

EDINBURGH TRAM PROJECT

Review of Progress and Management of the Project

January 2011 to June 2012

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FOI(S)A Exempt

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1.0 INTRODUCTION

The purpose of this report is to give the reader a clear overview of the project position, with specific reference to the period between January 2011 and June 2012.

The report endeavours to provide detail on programme, finance, contract and points of commercial governance, engagement with Lothian Buses, getting ready for operations, engagement with Stakeholders, communications, traffic modelling and York Place, as well as setting out the process for a forensic review.

The format of the report is to provide a narrative to introduce the enclosed documents, which have been extracted from the live project file in order to give transparency to the project path.

It is recommended that a detailed briefing be given to the reader in order to set the context of the points noted.

2.0 EARLY ANALYSIS AND EMERGING CONCLUSIONS PERIOD JANUARY 2011 TO MARCH 2011

First Observations and Emerging Thoughts

At the instigation of the City of Edinburgh Council ("CEC") Chief Executive Sue Bruce, an all-day project review to assess readiness for mediation was held on Saturday 29th January 2011.

The notes attached were created on the basis of the dynamic and the topics covered. They are the opinion of the author, not that of the Council.

This meeting was the first of many that followed as the tactics and detail were examined and refined in the lead up to mediation in March 2011.

Project SB File

Report Number One

**First Observations and
Emerging Thoughts**

31st January 2011

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**REPORT NUMBER ONE
FIRST OBSERVATIONS AND EMERGING THOUGHTS**

1.0 THUMBNAIL PROFILES

Steven Bell

Sure footed performance on facts, corrected his team on a number of points of detail. Did not have an answer on alternative contractor, completion of risk matrix (sensitivity analysis), or cost to complete on either scenario, Phoenix or Separation, reported that this was work in progress.

Richard Jeffrey

Reluctant chair of meeting, keen to keep discussion at high level. He and Tony contradicted one another on a number of points. Reluctant to take on the cost procurement definition of Haymarket to St Andrews "it will follow". Uneasy when point driven home on relationship governance between CEC and tie. No sense of alarm at prospect of tie being "sacrificial lamb" at the mediation.

Nigel Robson

Clearly expert in his field, though his advice seemed to be restricted up to a certain point. Would be keen to learn of his client instruction to date.

Brandon Nolan

Keen to establish "blue water" between McGrigors involvement and DLA, noted the offer of his initial report and statements throughout the day. A foundation stone of the overall problem are the contract provisions and novation of a part-completed design, with no control mechanism in the design specification by the client. NB. The exchange between David and Brandon re other conditions, viz land and Council consents to use their phrase that is the next set of financial "trap doors". Brandon needs an instruction to get his head round an acceptable outcome to think of a HOT that can follow on to contract adjustment if mediation is successful.

Tony Rush

Good grasp of people and technical issues, noted comments on time to prepare for Phoenix and Separation. Not enough time to do both, concentrate on Phoenix. I would agree with this, although Separation should be developed to some degree as a negotiating lever.

Tony, Brandon and Nigel can deliver a good performance, but they need to be organised/instructed by their client, Richard, who in turn should be mindful what his client needs.

**REPORT NUMBER ONE
FIRST OBSERVATIONS AND EMERGING THOUGHTS**

2.0 PROCESS

The mediation should be entered into trying to seek agreement on the two parties' issues:

1. Delivery of operations, Airport to St Andrews (to defer Haymarket to St Andrews only puts the problem on to others post mediation and could provide a second wave of bad news).
2. Cost recovery with a full contingency to deliver (1).
3. Mechanism to deal with design sign off, land acquisition and remaining consents.
4. Remedial works.

In addition, as a separate client action - How to fill funding gap and other matters noted in Appendix I

3.0 PROBLEM

The Contract appears to be flawed.

The parties are taking advantage of this contract circumstance to suit their own financial position. That situation can only lead to deadlock as it is ultimately unworkable and as a consequence the parties are now tainted with mistrust.

It would not be an option to sacrifice tie (indeed it may suit some, providing a scorched earth approach to files information) etc. In due course a forensic report will be required to see what may be able to be recovered.

For CEC to intervene, it should be on the basis of Airport to St Andrews at least as an opening position. Whole budget re-established and the contract implemented in a different manner.

**REPORT NUMBER ONE
FIRST OBSERVATIONS AND EMERGING THOUGHTS**

4.0 PROPOSAL FOR A BASIS TO MANAGE A POTENTIAL SOLUTION

I would suggest the below noted proposal to be discussed pre-mediation as a solution to be offered within the mediation process. This would need to be agreed and parties on our side would need to buy in to this suggestion before we go in to the mediation room.

Bilfinger Berger Siemens and CEC jointly appoint a chair to a new project Steering Group. The Chair to be of a technical and business background and respected at a high level politically.

The Steering Group has representation at a senior decision making level from CEC, Bilfinger Berger Siemens and tie. This group endeavours to apply the Contract as written, but also noting the original intent. The Chair has to be able to deliver that dual approach in managing the contract within the Steering Group.

This group can be monitored by Scottish and German government representatives.

Existing contract obligations to CEC from tie and tie to the Contractor remain as is.

I would be pleased to amplify on this proposal at your request.

5.0 TRACKER

I attach my first tracker by way of a note on progress.

PROJECT SB FILE



**REPORT NUMBER ONE
FIRST OBSERVATIONS AND EMERGING THOUGHTS**

Appendix I – Review of Observation Points

**REPORT NUMBER ONE
FIRST OBSERVATIONS AND EMERGING THOUGHTS**

CS OBSERVATION POINTS FOR TEAM MEETING ON 29TH JANUARY 2011

✓ - Points covered to some degree 29/01/11

- Is the style of the mediator known? Consensual or Authoritative ✓
- Has someone researched the Mediator's past outcomes? ✓
- How will any solution be funded?
Can shares/future profits be used?
Who will hold the liability?
- Is the proposed venue sufficient, neutral and conducive? ✓
- Pre-Mediation Agreement – CS with McClures will provide a skeleton form
- Client / Consortium Group
 - Clear hierarchy ✓
 - Decision maker ✓
- Technical, Contractual, Financial – understanding with each member – not as at 29/01/11
- Get copy of contract – CS – ✓ Ask Steven, cc. SB
- Get copy of programme – CS - ✓ Ask Steven, cc. SB
- First set of project progress meeting notes – CS to review - ✓ Ask Steven, cc. SB
- Last set of project progress meeting notes – CS to review - ✓ Ask Steven, cc. SB
- Separate the problems/disputes from the people – ✓ See Hg proposal
- Is a backfill statement prepared for 1b, 2 and 3? (Delivery, timetable, land acquisition powers, developer contributions) – ✓ Not as at 29/01/11, no cost to complete
- What is the best alternative to a negotiated agreement? – ✓ Not fully defined
- Has a risk analysis matrix and fund been established based on:
 - (i) successful mediation
 - (ii) unsuccessful mediation} ✓ Only in part, CS to request copy
- Check levels of authority on both sides and within – ✓ Move this point to client group
- Are the key points of dispute clear/identified and are differences known and understood? – ✓ Not fully as at 29/01/11



**REPORT NUMBER ONE
FIRST OBSERVATIONS AND EMERGING THOUGHTS**

- Are our position points of argument based on a solid, technical, contractual position? Do we know our strengths and weaknesses? – **Position now on table 29/01/11 – not fully defined**

3.0 AN OVERVIEW OF TACTICS STRATEGY AND AIMS FROM MEDIATION

The attached report gathers the actions and strategy immediately post mediation.

The report was reviewed by Bilfinger Berger and Siemens (“Infracore”) to ensure that all parties were content with the position prior to the first Principals (i.e. the senior directors of Bilfinger Berger, Siemens and CAF) meeting post mediation. The report was adopted by the Principals at that meeting.

Edinburgh Trams

Report on Progress since Completion of Heads of Terms to 8th April 2011



SIEMENS

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Document 1 of 2
Report

Issue Date: 7th April 2011

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4.0 APPROACH TO BRING A MANAGEMENT STRUCTURE TO DEAL WITH THE PROJECT CIRCUMSTANCES

The following attachments define:

- Meeting Hierarchy
- Governance Meeting Diary
- Governance Meeting Descriptors:
 - Joint Project Forum and Principals Meeting
 - Project Delivery Group
 - Programme & Risk
 - Tram Commissioning & Integration
 - Design, Consents & Commercial
 - Utilities, Princes Street & Construction
 - CEC Control / Consents
 - Communications
 - Lothian Buses – Ready for Operations
 - CEC Tram Briefing (Tuesday / Thursday)
 - Leith Works
 - Client Instruction and Control (CEC/Turner & Townsend (“T&T”))
 - All Party Oversight Group
 - City Centre Elected Members

It was agreed at mediation that a consensual approach be adopted to manage the project. This called for tasks to be split into the component parts, with a facility for escalation to a more senior level within the project without causing either party to call for dispute resolution.

The role of the Independent Certifier was agreed by all the parties.

To date, the Certifier’s opinion has been sought and given on five occasions. There have been no challenges to the opinions and there are no disputes.

5.0 CLIENT CONTROL AND REPORTING

In order to exercise control and ensure accurate recording, all control meetings are minuted and agreed. The attached documents illustrate the range of issues being managed, which are then reported to CEC Tram Briefing meetings, chaired by CEC CEO Sue Bruce, and thereafter to the Joint Project Forum.

- Joint Project Forum Agenda and Minute
- Joint Project Forum and Principals Meeting Agenda
- Client Instruction and Control (CEC/Turner & Townsend)
- CEC Tram Briefing
- Lothian Buses Integration meeting
- Utilities, Princes Street & Construction
- Design, Consents & Commercial
- Programme & Risk
- Tram Commissioning & Integration
- Communications
- Test Track handover

6.0 PROGRESS PROGRAMME AND NEXT INITIATIVE

The following papers are attached:

- Notes of Planning and Programming meeting with Infracore, CAF and T&T
- Planning Options paper presented to the CEC Tram SMT
- Option York Place proposal

The notes from the Planning and Programme meeting reinforce the contract programme position. Notwithstanding this, since March 2011 the project team has worked together to merge the programme critical dates in order to secure agreement on the maximum advantage on dates possible. The Planning Options paper and the York Place proposal illustrate this driven approach.

The project composite programme to completion created and held by the Client will be ready for Board approval in September 2012. This programme will provide for Bilfinger Berger, Siemens, CAF and Lothian Buses' operations.

EDINBURGH TRAM PROJECT

**Project Proposal to Progress
within the Contract Programme
and Present Working
Relationships and Behaviours**

Programme Initiative – May 2012

**Confidential & Legally Privileged
FOI(S)A Exempt**

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- 2.0 Protocol Approach – Collaborative Working**
 - 2.1 Goals and Achievements**
- 3.0 Presentation of Proposal**
 - 3.1 Elected Members**
 - 3.2 Project Principals**
 - 3.3 City Stakeholders**
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- 4.0 Implementation if Agreement and Approval Gained**

APPENDICES

- (i) Contract Programme Dates**
- (ii) Stakeholder Commentary**
- (iii) Proposal to Re-Sequence to Create Optimised Programme**
- (iv) Traffic Management**

1.0 INTRODUCTION

This proposal to examine the sequence of working is part of an ongoing review of the works programme. This follows the approach to work with the Contractors to present the maximum work faces in the light of weather conditions and progress made to date. This approach has helped achieve:

- (1) The Depot being completed on time;
- (2) Handover of The Mound four months ahead of schedule;
- (3) The test track being completed in time; and
- (4) Princes Street (mid section) being ahead of July 2012 hand back.

2.0 PROTOCOL APPROACH

During the mediation and subsequent negotiations to achieve the Settlement Agreement, the parties agreed to be transparent in their way of utilising the Contract Programme and, together with reasonable endeavours, to work on portions of the site while utilities, including Scottish Water, works were ongoing.

This approach has been of benefit to date in Shandwick Place and at Haymarket in aiding the time period to clear utilities out of the way of the track slab and OLE bases.

Further, the cost engineering initiative initiated by CEC in October 2011 captured a Contractor-lead proposal to create a “time bank” of 22 weeks that would act as a buffer in the programme in order to mitigate the delay effect to the commencement dates of Bilfinger Berger/Siemens works.

3.0 PRESENTATION OF PROPOSAL

This present proposal is an advancement of the protocol approach to working.

York Place is due to be handed to Bilfinger Berger and Siemens in October. Areas where tram works are to take place are to be utilities free at that time. The original traffic management proposal stemming from 2008 is not practical.

This proposal endeavours to advance utilities clearance work in the period from July to October 2012 and to provide the Contractor with a work area that offers a more efficient and practical site. This proposal has been assessed by the City of Edinburgh Council and the Client Target Programme indicates possible time benefits, provided that no other adverse factors affect the work stream. The proposal has been traffic modelled and found to be workable.

Stakeholder comments have been considered:

- Shortest time
- Advance notice to allow retailers time for advertising campaigns
- Festival
- “T in the Park” travellers coming through the Bus Station
- Staff resourcing for retailers
- Access systems – St James and NCP
- Consideration to bus routes
- Earliest time to re-open all of Princes Street
- Least number of Christmas trading years

4.0 IMPLEMENTATION IF AGREEMENT AND APPROVAL GAINED

The approach to build up this proposal has been sequential in process. The Utilities Contractor and Turner & Townsend have been consulted to ensure that they could resource this “acceleration”. They, together with Bilfinger Berger and Siemens, have confirmed that they can resource the proposal. Traffic modelling and the Council Roads team are engaged and satisfied that the proposal is workable. Meetings have been held with Stakeholders and their views have been considered.

The City of Edinburgh Council Tram SMT was given a draft proposal on 22nd May. A presentation is to be made to elected Council members on 28th May for their views to be sought.

The Principals (i.e. the senior directors of Bilfinger Berger, Siemens and CAF), will receive the presentation of this proposal on 30th May.

A communications process will be engaged upon to ensure that Lothian Buses and the bus operators are engaged with this plan prior to implementation.

A wider communications plan will also be put in place prior to July commencement.

The proposal as outlined is recommended to the project.

Project:
Reference

Edinburgh Trams Project

Programme Initiative – May 2012

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Appendix I Contract Programme Dates

Activity	Rev 4	Rev 4c	Rev 5	Rev 5c
Test Track Available for Commissioning	25 th January 2013	5 th December 2012		
Track Finishes	8 th November 2013	16 th September 2013		
System Integration	February 2014	Sept – Oct 2013		
Test Running	February to March 2014	Nov to Dec 2013		
Approval of HMRI	April 2014	December 2013		
Shadow Running	April to July 2014	December 2013 to March 2014		
T3 Tests	April 2014	March 2014		
Revenue Running	Summer 2014	Summer 2014		

Key Factors / Tasks Remaining that can Affect the Completion Date

- BAM Track Laying
- RBS Tram Stop
- Airport Tram Stop
- Underpass
- Weather
- Network Rail

Note: Rev 4c as progressed to 28 April 2012, no period for prior Utility diversions

Appendix II Stakeholder Commentary

Overview of feedback from stakeholder engagement meetings – York Place programme May 2012

Summary

Over the past month we have held a series of engagement events to socialise stakeholders in the East End with two possible scenarios for the extension of works onto York Place:

1. a partial closure of York Place which would see works in place over two Christmas periods
2. a full closure of York Place which would see works in place over a single Christmas

There has been overwhelming support for option 2 – a full closure of York Place with a shorter duration of works.

Stakeholders in this area appear pragmatic in their approach. The larger stores in particular recognise the benefits that the trams will bring to their operations and seem keen to support any measure which will hasten the arrival of the service and / or guard against any future delay.

The concerns raised by traders centre around logistical considerations – parking, signage, crossing points, appearance of sites etc. - which we believe we can mitigate against successfully as we have in other areas of the city with dedicated logistical and relationship management support.

Meetings have included:

1. Meeting for all traders in the East End – 2nd May
2. Meeting for traders in St James Centre, Multrees Walk area – 8th May
3. Meeting for traders in York Place – 14th May
4. Meeting with Tram Business Forum including representatives from business associations from across the city – 14th May

Overview of feedback

1. Meeting for all traders in the East End – 2nd May 2012

Introductory engagement session to:

- establish relationships
- highlight start of works in East End
- promote further meetings were options would be discussed

Stakeholder	Primary aim - perceived sentiment	Secondary aim - mitigations
Nell Graham - Troon	N/A	Unmanned opening / no safe crossing / no loading bay / no disabled parking / drainage / rubbish collections/ no progress with Assessor this time around
Andrew Stewart - Royal British Hotel	N/A	Better signage for deliveries / site / road being used as turning circle / logistical help needed
Gill Hames – Neal's Yard	N/A	Location of bus station?
Neil from Place Hotel	N/A	How much Open for Business budget is left and how much will be used for the East End? Will there be night works in York Place?
Gordon Wilson, 28 York Place	N/A	Time scale for the case for the Assessor?
Charlie Galloway - Guildford Arms	N/A	Difficult to measure pubs for Assessor?
Ian Staples - Curious and Curiouser	N/A	Impact on Broughton Street. Concerns about lack of crossing points impeding footfall
Scott Girdwood - Balmoral Hotel	N/A	Concerned that traffic management plans aren't being followed or marshalled – e.g. taxi ranks that are marked for one taxi have nine in it
Derek Gordon - Eric Young & Co	N/A	Concerned about access to York Place / extent of the site
Hazel Tierney - John Lewis	N/A	Big anchor stores like Harvey Nichols, St James Centre and John Lewis need more than signs - it must be right from the beginning. If customers have a bad experience they won't come back.

2. Meeting for traders in St James Centre, Multrees Walk area – 8th May

Stakeholder	Primary aim – perceived sentiment	Secondary aim - mitigations
Rochelle Burgess – St James Centre and Multrees Walk	Option 2	Appearance of worksites and the area / desire for scrim on heras fencing and directional signage / bus routes / accessibility / car parking / marketing support / footfall
Gordon Drummond – Harvey Nichols	Option 2	When in December will St Andrews Square be cleared
Mark Lindsey - NCP	Option 2	
Hazel Tierney – John Lewis	Option 2	Road and pedestrian signage / access to click and collect service
Richard Corrigan – St James Centre and Multrees Walk	Option 2	Safe crossing points / operational access to car park

3. Meeting for traders in York Place – 14th May

Stakeholder	Primary aim - perceived sentiment	Secondary aim - mitigations
Alex Smyth - RBS	Option 2	Road safety / 800 visits per week down
Gordon Wilson – 28 York Place	Option 2	Loading at rear / residential area – full in August / could we vary working hours from 10am to 6pm rather than 8am to 4pm to allow guests to sleep
Neil Ellis – The Place	Option 2	Loading at rear / residential area [rents parking from Scottish Executive]
Ruth Milligan and committee - St Pauls and St George Church [individual meeting]	Option 2	Noise, litter, foundations, parking, disabled access, working hours
Pretti Majithia – Virgin Money [individual phone call]	Option 2	Car parking in North St Andrew's Lane / muster points / when are works coming off St Andrews Square

4. Meeting with Tram Business Forum including representatives from business associations from across the city – 14th May

Stakeholder	Primary aim - perceived sentiment	Secondary aim - mitigations
Gordon Drummond - Harvey Nichols Graham Birse - Edinburgh Chamber of Commerce Joshua Miller - Charlie Miller's Hairdressers + George Street Association Michael Apter - Paper Tiger + West End Traders Association Richard Corrigan - St James Centre and Multrees Walk Sharon Duffy - Marketing Edinburgh Andy Neal - Essential Edinburgh Kirsty Knust - John Lewis Ruth McKay- Federation of Small Businesses	Option 2	Clarity needed on when St Andrews Square to reopen – big difference between early and late December to traders in that area

Appendix III Proposal to Re-Sequence to Create Optimised Programme

TASK	TARGET DATE
Information Briefing	
Proposal to Tram SMT, including advice note from Council Officers on Optimum TM proposal	22 nd May 2012
Councillors Briefing and Project Review since Mediation	28 th May 2012
Presentation and Affirmation of Principals to Optimum TM Proposal	30 th May 2012
Bus Operator’s Briefing	1 st June 2012
Briefing Note to Stakeholders	1 st June 2012
Follow up one to one meetings with Stakeholders	w/c 11 th June 2012
Depot Visit by Politicians and “One Year On” Update	To be advised
Target Points of Project Delivery and Progression	
CEC offer of weekend working on “the Plug” for period June to October 2012	2 nd /3 rd June
Broughton Street closure to accommodate BT Duct works	11 th June 2012 for 4 weeks
Princes Street hand back to City of Edinburgh	29 th June 2012
Princes Street available for buses running on mid section	30 th June 2012
Cathedral Lane demolition	Complete by 8 th July
Cathedral Lane Scottish Power duct work	Complete by 8 th July
Commencement of utilities clearance in York Place, 2 lanes only for Lothian Buses Traffic Management taking all other traffic off York Place	16 th July 2012

TASK	TARGET DATE
Target Points of Project Delivery and Progression cont'd	
“Half Plug” on Princes Street open, triggering York Place complete closure	<i>September 2012 *</i>
“Plug” Fully open	<i>November 2012 *</i>
Bus Station Closed – Facilities to remain open Temporary Stopovers at Charlotte Square and Waterloo Place	27 th August 2012
Temporary stop over at Charlotte Square terminated, Waterloo Place remains Temporary Bus Station opened at St Andrew Square	November 2012
Infraco sole possession of York Place	November 2012
York Place - Slab, Track form and Rails	<i>June 2013*</i>
Bus Station Re-opens	<i>June 2013*</i>
South St Andrews Street - Slab, Track form and Rails	<i>October 2012*</i>
Haymarket - Slab, Track form and Rails	<i>May 2013*</i>
Shandwick Place - Slab, Track form and Rails	<i>January 2013 to August 2013 (progressive hand back)*</i>
<i>On Street - Slab, Track form and Rails *</i>	<i>August 2013*</i>
Poles, overhead lines, tram stops, tram furniture, on street	<i>August 2012 to August 2013*</i>
Off Street – Complete	<i>July 2013*</i>
Commencement of Tram testing, running and commissioning	<i>September 2013*</i>
<i>Tram ready to commence revenue service *</i>	<i>April 2014*</i>

** Work in progress – These target points require agreement from McNicholas and Infraco*

Project:
Reference

Edinburgh Trams Project

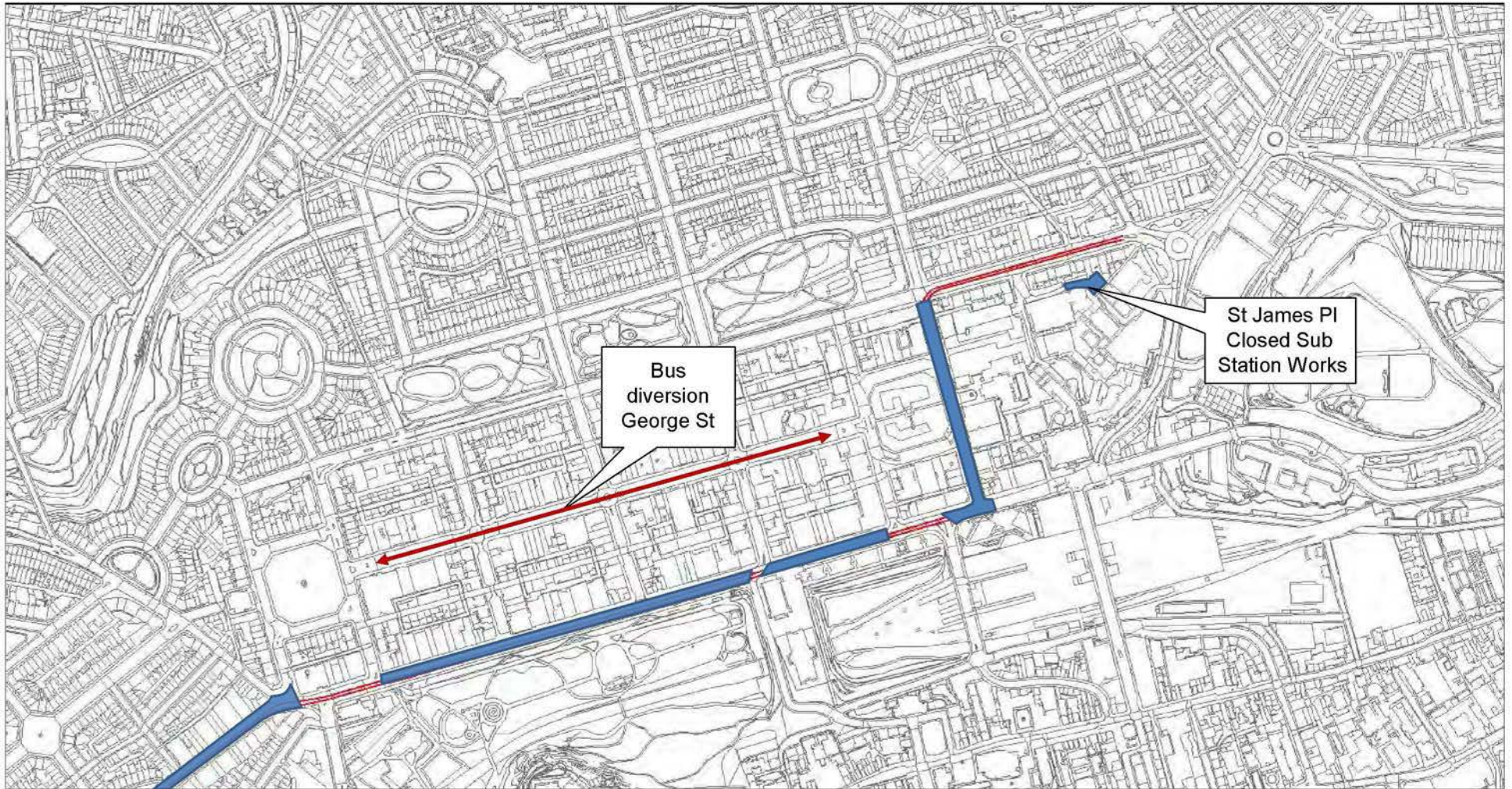
Programme Initiative – May 2012

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Appendix IV Traffic Management

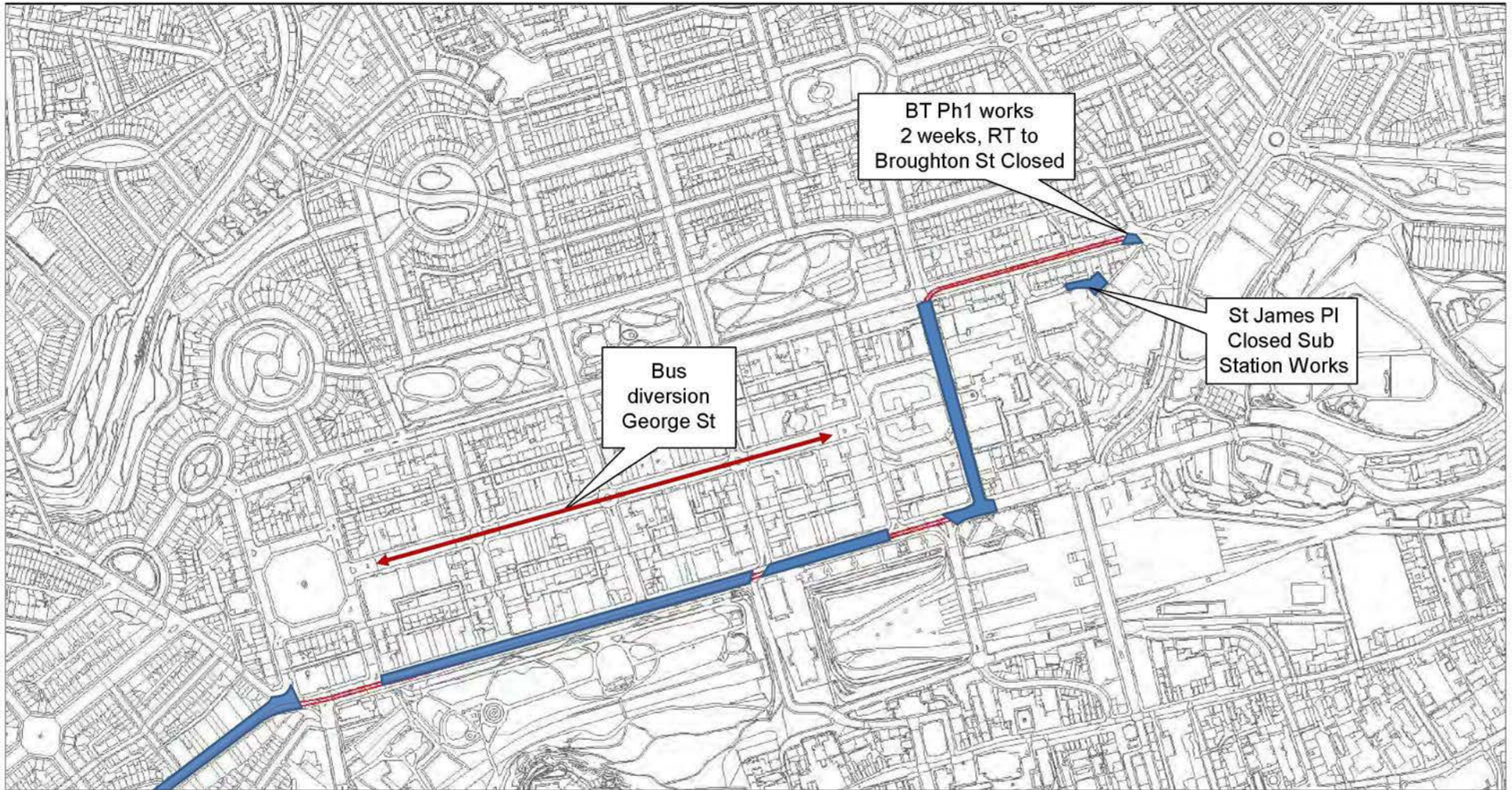
Current City Centre Worksites



Edinburgh
Trams

DRAFT TBC

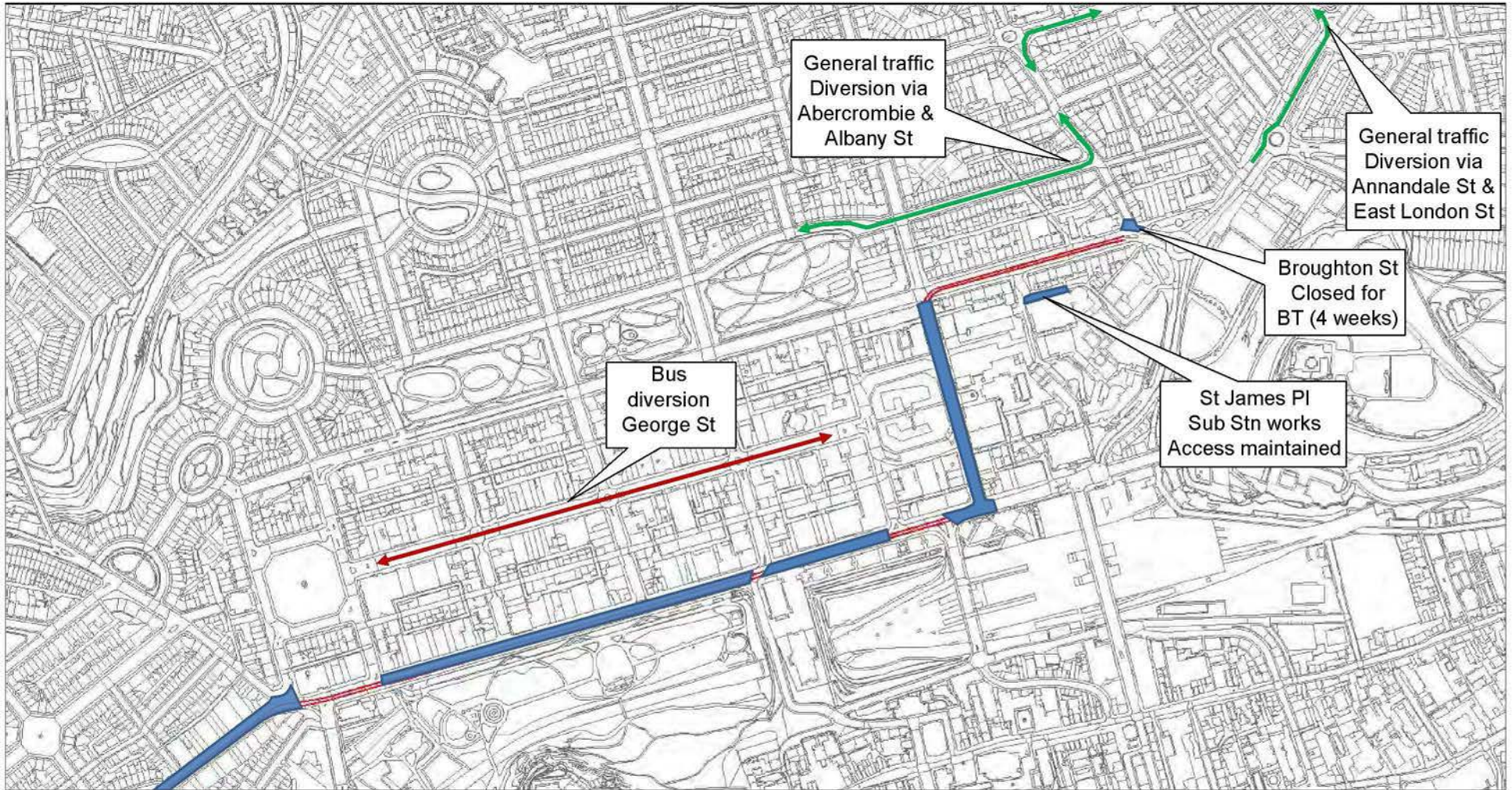
City Centre Worksites from 11/6/12



Edinburgh
Trams

DRAFT TBC

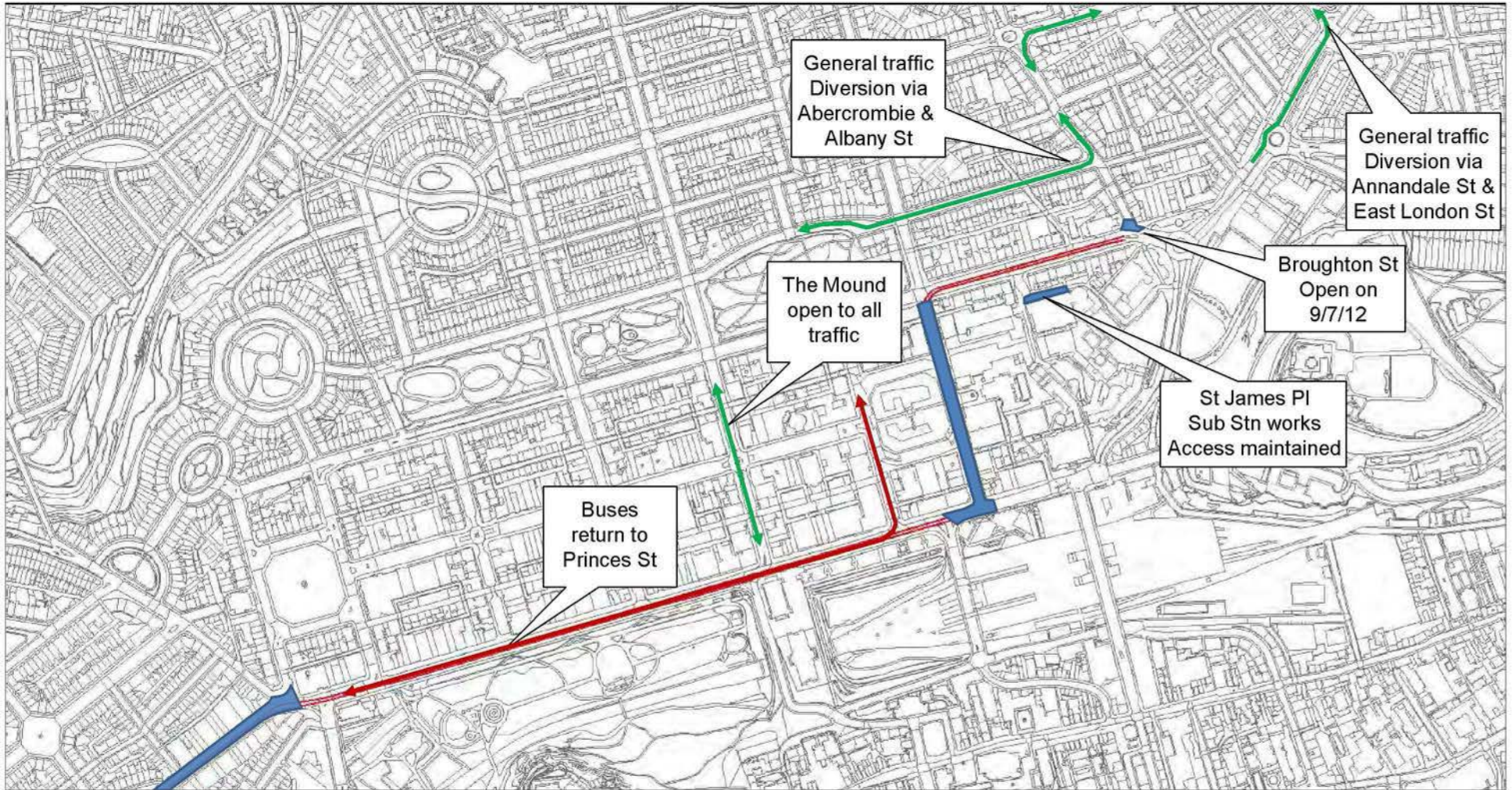
City Centre Worksites from 25/6/12



Edinburgh
Trams

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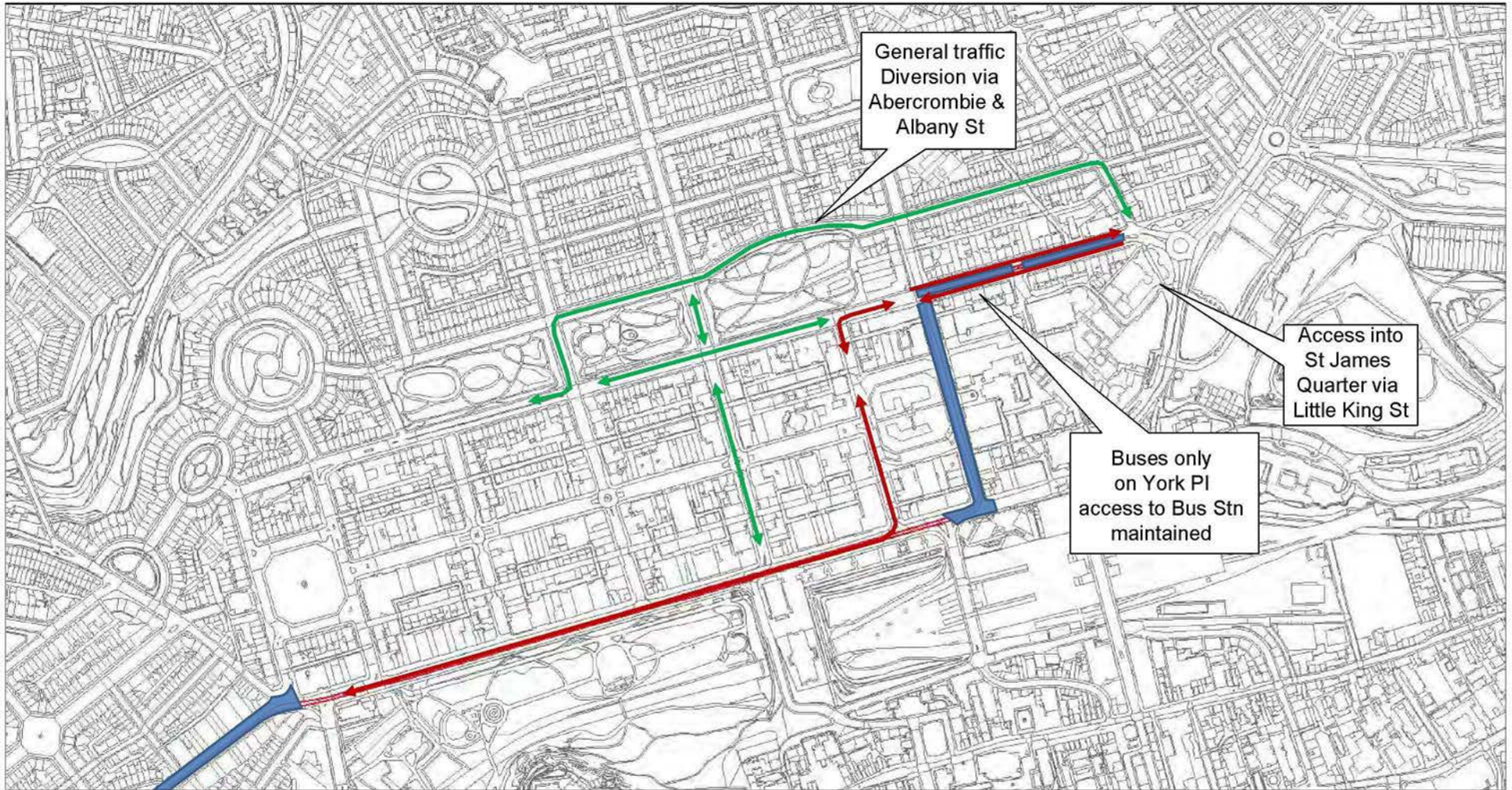
City Centre Worksites from 29/6/12



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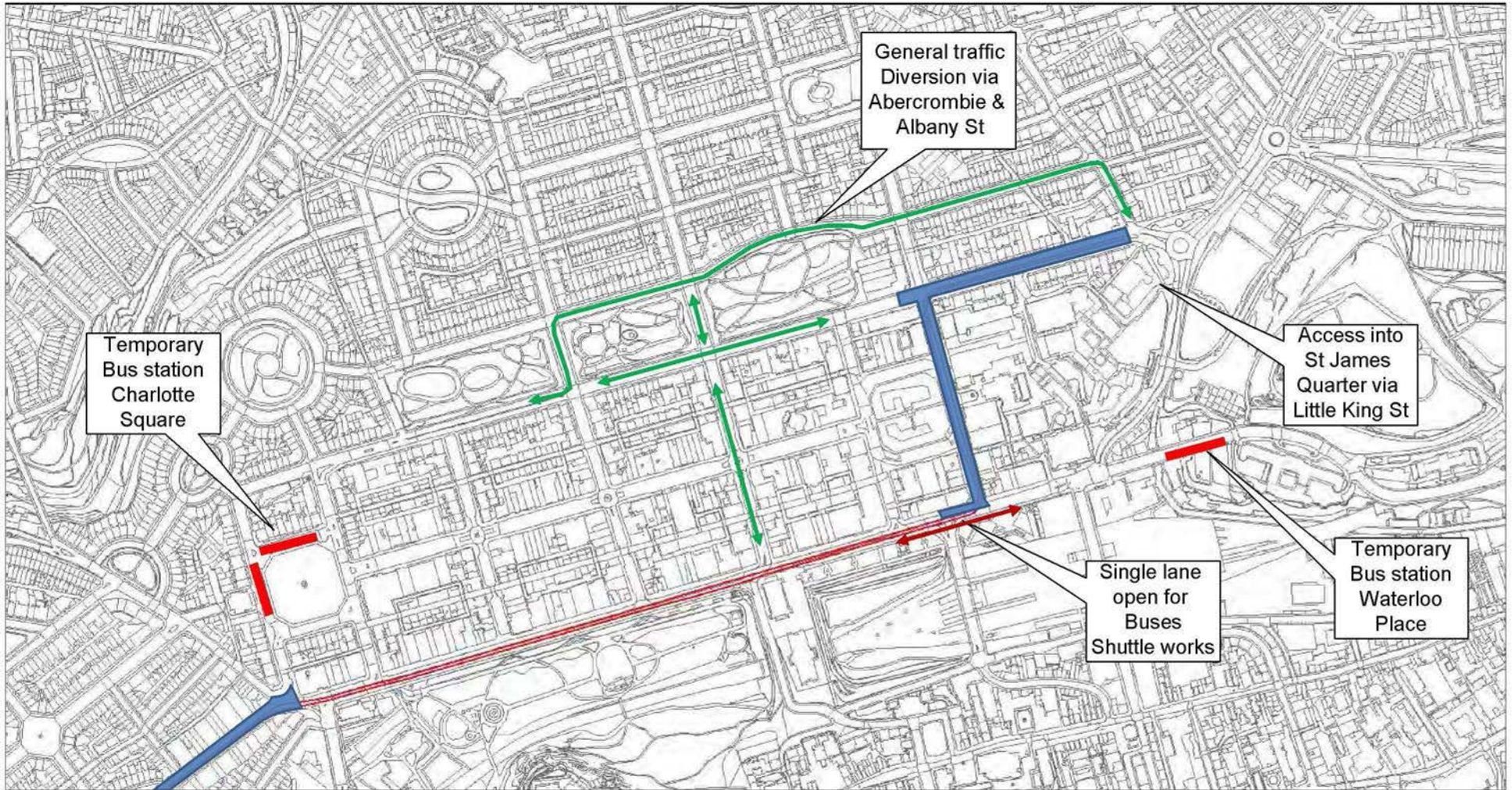
City Centre Worksites from 16/7/12



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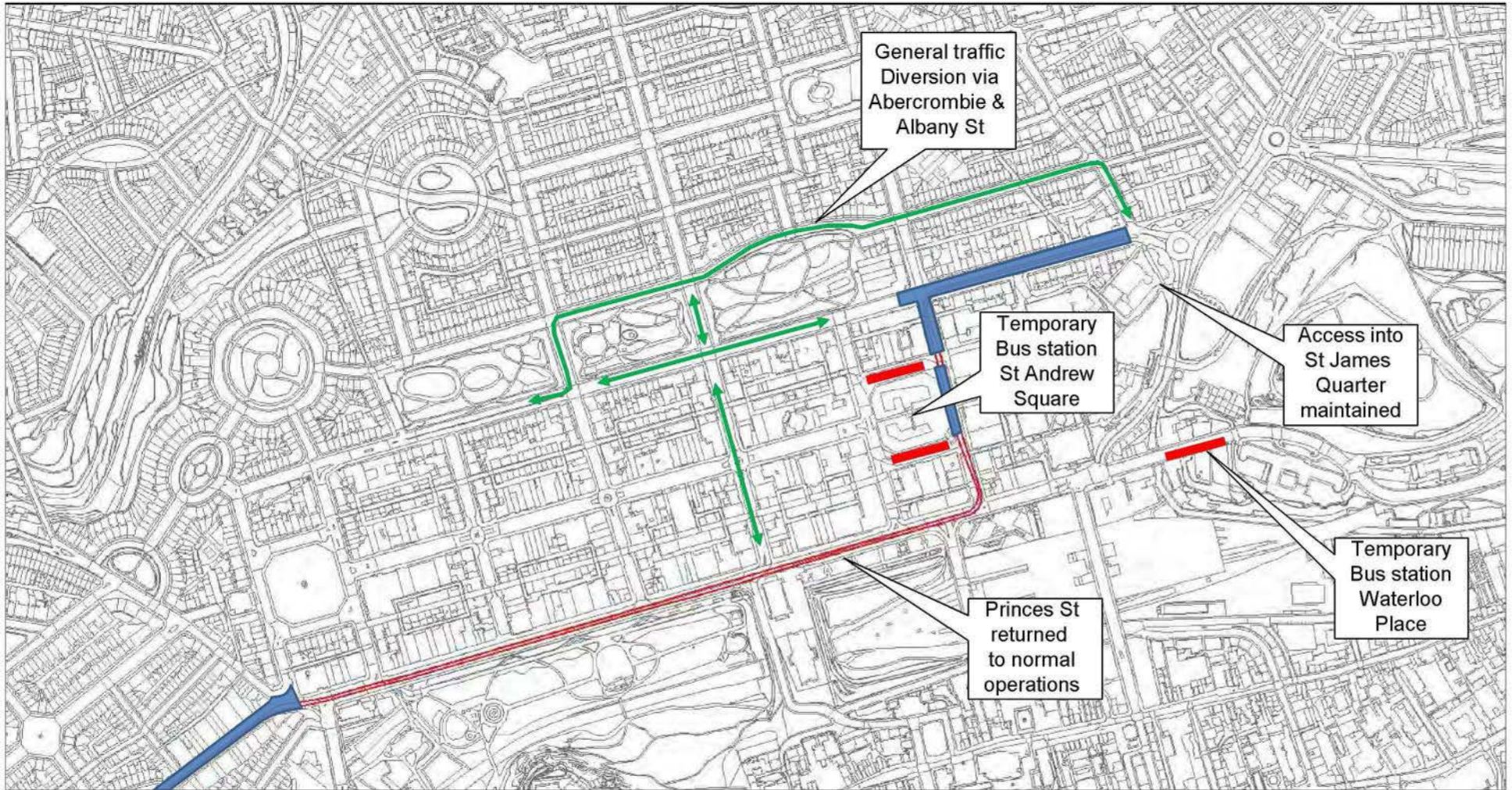
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City Centre Worksites from 27/8/12



DRAFT TBC

City Centre Worksites from 01/11/12



**Edinburgh
Trams**

DRAFT TBC

7.0 FINANCIAL BRIEFING REPORT – MAY 2012

7.1 Purpose

The purpose of this report is to brief the incoming Transport, Infrastructure and Environment Convener on the evolution of the capital cost of the project from the period leading up to mediation to the current point in time and the future forecasts. The briefing also includes detail on the business case appraisal and review on the project that was undertaken in the summer of 2011.

7.2 Pre Mediation

In the period prior to mediation a significant amount of effort went into identifying the likely cost of the project within a range of possible outcomes should the contract with the Infraco consortium be progressed or terminated.

During the period in the lead up to mediation, the Council's then Director of Finance requested that a member of his own team form part of the finance team at tie Ltd (tie), with a view to the Council having a greater degree of transparency in relation to project costs.

As a result of this, a group was formed that included tie's senior team and commercial team to assess the range of possible outcomes. CEC finance were a strong part of this group to ensure that the process was driven hard and that a full financial picture could be understood by the Council in advance of mediation. In addition to this, tie had already had a number of views on the likely commercial/contractual impacts from a number of sources, including legal and quantity surveyors as a result of previous commercial settlements they had attempted with the Infraco consortium as part of the commercial strategy they were following at that time.

The results of the various financial outcomes were then plotted on a spreadsheet with a working title of "Deckchair".

Prior to mediation, tie had also employed consultants, Gordon Harris Partnership and Tony Rush to pursue settlement of the commercial issues with BBS.

It became apparent from the pre-mediation work outputs that tie's commercial assessments of the likely outcomes were of a very hard line when compared to the assessment of where the culpability for delay fell. It has become clear that the dominant cause of delay to the works was the delayed MUDFA utility diversions.

The hard line tie were taking was also apparent in the position Tony Rush was advising versus the in-house tie commercial team. At that point tie was forecasting an estimated outturn cost of £638.2m to finish the line to St Andrew Square. This sum took no account of exclusions from the contract but did include tie's assessment of delay costs. The settlement deal (named Project Phoenix) that Tony Rush was discussing with Infraco at the time would have resulted in an anticipated final cost of £760.3m with defined exclusions still sitting outside the settlement.

The detail of the two positions is highlighted in Appendix I (Deckchair vs. GHP view 280211). The baseline for the position Tony Rush took in his assessment was the "Phoenix" deal he was discussing with Infraco. The Project Phoenix proposal was the baseline for Infraco's discussion at mediation.

7.3 Mediation

Work continued on the financial forecasts in preparation for mediation. The “Deckchair” spread sheet (Appendix 2 Deckchair v1) remained the repository of tie’s financial forecasting. These forecasts were then presented to the full CEC/tie mediation team. The range of scenarios included in these forecasts were as follows (the deckchair spreadsheet also had a range of potential terminal points, the forecasts highlighted below were tie’s view of St Andrew Square as the terminal point;

- Settlement with the current contractor (Assumes Infraco walks away and re-procure with a new contractor). All numbers in this scenario were tie’s assessment.

High £698m

Medium £659m

Low £646m

- Phoenix proposal (Baseline proposal from Infraco on settlement)

Infraco view £747m

Tie view (high) £749m

Tie view (baseline) £682m

7.4 Settlement with the Current Contractor and Re-procure

This scenario seemed to be tie’s preferred strategy with mediation in mind. There are a number of fatal flaws in the assumptions that tie made in this scenario. For example, the cost of settlement with Infraco was forecast by tie at £33m, which was essentially the balance of entitlement for work done set against work certified to date. This number was not cognoscente of any contractual entitlement Infraco would have had for delay (MUDFA delay being the dominant cause) or disputed design changes for work that had already been undertaken. In addition, this forecast assumed a new contractor would be able to take up where Infraco left off without any risk allowance being included and without any “bad project” premium being allowed for in the price. In addition, there was no indexation built in for materials that would be required where the price would have changed in relation to the original contract sum. It is also important to note that tie had priced the on-street section from Haymarket to St Andrew Square at £19m and did not allow for any significant risks for the on-street section at this time, nor did they allow for any extension to the programme as a result of having to re-procure.

7.5 Phoenix Proposal

As highlighted above, the Phoenix proposal represented Infraco's opening position at mediation. tie's negotiating standpoint on this proposal was that a deal could be achieved which would have resulted in an anticipated final cost of £682m compared with the Infraco proposal, which would have resulted in an anticipated final cost of £747m.

On closer examination of the Infraco Phoenix proposal it became clear that there was c£80m of exclusions in this proposal which may have resulted in a similar addition to the final cost of the project, had CEC signed up to the Phoenix proposal as it was.

7.6 Separation

As highlighted above, tie would have preferred to terminate with Infraco and re-procure. This went against all the advice that was given by independent advisors at this time. During the initial stages of mediation, there was a significant amount of discussion between tie and CEC (including CEC advisors) on the assumptions tie had made in the forecasts for separation. It soon became clear that tie had not considered a number of cost headings at this time which would have had a significant impact on the final cost. In very broad terms, these items were in the order of £150m for settlement, professional costs, bad project premium risk, systems re-procurement risk, and inflation, which would have potentially resulted in a final outturn cost of at least £800m. Appendix 3 (Optioneering 7 March 2011) shows the working papers from mediation for this eventuality.

7.7 Settlement on Heads of Terms

During the course of negotiations over two to three days at mediation, there were a number of offers and counter offers exchanges between the parties.

CEC's first offer to BSC was for £304m for the off-street section. At this point there were still a significant number of exclusions that sat outside the off-street price which were estimated at £80m. This price did not include for the remainder of the on-street works, which were thought to have been in the region of £20m. When the shape of this deal was added to the rest of the project costs, the estimated anticipated final cost was thought to be in the order of £731m.

Infraco did not accept this offer and returned with essentially an updated Phoenix proposal of £404m, which was only for the off street section. When risk, exclusions and the remaining project costs were added to this number the final cost would have been £814m.

CEC then replied with a final offer of £362.5m for the off-street section, with no exclusions and Infraco taking all the risk with the exception of minor utilities. By adding the rest of the project costs, £30m for risk and £22.5m for the on street section (which was an estimated figure and hadn't yet been negotiated) the anticipated final cost was £743.5m. The breakdown of these numbers can be found in Appendix 4 (High Level Budget Proposal Total Project v1.1).

7.8 Preparation for 30 June Council Report

The report to Council on 30 June 2011, examined the options that were available to the Council following mediation. The work in preparation for the report included a thorough financial appraisal of the various options. In the period running up to the Council meeting, confidential briefings were provided for members to examine the detail that supported each of the scenarios. In addition, the report to Council also included the findings of an independent examination of the Business Case for tram by Atkins (covered later in this report).

At that point in time, there were three options available to the Council. They were as follows;

to continue to attempt to secure the completion of the project under the existing contract;

to separate from the current contract and pursue matters either through the courts or by agreeing a commercial settlement with BSC, outside of the courts (this option would require decisions to be made subsequently about whether the project should be cancelled entirely or re-procured, either immediately, or at some point in the future); or,

to complete the project as far as St. Andrew Square/York Place on the basis of the terms outlined during the mediation talks, with a sub-option to complete only to Haymarket at this stage.

In evaluating each of these options from a commercial, legal and financial point of view, the Council worked with McGrigors and Faithful and Gould to assess the likely outcomes. McGrigors were able to provide legal advice on the liabilities and obligations tie (and the Council) had under the current contract that would have to be settled on exit, either mutually agreed or contested. Faithful and Gould were to provide the commercial summary of the likely quantum should the project be re-procured and were able to provide valuations for each of the legal obligations and assessed risk.

The McGrigors report forms Appendix 5 – (McGrigors scenario report DRAFT) of this document and the Faithful and Gould report can be found in Appendix 6 – (City of Edinburgh Council Report Rev 3 _2 Final). The McGrigors report, while in draft form was essentially complete and only required some final comments from tie.

The financial evaluations of each of the options were as follows;

Option I	£1.055bn
Option ii	£687m to £1.14bn
Option iii	£773m

The detail that underpins each of these numbers can be found in Appendix 7 – (Scenarios).

Option iii was recommended on the basis that completion of the first phase of line 1a from the Airport to St. Andrew Square/York Place was the only option that will, with a strong degree of certainty, produce a tram line for Edinburgh, as the first building block of a future network. This option also produced the more favourable business case and the greatest return on investment. The option provided full and final settlement with Infraco for all historic claims.

7.9 Business Case Review

As part of the options appraisal and in responding to a previous Council motion, officers appointed Atkins to undertake and audit of the tram business case. The Atkins report tested the reasonableness, credibility and assessed whether the process and tools used for the production of the business case were fit for purpose. The report concluded that the process was in line with standards and comparable with other schemes. The full Atkins report is included in Appendix 8 - Edinburgh Tram – (Business Case Audit Final Report).

In addition the patronage numbers were re-examined from the business planning numbers that were produced in 2010. These numbers showed that the optimal terminal point for the truncated tram line was St Andrew Square/York Pl versus the option to truncate at Haymarket which would have resulted in an estimated operating deficit. These numbers and plotted on the graph that forms Appendix 9 – (Cumulative Revenue Figures).

7.10 Budget and Risk Preparation for August 25 2011 Council Meeting

In agreeing the Edinburgh Tram Report to Council on 30 June 2011, the decision of Council set out a number of actions for Council officers. One of the key work streams that then resulted was the detailed analysis of risk and the further development of the budget based on the negotiations with the consortium over the settlement agreement.

A full review was then carried out on the key project risks against the proposed budget. This review included several workshops with the Council project team and also the staff that remained within tie. These sessions were chaired and scrutinised by Faithful and Gould. The numbers were then validated by Faithful and Gould. The Faithful and Gould report is included in Appendix 10 (Final - Settlement Agreement Budget Report Rev A). The review considered the robustness of the financial assessment as presented to Council on 30 June 2011 and was updated as new information became available.

The revised budget report was then produced based on the assessment of all the work that had been undertaken over nearly a two month period to assess the budget and risks. The key risk to the project at that time, as now (though diminishing daily) was utilities requiring to be diverted.

The detailed budget and risk assessment is included in Appendix 11 – (Post MOV5 Budget Development - Updated 26 Sept 2011).

7.11 tie Ltd close report and financial consequences

When the Council made the decision to replace tie with Turner and Townsend (T&T) as project managers, there was a clear handover put in place to ensure that the Council and the project were not exposed. Turner and Townsend were introduced to the project in a phased manner with tie staff leaving over the period of 3 or 4 months ensuring an adequate handover was in place.

In addition, to ensure sign off by the tie Project Director, a template document was produced to ensure that each project manager in tie provided a sign off document for their particular work stream, highlighting and issues which may impact on the project going forward.

This document was then signed off by the tie Project Director as an accurate record of all he was aware of.

7.11 tie Ltd close report and financial consequences cont'd

Subsequent to tie's departure, it became clear that the close report did not take into account a number of historical utility issues, primarily in relation to Scottish Water assets and the commercial difference that existed between tie and Scottish Water. The tie Close out report is included in Appendix 12 – (tie close Report Final 2810117.10).

7.12 Turner and Townsend

Since T&T took over the project management of the Infraco, Utility and CAF elements of the project, there have been negotiations around moving to a capped fee. These discussions have now been concluded with a price of £7m agreed as a capped some for the core works. In addition, T&T have agreed that where Council skills can be utilised to undertake a task within their team, they will make use of those resources which will derive further savings. It is also important to point out that due to the lack of skills in tie previously to deal with utilities additional resource has been required to manage this area due to its complexity. It is likely that by the end of this summer, utilities will be substantially completed.

7.13 Project Budget - August/September 2011

At the time the project budget was set there were a large number of uncertain items for which the risk/contingency allowance was identified totalling £34m, as work on the project has progressed more clarity has emerged on these items.

The key project risk as highlighted earlier is that of utilities. Generally speaking, the further away from project completion the greater is the risk exposure. In the case of utilities we are only a few months away from completion which means that there will be greater confidence in the risk profile of the project at that time. The uncontrollable risk of the weather remains. In the case of this project there were some significant risks in September 2011. Since that point in time these risks have either crystallised, been mitigated through management action, have reduced/not materialised or still remain as risks.

Those risks that have materialised have an associated cost which has been met by drawing down from the risk allowance. There have also been significant managements taken to date to mitigate risk, such as allowing the complete length of Shandwick Place to be handed over the contractor which has delivered programme efficiencies.

A number of opportunities exist for the project- these are items that will benefit the project in terms of cost or time. Any opportunity that is realised increases the risk and contingency allowance.

Since September 2011 considerable progress has been made and the project is much clearer on the challenges that face it. As such a large number of items have moved from being categorised as risks and are now being factored into cost forecasts. As a result of this the project's risk exposure has considerably reduced.

Current drawdown from risk allowance

The drawdown, as at period 1, from the risk allowance is £3.545m. This figure is primarily in relation to risk drawn down for utilities costs, partially offset by savings made from de-scoping work in the Forth Ports area from the original contract and savings made on Siemens track equipment and poles.

7.13 Project Budget - August/September 2011 cont'd

Area-by-area budget breakdown:

Infraco - Off-street

Position 25th August

The original budget for the off-street section was £360.06m. This figure provided for a base contract sum of £362.5m with an assumed saving of £2.44m relating to value engineering in the Forth Ports area. In addition a specific provision of £1.1m was made within the original risk allowance (of £34m) for risks in this section.

Current Position

The current forecast spend on the off-street section is £360.30m. The Forth Ports value engineering has been instructed and the £2.44m saving realised.

Infraco - On street

Position 25th August

The original budget for the on-street section was £38.8m. This figure comprised a base cost of £45.8m with an assumed saving of £7m to be found through value engineering initiatives. In addition provision was made in the risk allowance for two types of item-£2.772m for pricing assumption variations and £1.35m for specific risks in this section.

Current Position

The forecast spend for the on-street section is £40.506m. This position takes into account the delay in signing the settlement agreement in September 2011 due to the Council decisions on 25 August and 2 September 2011 and also takes account of the programme benefits gained to date in Haymarket and Shandwick Place.

Utilities

Position 25th August

The original budget (at 25th August 2011) for utilities was £2.91m. In addition a specific provision of £16.6m was made in the original risk allowance for utilities made up of delay and direct cost allowance.

Current Position

The current forecasted spend on utilities items for the project is £18.61m. To date changes of £4.861m relating to utilities have been approved and this sum has been drawn down from the risk allowance. It is anticipated that a further £10.839m will need to be drawn down from the risk project over the course of the project.

Explanation of Movement

As work on the project progressed after September 2011 it became apparent that the scope of the utilities work was considerably greater than had been anticipated or included in the tie close report. McNicholas Construction Services Ltd has been engaged by CEC to work on utility related items and whilst the cost of that work is more expensive than had previously been anticipated it has significantly mitigated the risk of delay to the project's completion date. It should also be noted that tie's assessment of legacy works in Leith Walk was £1.1m, now expected to be c£2.7m.

7.13 Project Budget - August/September 2011 cont'd

Area-by-area budget breakdown:

Trams

Position 25th August

The original budget for the tram vehicles (CAF) was £62.4m. There was no specific provision for any risks related to the contract for the provision of the tram vehicles.

Current Position

The current forecasted spend on the tram vehicles is £63.65m, £1.25m above the original budget. This sum will need to be drawn down from the risk allowance.

Explanation of Movement

The increased cost forecast for this area is attributed to the finalised contract amount with CAF being excess of budget and exchange rate fluctuations around the time of contract settlement.

Project Management

Position 25th August

The original budget for project management was £275.53m. There was no specific provision for any risks in this area (see risk budget section below for detail of general, project related risks).

Current Position

The forecast spend on project management is £273.19m, which assumes a credit of £5m for the sale of surplus trams. In the event this didn't happen the forecast would increase to £278.19m, which would be an increase of £2.66m on budget.

Explanation of Movement

The project management budget heading covers a wide number of individual budgets areas, many of which have seen movements in the forecast since the budget was set. The most significant area of increase is tie Ltd redundancy costs of £2.56m.

Risk

Position 25th August

The original risk allowance was set at £34m. Of this £10.222m was linked to specific risk in the on-street, off-street and utilities areas (as detailed in those respective sections above). The other key components of this risk allowance were £13.37m for delay related risks (of which £11.610m was linked to utilities), £3.3m for the risk of the project moving to a cost reimbursable basis, general design risk of £5.925m and other risks of £1.183m.

Current Position

Funding of £3.545m has already been drawn down from the risk allowance net of opportunities of £4.1m.

It is anticipated that a further £16.571m will need to be drawn down to fund utilities and there are changes in progress of £9.462m which is made up of the full cost of delay of £4.5m for delay in signing the settlement agreement (the full quantum of which is unlikely to be expended) and also £4.8m for the Edinburgh Gateway which is also included in third party contributions.

Further risks, contributions and opportunities

There remain opportunities in relation to programme efficiencies that have not yet been crystallised. The Council will continue to seek cost engineering solutions to mitigate risk and cost until completion of the project.

Conclusions

When the budget was set in September 2011, the base budget was £742m with a risk and contingency allowance of £34m. Since then the risk profile has changed due to the dynamic nature of the project. Back in September a significant part of the risk budget was made for delaying Infracore due to utilities. This hasn't yet occurred to any great extent and there is a great deal of confidence that this won't happen. The direct cost associated with utilities has however increased.

As at period 1 of 2012/12 financial year the financial position of the project is as follows;

	P1
	£'000
Original contract amount	755,196
Add: Approved changes (change 7,648 opportunities 4,103)	3,545
Add: Changes in progress	9,462
Add: Anticipated changes	16,571
Less: Opportunities to secure	-11,752
Less: Funding contributions	-8,716
TOTAL: Forecast cost	764,306
Original budget	742,943
Variance	21,363
Original risk allowance	34,057
Less: Variance (from above)	-21,363
Balance of risk allowance remaining	12,694

This summary statement tells us that when opportunities, approved change, change in progress and early warnings are taken account of (though early warnings are not yet expended and there will be continued attempts to mitigate) there is forecast to be c£12m left in the project budget. The full financial breakdown for period 1 2012/13 is included in Appendix 13 (SFLA- 2012-13- P1).

LIST OF APPENDICES TO FINANCIAL BRIEFING SECTION (MAY 2012)

- Appendix 1 Deckchair vs. GHP (28th February 2011)
- Appendix 2 Deckchair v1
- Appendix 3 Optioneering – 7th March 2011
- Appendix 4 High Level Budget Proposal – Total Project v 1.1
- Appendix 5 McGrigors Scenarios (Draft)
- Appendix 6 Atkins Independent Review – June 2011
- Appendix 7 Scenarios
- Appendix 8 Atkins Business Case Audit – July 2011
- Appendix 9 Cumulative Revenue figures
- Appendix 10 Faithful & Gould Post Settlement Budget – August 2011
- Appendix 11 Post MOV5 Budget Development – Updated 26th September 2011
- Appendix 12 tie Close Out Report (Final)
- Appendix 13 SFLA 2012 – 2013

8.0 COST ENGINEERING

A clear indication of the collaborative working was the joint Cost Engineering Initiative, led by CEC. The Contractors participated fully in this Initiative and real benefits have been, and continue to be, delivered. Those benefits are managed by way of the attached Trackers.

- 9th November 2011 Tracker
- 9th January 2012 Tracker

9.0 COMMUNICATIONS

The PR and media interface on the project are managed by officers from City of Edinburgh Council and Transport Scotland.

A Media Plan has been prepared and is being enacted.

To achieve full benefit, a separate briefing on Communications should be arranged.

The next project win will be the early handover of the mid section of Princes Street.

I attach a recent communications update that was drafted.

Project: Edinburgh Trams Project

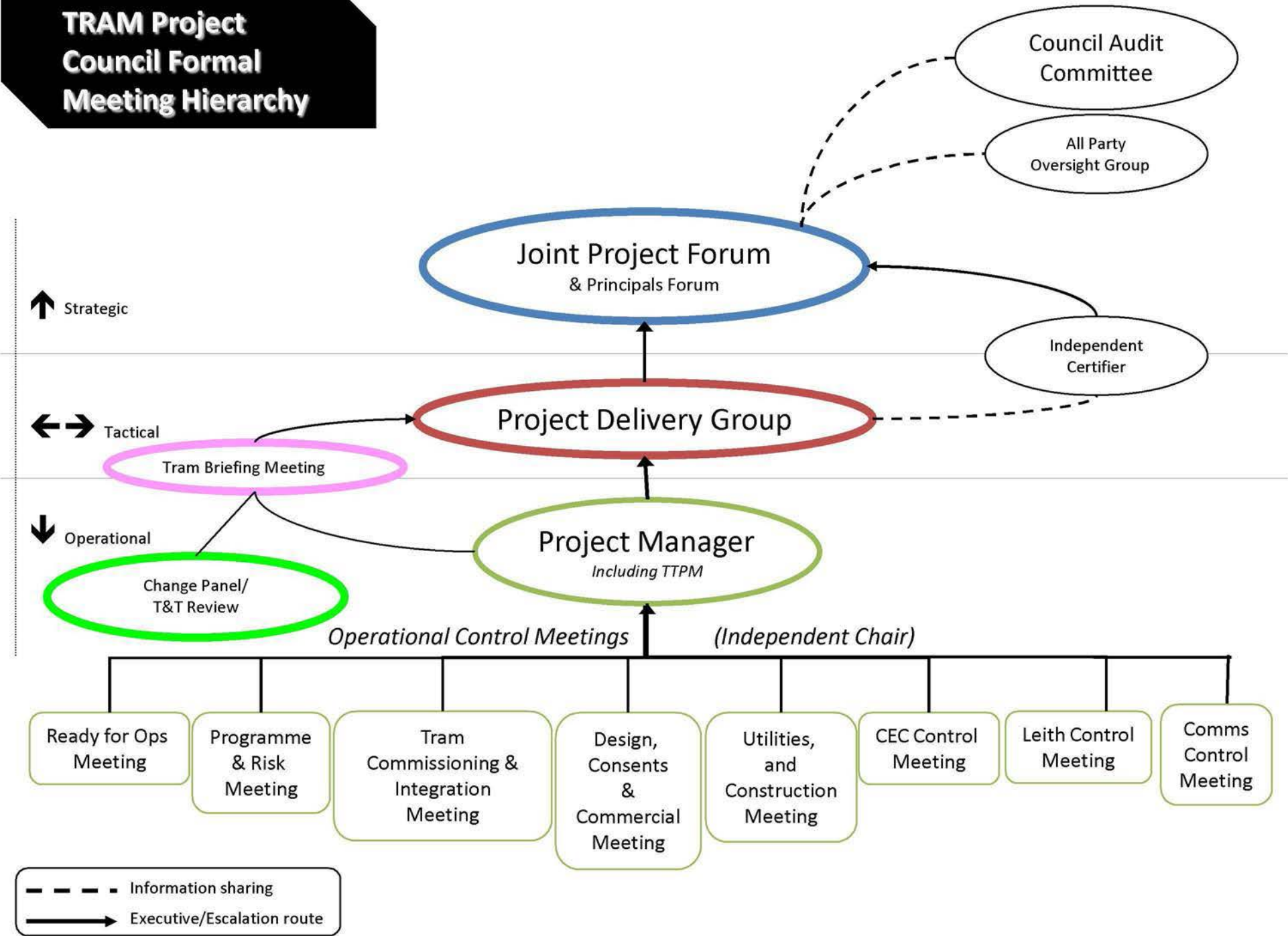
Reference

Review of Progress and Management of the Project
January 2011 to June 2012

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Appendix I Governance Structure Diagram

TRAM Project Council Formal Meeting Hierarchy



Project: Edinburgh Trams Project

Reference

Review of Progress and Management of the Project
January 2011 to June 2012

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Appendix II Contractor's Progress Report

Project: Edinburgh Trams Project

Reference

Review of Progress and Management of the Project
January 2011 to June 2012

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Appendix III Turner & Townsend Progress Report Extract