be made until the VCS is operational. This will be the later of 1 October 2012 and receipt of the Council's written approval of the VCS.

4.2 The VCS will close on the date that is the tenth anniversary of the date on which the VCS becomes operational: this is the deadline for receipt of any claims. Any claim received on or before this date will continue to be processed but if a claim is received by the Airport after this date, then neither the Airport nor its related companies will be obliged to consider the claim or to accept liability to pay compensation under that claim pursuant to the VCS.

#### **5 Publicity**

5.1 The existence of the adopted VCS and its closing date will be publicised by its inclusion in the annual performance report which the Airport is obliged to publish every year under the Section 106 Agreement and (within three months of the start of the VCS) through written notification of the owners of Eligible Interests in Eligible Sites, insofar as the Airport is able to identify them through Land Registry searches.

5.2 The following will also be made available on the London City Airport official website after receipt of written approval of the VCS from the Council:

- the Adopted VCS
- the 'Base Case' PSZs existing as at 9 July 2009
- the PSZs published on the 15 March 2011 by the CAA which take into account the Airport's Planning Permission granted on 9 July 2009 (the 'Revised PSZs').

#### **6 Procedure**

6.1 The claim will be made under the VCS by the delivery to the Legal Affairs Manager of London City Airport Limited at City Aviation House, Royal Docks, London E16 9PX (email: [notices@lcy.co.uk](mailto:notices@lcy.co.uk)) of a written request for compensation which includes the following minimum information requirements:

- Name of claimant;
- Nature of interest held;

- When the interest was acquired;
- If the interest was acquired after publication of the revised PSZs, evidence of assignment of the entitlement to claim under the VCS in accordance with the above requirements
- Address of the site in which the interest is held;
- Plan showing the extent of the interest in the relevant site;
- Details of the estimated loss of value of the claimant's interest as a result of the revision of the PSZs at the Airport due to the Airport's Planning Permission granted on 9 July 2009 i.e. the amount which the claimant considers it should be entitled to under the VCS because its land is now within the Eligible Zone.

6.2 From receipt of the claim the Airport will adhere to the following procedures and timescales (unless it is prevented from doing so by matters outside its control):

- within three months of receipt of the claim the Airport will notify the claimant whether or not the Airport considers the claimant, its interest and the site to be eligible for the VCS;
- if there is a dispute regarding eligibility, a period of six weeks will be allowed from the date of that dispute for the Airport and the claimant to reach agreement and failing that, the dispute will be resolved in accordance with the dispute resolution process indicated below and the determination of eligibility through that dispute resolution process will prevail;
- if the claimant, its interest and the relevant site are eligible under the VCS, the Airport will procure that a valuation of the relevant interest is undertaken within three months of notifying the claimant of his/her/its eligibility or eligibility being determined through the dispute resolution process. This valuation will be undertaken by an RICS (Royal Institution of Chartered Surveyors) qualified valuer, who will be jointly appointed by the Airport and the claimant and will, at the Airport's cost, visit the site to undertake the valuation described below and take into account the information submitted with the claim. If the valuer requires a survey to be undertaken before arriving at a valuation, then the Airport will pay the costs of that survey as well. The valuer will be instructed to deliver a final valuation report within six weeks of appointment. Any dispute regarding the choice of the valuer shall be resolved by an application by the Airport (at the Airport's cost) to the President for the time being of the Royal Institution of Chartered Surveyors for the President to identify an independent surveyor whom the Airport and the claimant shall jointly instruct.
- Within 30 days of receiving the final valuation report, the Airport will send a copy to the claimant together with its offer of compensation; any offer of compensation made by the Airport will be subject to the following terms and conditions: (a) the offer will be open for acceptance until the earlier of the following dates - the expiry of three months from the date of receipt of the offer by the claimant or the date on which the Airport makes a further offer of compensation following agreement between the parties on the amount of compensation as described below or the date on which a dispute concerning the amount of compensation is referred to an expert in accordance with the dispute resolution process referred to below; (b) the claimant agrees that the offer is in full and final settlement of any claim that the claimant may have (against the Airport or LBN or any other body) in respect of the diminution in value of an Eligible Interest which results from the revision of the PSZs due to the Airport's Planning Permission; (c) the claimant undertakes that (notwithstanding its acceptance of the offer in full and final settlement) in the event of receiving compensation under any other entitlement for the same loss of value (due to the revision of the PSZs), within 30 days of receiving such compensation to pay this compensation to

the Airport, up to the value of any payment received from the Airport with interest calculated at the Bank of England base rate from the date of payment.

- The compensation payable and to be offered by the Airport under the VCS will be the difference between the value of the Eligible Interest assessed with the Base Case PSZs and the value of the Eligible Interests assessed with the Revised PSZs (in accordance with the valuation principles indicated below). If there is a dispute regarding the amount of compensation following the receipt of the Airport's offer, the claimant and the Airport will meet to discuss compensation and failing agreement between the parties, the dispute may be referred by either party in accordance with the dispute resolution process indicated below. The amount of compensation which is arrived at following that dispute resolution will prevail and within 30 days of the Airport receiving written notice of the compensation determined by the expert the Airport will make an offer to the claimant to pay that compensation on the terms and conditions referred to above (except that there will be no further provision for disputes regarding the amount of compensation).
- If an offer of compensation including its terms and conditions is accepted in writing by the claimant, payment will be made within three months of the date of receipt by the Airport of that written acceptance.

## **7 Valuation Principles**

Valuations under the VCS will be conducted in accordance with the RICS' Valuation Standards (Red Book) but subject also to the following principles:

- Actions taken in order to enhance compensation potentially payable under the VCS (such as the creation of additional interests in land) will be disregarded.
- The VCS will be based on the difference in value of the Eligible Interest in the Eligible site shown in two valuations. Both valuations will assess the market value of the interest as at the date of claim (unless an Eligible Claimant has transferred its Eligible Interest without assigning the entitlement to claim - see below) but the first valuation will assume that the Airport's Planning Permission had not been granted and that therefore the PSZs were not altered beyond their extent prior to the grant of the Airport's Planning Permission (ie the base case PSZs) - all other valuation assumptions shall be the same. In addition, in the first valuation the valuer shall be entitled to assume that if the PSZs had not been extended other adjacent and nearby sites to the valuation site may have been developed at the time of valuation to the extent that this may affect the valuation of the site being valued.
- If an Eligible Claimant has transferred its Eligible Interest without assigning the entitlement to claim the date for the two valuations will be the date of transfer, not the claim; the second valuation (which takes into account the revised PSZs) will be the higher of the purchase price paid at the time of transfer and the valuation conducted under the VCS.
- In undertaking the VCS valuations, regard shall be had to the effect of the revision of the PSZs on the Eligible Site as a whole. In other words, any loss of potential development floor space caused by the PSZ revision across part of the site could have beneficial or adverse knock-on effects within the remainder of the site and these should be taken into account in the valuations.
- The market value shall take account of all factors that may impact on a willing seller and a willing buyer in the open market at the date of claim. This includes the future development potential of the site and the desirability in valuation terms of implementing planning permissions extant on 9 July 2009.

## **8 Aggregate Claim made in the first six months**

- 8.1 An aggregate claim is one which is made by the owners of all Eligible Interests in one Eligible Site. In this instance the physical extent of the Eligible Site will be determined by the extent of the property adjoining the relevant land within the Eligible Zone, which is held under the same freehold interest.
- 8.2 For the first six months of the VCS, the Airport will consider an aggregate claim in respect of any Eligible Site from all Eligible Claimants in respect of all Eligible Interests provided that those claimants jointly agree and request a capital sum from the Airport which will represent the sum of the payments which would otherwise be due under the VCS in respect of all such interests. Whether or not the Airport offers to pay compensation pursuant to an aggregate claim of this nature will be in its absolute discretion and the amount of compensation will be subject to the prior approval of Newham. If an aggregate claim is not accepted by the Airport or withdrawn (by one or more claimants) before payment is made or results in an offer of compensation being made by the Airport which is not accepted by one or more of the Eligible Claimants, then the aggregate claim will be disregarded and any of the Eligible Claimants will be entitled to claim individually.

## **9 Claimant's Costs**

In the event that a claim is made under the VCS which results in compensation being paid, the Airport will cover all of the claimant's reasonable and proper legal and valuation costs incurred in making the claim and in entering into any agreement to record the compensation payable. However, in determining what costs are reasonable and proper the Airport will be entitled to have regard to the proportion of the original amount claimed that has been recovered and whether any part of the claimed amount has been shown to be without foundation and as having caused costs which would not otherwise have been incurred.

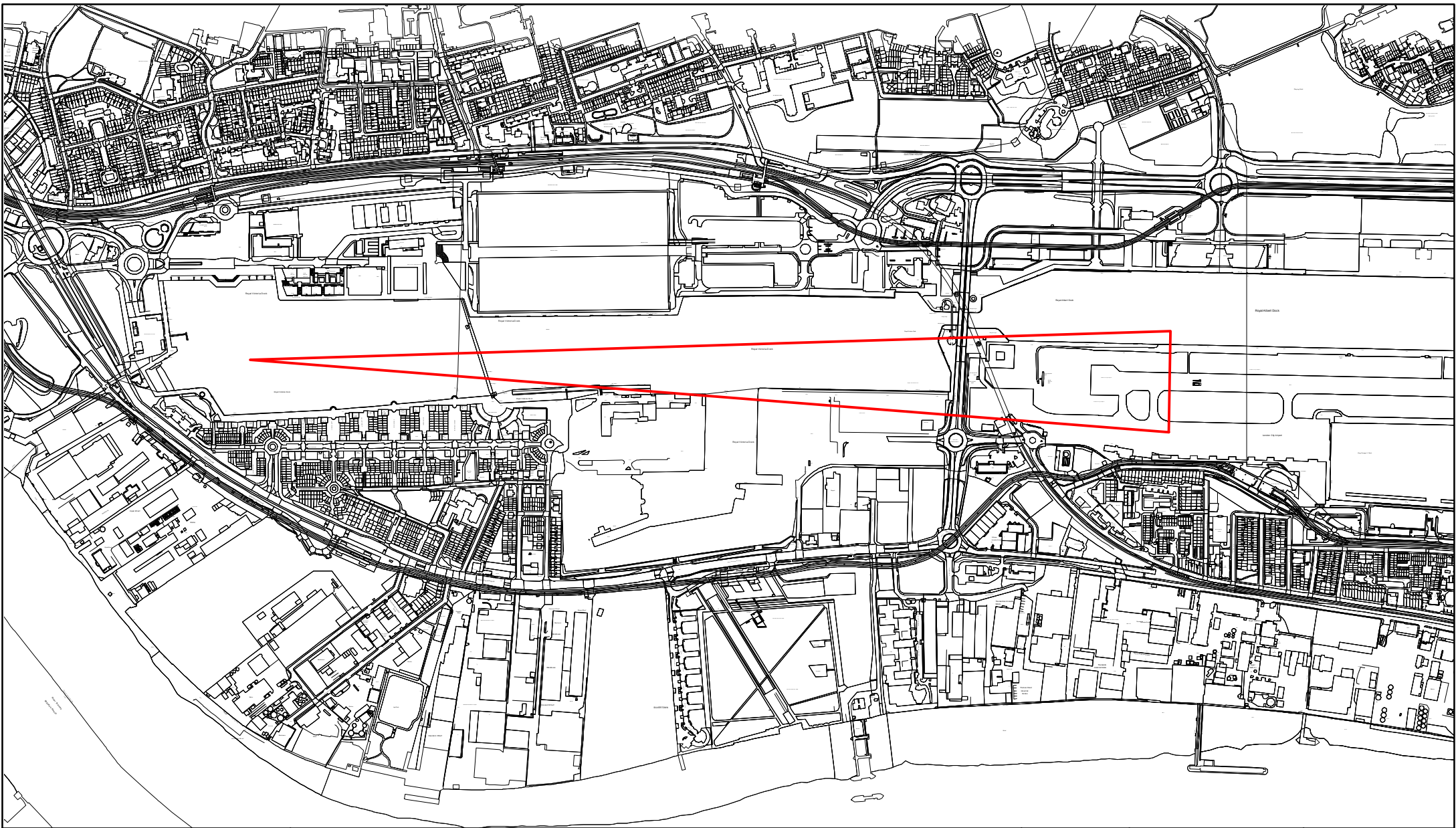
## **10 Interest**

Interest will be payable on compensation calculated at the Bank of England base rate from time to time from the date of claim until date of payment.

## **11 Dispute Resolution**

- 11.1 In the event of a dispute under the VCS the matter in dispute will on the application of either the Airport or the claimant be referred to a person acting as expert (the "Expert") being a person with not less than 10 years' recent and relevant experience of the matter in dispute whose identity will be agreed between the Airport and the claimant or in the absence of agreement appointed by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors on the application of either party.
- 11.2 The resolution of the dispute will be on the following terms:
- (a) the determination will be final and binding on the parties except where the Expert has made a manifest error;
  - (b) the parties will be entitled to make representations and counter-representations in accordance with such timetable as the Expert directs; and
  - (c) the Expert's costs will be borne in such proportions as he or she may direct failing which each party will bear its own costs of the reference and determination and one half each of the Expert's costs.

**London City Airport Limited**



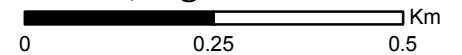
— Base Case PSZs (current at the time planning permission was granted on 9 July 2009)



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Date: Nov 2011

Scale: 1:10,000 @ A4



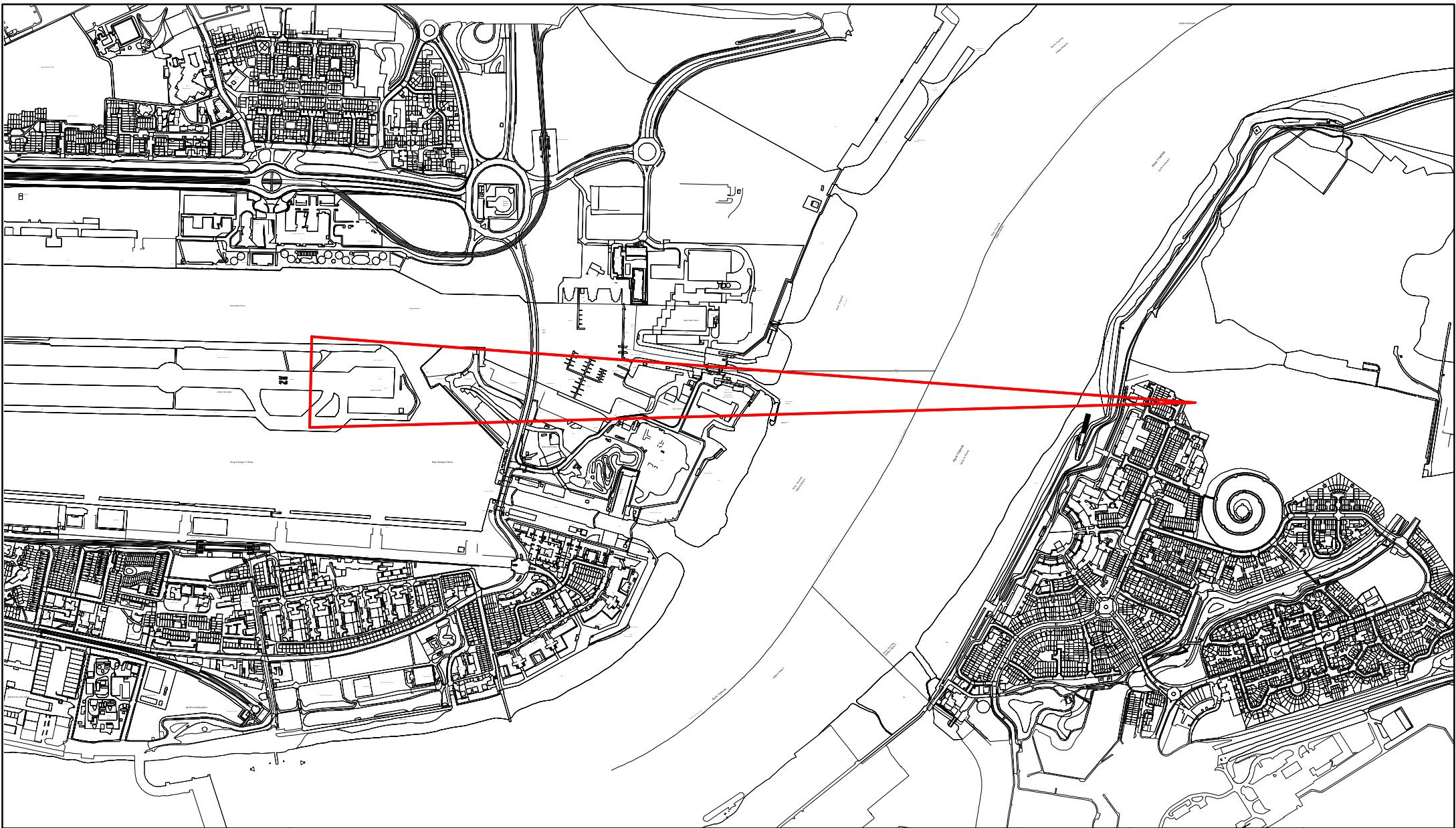
**London City Airport - Value Compensation Scheme**

**Plan 1**

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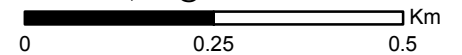
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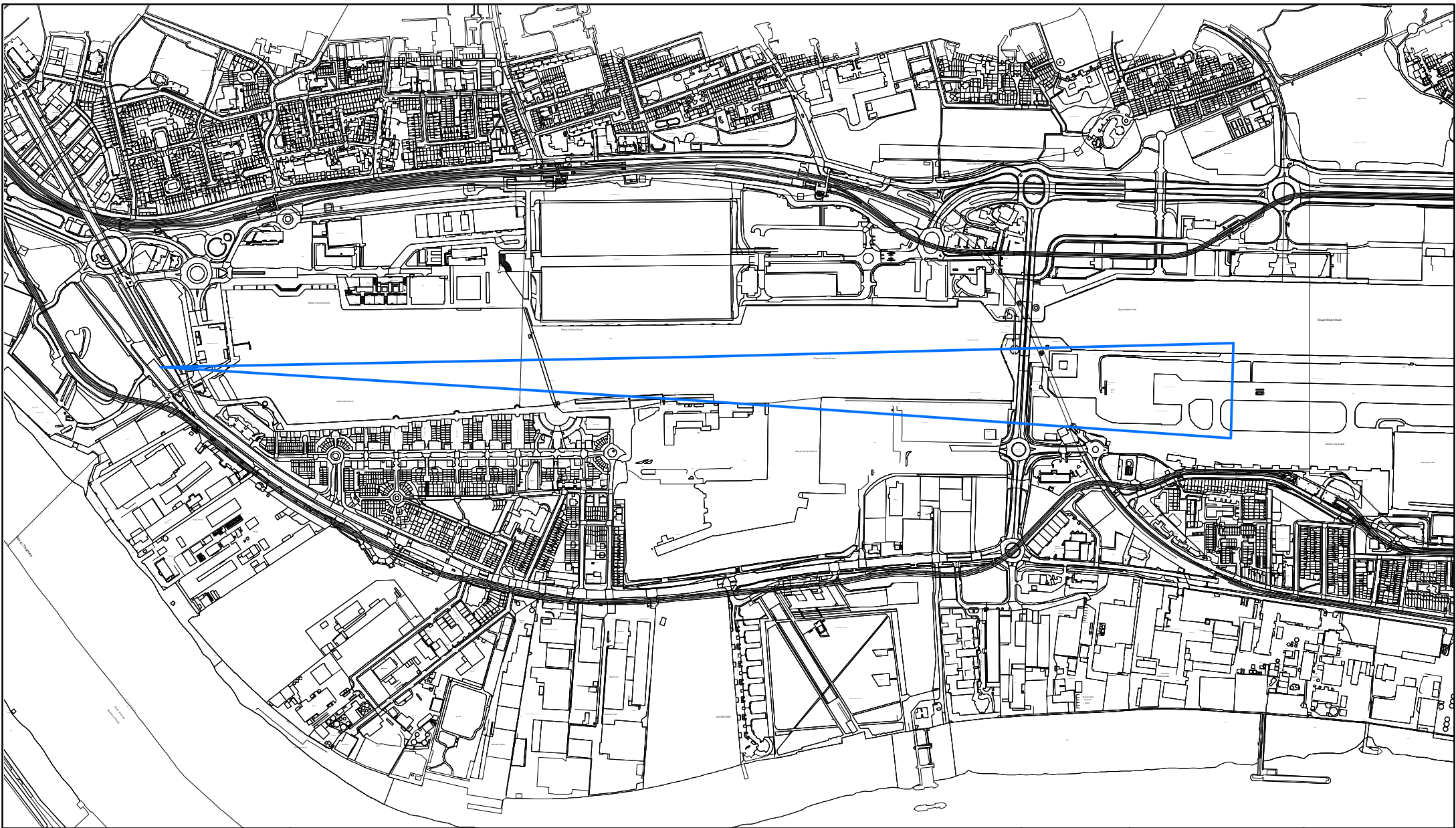
**London City Airport - Value Compensation Scheme**

**Plan 2**

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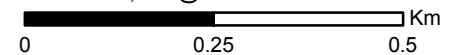
— Revised PSZs (came into effect on 15 March 2011)



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**London City Airport - Value Compensation Scheme**

**Plan 3**

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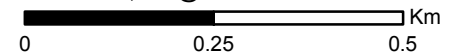
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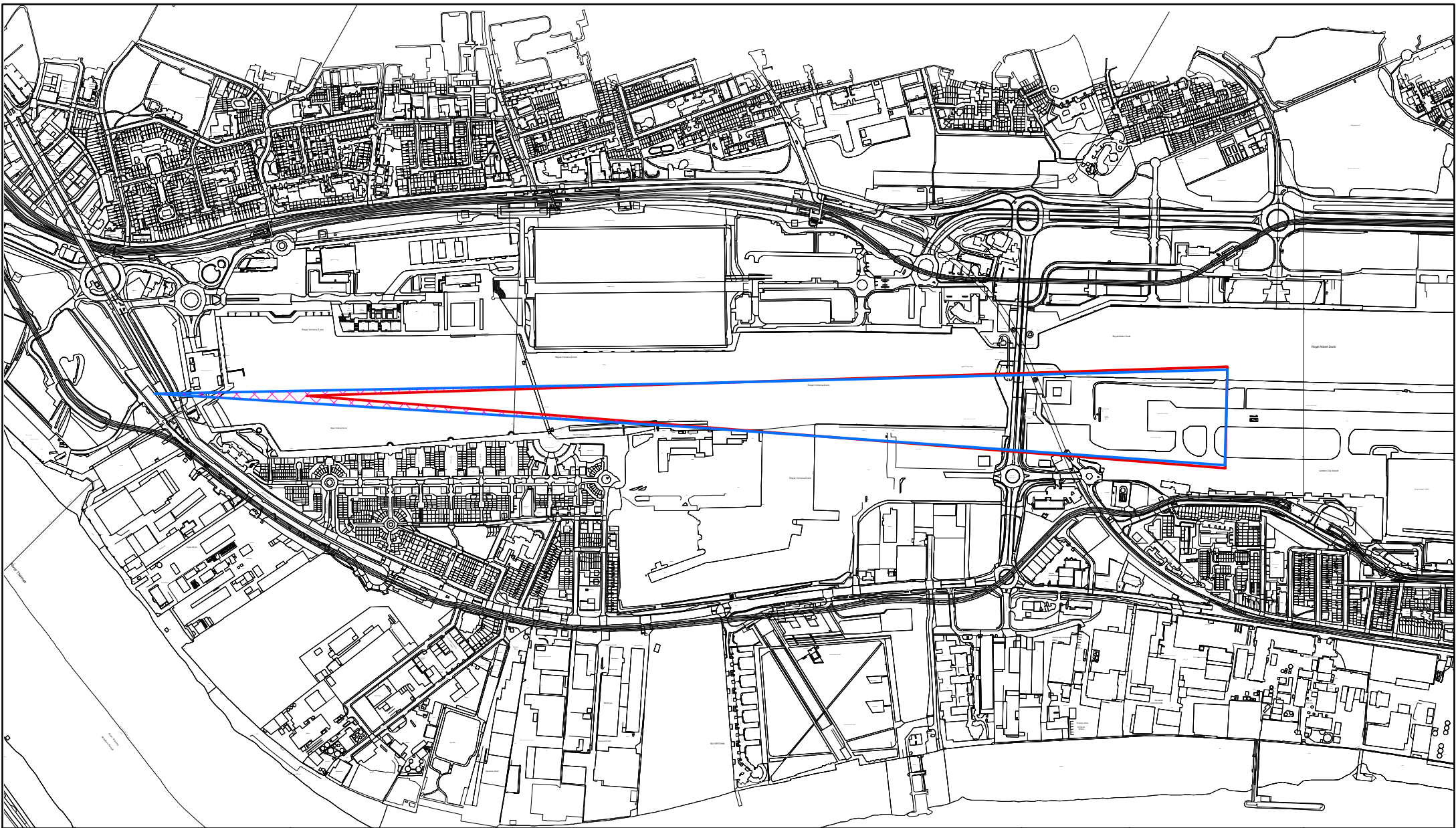
**London City Airport - Value Compensation Scheme**

**Plan 4**

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- Base Case PSZs (current at the time planning permission was granted on 9 July 2009)
- Revised PSZs (came into effect on 15 March 2011)
- ✕ Eligible Zone

## London City Airport - Value Compensation Scheme

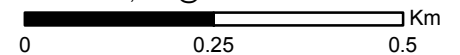


Plan 5

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- Base Case PSZs (current at the time planning permission was granted on 9 July 2009)
- Revised PSZs (came into effect on 15 March 2011)
- Eligible Zone

### London City Airport - Value Compensation Scheme

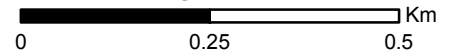


Plan 6

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