

Edinburgh Tram Update

The City of Edinburgh Council

16 May 2011

1 Purpose of report

- 1.1 This report updates the Council on the key outcomes arising from the mediation of the tram dispute in relation to the contract (“Infraco Contract”) between **tie** and the Bilfinger Berger/Siemens/CAF consortium (BSC). Council is asked to note these outcomes, pending the detailed design and costing work that will be needed to provide a more complete picture of the full costs and revised programme for the Edinburgh Tram Project.
- 1.2 The report also deals with plans for rectifying the road surface cracking problems which have emerged on Princes Street since the tram tracks were laid in 2009.

2 Summary

- 2.1 Mediation talks were held from 8 - 12 March 2011 involving the main parties to the tram dispute. Good progress was made in resolving the issues at the heart of the dispute. Short-term actions are underway with work recommencing in priority locations along the route of tram line 1a, pending the resolution of detailed design and costing work on the first phase of the route, from the Airport to St Andrew Square (with a turn back point in York Place), in accordance with the agreement reached by the parties during mediation.
- 2.2 Council is also asked to note the proposals made by Infraco to rectify the surface cracking problems that have arisen on Princes Street. It is proposed that this will be done through a programme of remedial work from July 2011 to spring 2012, with an embargo over the Christmas/New Year shopping season. Consultation has already commenced with City Centre stakeholders about these proposals.

3 Main report

- 3.1 On 16 December 2010, the Council received a report on several tram related issues including: the refreshed Business Case; progress on the Emergency Council Motion of 18 November 2010; future project governance arrangements; and powers for land acquisition. The Council was asked to note that steps had been taken to initiate mediation of the dispute between **tie** and BSC, the

consortium responsible for the delivery of the tram infrastructure, in accordance with the Emergency Motion.

- 3.2 The Council's incoming Chief Executive, Sue Bruce, made early contact with the consortium and **tie** to agree the timing and terms of reference for mediation of the dispute. An independent mediator, Mr Michael Shane, was subsequently appointed, on a mutually agreed basis. Mr Shane has a track record of successful mediation of Civil Engineering projects worldwide. Intensive mediation meetings took place from 8-12 March 2011 with all relevant parties represented, including Transport Scotland and, since March, positive dialogue has been maintained between the parties.
- 3.3 The parties involved in mediation agree that good progress has been made in identifying the key issues at the heart of the tram dispute, and a measure of goodwill has been re-established, that has enabled work to progress on priority sections of tram line 1a whilst detailed planning, design and costing work is undertaken to provide greater cost certainty for the first phase of the route from the Airport to St Andrew Square/York Place.
- 3.4 One specific outcome of the mediation is that it is proposed the contract with the provider of the tram vehicles – CAF – should be novated back to **tie** Ltd, thus separating their role, as supplier of the trams and the provider of maintenance and technical support for the vehicles, from the parties involved in infrastructure construction – Bilfinger Berger (Civil Engineering) and Siemens (Power Systems and Equipment) - BBS.
- 3.5 Full details of revised plans for the incremental delivery of phase one of line 1a will be reported to Council later this summer, as soon as there is sufficient certainty on price, scope and programme, following the conclusion of the outstanding design consents and related matters, discussed during and subsequent to mediation. An independent review of the Business Case will also be included, as requested in at the December 2010 Council meeting.
- 3.6 In the meantime, Council is asked to note a number of short term actions that are required to restore momentum to the construction of tram infrastructure in priority sections of line 1a. These will be managed through a Minute of Variation to the contract, 'Priority Works Minute of Variation', reference here after as MoV4, which deals with the immediate priority issues that were resolved through mediation. The main provisions of MoV4 are summarised in appendix 1. MoV4 will be superseded by a subsequent Minute (MoV5), reflecting the full terms of any agreement reached between the parties to deal with the completion of the revised programme, scope and budget for the Airport to St Andrew Square phase of line 1a. A report will be brought to Council this summer for a decision on the terms of this more substantive minute of variation to the tram contract.

Priority Works Programme

- 3.7 During the mediation process, Council officers stressed the need for an urgent re-commencement of work along tram route 1a in a number of locations of particular importance to the city and to the tram project timetable. An immediate outcome of the mediation is that Bilfinger Berger Civil UK and

Siemens have started to re-mobilise staff to complete infrastructure works in the following priority locations:

- Haymarket Yards;
- Tram Depot, including Depot access route, and a section of track towards the airport;
- A8 Underpass.

3.8 Work re-commenced at these locations in early May 2011. As part of the priority works programme, some auxiliary works will also be carried out to progress detailed site investigations, clearance and demolition at several other locations along the tram route. Agreement has also been reached under MoV4 for all materials held by Siemens, including overhead power lines, track and associated equipment to transfer to the ownership of the Council. The costs associated with the re-commencement of work, the transfer of materials to Council ownership and related matters has been subject to independent verification by an external Chartered Quantity Surveyor and cleared with Transport Scotland officials. These costs, added to those already incurred, take the cumulative expenditure on the tram project up to 6 May 2011 to a total of £440M.

3.9 All of the above have been subject to past dispute and uncertainty and it is clearly now more prudent to complete these works on an agreed basis rather than to suffer further time delays and associated costs.

Princes Street Remedial Works

3.10 A further outcome of mediation is that the infrastructure consortium has agreed to carry out a rectification plan to repair the deficient sections of Princes Street where there has been a failure of the mastic bond between the flexible road surface and rigid tram track. This problem has led to deformation of the road material, resulting in cracks and holes in the road surface. This has given rise to health and safety issues which accelerate over time and the work is therefore time critical. Bilfinger Berger Civil UK/Siemens (BBS) propose to carry out the Princes Street remedial work in two stages commencing from 1 July – 26 November 2011, and then from January – May 2012. This will be done at no additional cost to public funds.

3.11 The agreed technical solution to the cracks that have appeared in the road surface will involve reinforcing the area around the tram rails with concrete to a depth of approximately 25 cm (9.8 inches). The concrete will be dyed black to blend with the road surface.

3.12 In addition, BBS will complete other necessary work on Princes Street, including the installation of the foundation pits for poles carrying overhead line equipment, tram stop furniture and all remaining infrastructure work, except hooking up the overhead catenary, power lines and cables.

3.13 The Council's previous experience of managing tram works on Princes Street has highlighted the importance of careful project management, well planned

stakeholder communications, and effective traffic management. BBS will remedy the surface cracking problems which have emerged in Princes Street, and will take the lead role in managing the remedial works, within the rectification plan.

- 3.14 The remedial work on Princes Street will be managed and paid for by BBS. However, the Council will have a key role to play in ensuring that this is completed in such a way as to minimise any detrimental impact on businesses, residents and visitors.
- 3.15 The target date, for remedial work to begin on Princes Street, is 2 July 2011. Over the next two months there will be detailed consultation with the City Centre business community and other stakeholders to plan the necessary arrangements for traffic diversions, delivery of goods to shops, offices and restaurants, waste collection, pedestrian routes, bus services, health and safety management, and signage. The plans for Princes Street remedial work will build upon the lessons learned from the previous closure of the street as approved by the Council on 12 March and 30 April 2009, and the traffic diversion arrangements will be broadly similar, with buses diverted to George Street. The details of the Princes Street rectification work are set out in Appendix 2.
- 3.16 The nature of the proposed remedial work is not expected to be as complex and intrusive as the original track laying operations. However, parts of Princes Street will require to be closed, in two stages, for a total period of up to ten months to ensure that the work can be progressed in line with the expected programme for delivery of the first phase of line 1a from the Airport to St Andrew Square. Detailed proposals for managing the period(s) of closure of Princes Street to bus and taxi traffic will be disseminated, following consultation with City Centre stakeholders. The consortium has accepted that there should be no work on Princes Street over the course of the peak Christmas and New Year shopping season. The proposals also seek to mitigate the impact of Tram works during the Edinburgh summer festival period.

Future Project Management and Governance Arrangements

- 3.17 The mediation process has resulted in a significant change to the joint working relationship amongst the Council, **tie** and the infrastructure contractor, reverting more to the project partnering ethos of mutual cooperation set out in the main body of the original contract. In future this will mean closer working relationships across the key parties. There will be a requirement for the infrastructure contractor – Bilfinger Berger Civil UK and Siemens – to deliver tram infrastructure to meet the employer's requirements.
- 3.18 This approach will provide opportunities for savings to be made in project management costs. Proposals for revised project management arrangements and appropriate changes to the governance structure will be brought to Council for consideration this summer.
- 3.19 In the meantime, it is essential that project management costs are kept to an appropriate level, and that overheads are minimised as far as possible. During the period until detailed post-mediation design changes and scope revisions

have been concluded, **tie**/TEL has therefore been instructed to review its overhead costs and achieve savings wherever possible. A letter has been issued to **tie** to enable **it** to progress the priority works identified in MoV4. **tie** has been asked to focus its efforts on these key elements of the programme. Members should note that elements of this cost have been expended within the £440M cumulative costs to date.

Surplus Tram Vehicles

- 3.20 One consequence of the move to incremental delivery of tram line 1a is that there will be between 6-10 trams that will no longer be required for operational service, for a period of several years.
- 3.21 The Council has been exploring the opportunity to lease a number of surplus tram vehicles to Transport for London for use on the Croydon Tram Network. This potentially offers the opportunity to mitigate sunk investment costs and reduce the need for storage, security and maintenance costs for these vehicles, whilst attracting a short term rental income or a capital receipt, should the sale of surplus vehicles prove to be the better option.
- 3.22 With the support of **tie**, the Council has expressed interest in a Transport for London tender call for tram supply. The Council has the option to withdraw from this process without penalty at any stage until the formal award of the contract, currently scheduled for July 2011. In advance of potential selection as the preferred bidder, for the supply of leased tram vehicles, a business case will be brought to the Council. The agreement of Transport Scotland and Scottish Government will also be required.

4 Financial Implications

- 4.1 As a result of the mediation process agreement has been reached amongst the parties in dispute that has enabled work to progress on priority sections of line 1a, whilst detailed design and costing work is carried out on the full extent and budget for the first phase of Line 1a, from the Airport to St Andrew Square.
- 4.2 The Priority Works Minute of Variation (MoV4) will enable the Council to acquire the Siemens materials and equipment needed to complete line 1a. The valuation certificates for these payments have been verified, elements of which are included in the cumulative programme costs to date of £440M.

5 Environmental Impact

- 5.1 The Edinburgh Tram Project will make a positive environmental contribution to the city's future growth by mitigating the forecast increase of 1 million vehicle kilometres per day, anticipated by 2020. The tram will also help the city to cope with the increased demand for public transport connections into the city by airport users (forecast to rise from 9m to 13m at Edinburgh Airport by 2020) and from the 40% forecast rise in rail passenger volumes, that is anticipated from the enhanced capacity on central Scotland rail routes and the opening of the Gogar Intermodal station. The tram will have no on-street pollution emissions and will offer a quiet mode of transport, enabling Scotland's capital

city to provide a positive, modern, reliable public transport service to residents, commuters and visitors to Edinburgh.

6 Conclusions

- 6.1 Positive progress has been achieved as a result of the formal mediation of the tram dispute. The parties involved have agreed to a priority works programme that will allow progress to be made on key sections of line 1a under the Priority Works Minute of Variation (MoV4) to the contract, pending detailed work to complete fully designed and costed proposals for the incremental delivery of the first phase of line 1a from the Airport to St Andrew Square/York Place. These proposals will be brought to Council in the summer, once sufficient certainty has been achieved on total project costs for the first phase of line 1a.
- 6.2 Works is progressing on the completion of a subsequent Minute of Variation (MoV5) which will give legal expression to the key issues resolved at mitigation, in relation to the full extent of the first phase of Line 1a (Airport to St Andrew Square/York Place). As stated in paragraph 3.6, a report will be brought to Council this summer for a decision on the terms of this more substantive minute of variation to the tram contract.

7 Recommendations

- 7.1 Council is asked to approve the following recommendations:
- a) To note the outcomes of the mediation process to date;
 - b) To note the consultation arrangements for remedial work on the Princes Street road surface;
 - c) To note that a further detailed report will be brought to the Council in the summer of this year.

Dave Anderson
Director of City Development

Appendices	1.	Minute of Variation Summary;
	1A.	Priority Works Programme
	2.	Princes Street Rectification Plan.

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Wards affected All

Single Outcome National Outcome 1 – We live in a Scotland that is the most attractive
Agreement place for doing business in Europe.
 National Outcome 14 – We reduce the local and global impact of our
 consumption and production.

Background
Papers

PRIORITY WORKS MINUTE OF VARIATION – SUMMARY OF KEY TERMS

This appendix summarises the key provisions of the Priority Works Minute of Variation between tie and the Infraco. The Minute of Variation deals with the following:

1. The Siemens materials and equipment and certain other works

Scope

The Council will take ownership of certain Siemens materials and equipment needed to complete line 1a. In addition, payments are to be made in for costs in respect of:

- (a) progress of the design;
- (b) procurement of sub-contractors and suppliers and instruction of site clearance works;
- (c) works carried out at the Depot; and
- (d) works carried out to execute changes.

Payment

Payments will be issued in the amounts certified by an independent certifier who will have a duty of care to the Council, tie and the Infraco.

Timetable

Payments of the valued and certified amounts are due on agreed dates from May to August 2011.

2. Priority works

Scope

The scope of the priority works is as set out in paragraph 3.7 of the Report.

Payment

Monthly payments will be made to the Infraco based on works completed or delivered in that month, as valued and certified by the independent certifier.

Timetable

There is an agreed timetable set out in Minute of Variation. This is set out at appendix 1A.

3. Agreement for incremental delivery – effect on the Infraco Contract

As set out in the Report, detailed discussions between the parties are continuing in order to agree fully designed and costed proposals for the incremental delivery of the

first phase from the Airport to St Andrew Square. It is proposed that if agreement is reached this will be set out in a further minute of variation to the Infraco Contract ("**Incremental Delivery Minute of Variation** ") which will be brought to the Council for consideration as soon as it is available.

In the event that the parties fail to agree a deal for incremental delivery of the project, or CEC/tie fail to obtain funding for the proposed incremental delivery plan within an agreed timescale, this will have consequences for the existing Infraco Contract as follows:-

1. Where the Incremental Delivery Minute of Variation has not been entered into:
 - (a) on an **unconditional** basis because tie and/or CEC do not have sufficient funding to meet tie's obligations under the Infraco Contract; or
 - (b) on a **conditional** basis subject to funding being available,the following provisions apply:
 - Infraco is required to continue to carry out and receive payment for the priority works, but there is no requirement on the Infraco to carry out any other works under the Infraco Contract;
 - The Infraco Contract will automatically terminate;
 - Parties are to discuss separation terms; and
 - The Infraco will continue to transfer ownership of and receive payment for the Siemens materials and equipment to the Council.
2. Where the Parties have not entered into the Incremental Delivery Minute of Variation for reasons other than lack of availability of funding the following provisions apply:
 - Infraco's obligation to perform the priority works ceases;
 - Infraco works under the existing Infraco Contract are to recommence;
 - The Infraco will continue to transfer ownership of and receive payment for the Siemens materials and equipment to the Council.

4. Cessation of hostilities

There is a ceasefire in respect of existing disputes and claims under the Infraco Contract during the currency of the Priority Works Minute of Variation.

Programme of Priority Works

All works to commence in May 2011, following the agreement of the Priority Works Minute of Variation.

The Priority Works identified for progress under the Priority Works Minute of Variation are set out below. All works to commence in May subject to the signing of the Priority Works Minute of Variation. The current planned completion dates are also detailed.

Priority Work	Planned completion dates
Princes Street Rectification:	July 2011 to April 2012, See <i>Appendix 2</i> .
Haymarket Viaduct	Phases 1 and 2 - 22 Nov 2011.
Depot Access Bridge	May 2011.
The Depot	16 Dec 2011 (excluding Operation Control Centre).
Mini Test Track	2 December 2011.
A8 Underpass	Phases 1,2 & 4: 27 September 2011.
Auxiliary Items	N/A.

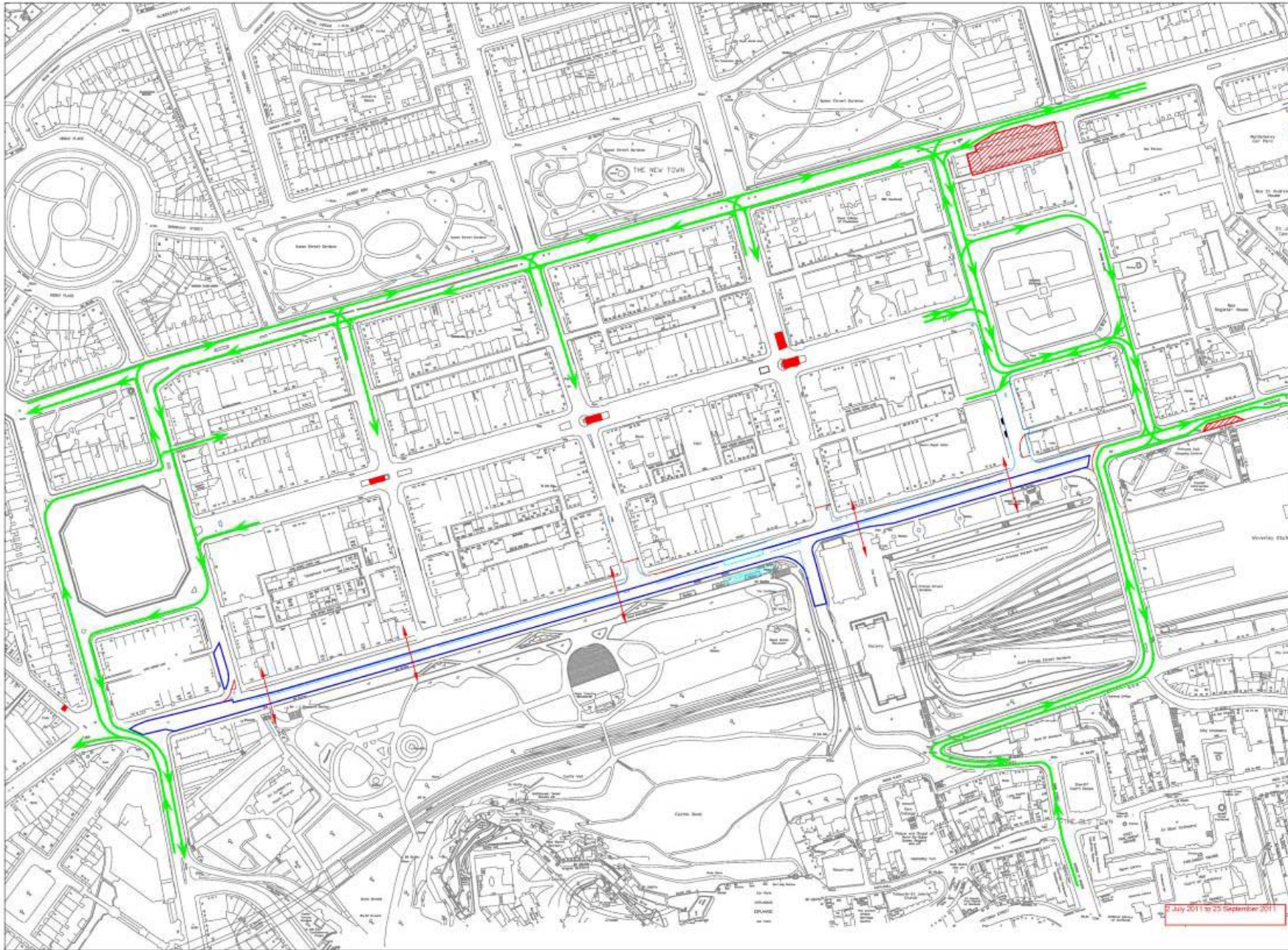
**Princes Street Rectification Plan:
Proposed Works Programme
(For Consultation)**

The following Works Programme has been prepared to manage the rectification of Princes Street. The drawings, noted below, show the layout of Princes Street for the various periods of the Works Programme and show the proposed traffic diversion arrangements, and include a proposed layout for the weekend of the Festival Fireworks.

- Period 1** 3 July 2011: Works will commence on the tram tracks on the south side of Princes Street, involving planing to a depth of 25cm (approximately 10 inches) along the entirety of the street with planing machines working from both ends. Work will subsequently be carried out to infill the area around the tram rails with reinforced concrete. The north side road lanes, during this time will remain open to pedestrians and delivery vehicles, up until the end of the festival period. The south side footpath will remain open throughout the remedial works. See drawings:
- **BSC-TM-1C-6-1001, 'Princes Street Remedials 2011 Site Layout Pre-Festival'** and;
 - **BSC-TM-1C-6-1002, 'Princes Street Remedials 2011 Site Layout for Fireworks'**-
- Period 2** 5 September 2011: Work will also commence to plane the north side lanes of Princes Street, and infill the area around the tram rails with concrete. See drawing:
- **BSC-TM-1C-6-1003, 'Princes Street Remedials 2011 Principal Layout'**.
- Period 3** 26 November 2011: All work on Princes Street will cease for the duration of the Christmas/New Year shopping season and the site compound will be removed. Princes Street will remain pedestrianised. See drawing:
- **BSC-TM-1C-6-1004 Rev B, 'Princes Street Remedials 2011 Christmas Embargo Layout'**.
- Period 4** 16 January 2012: Work will recommence on Princes Street to complete the reinforcement of the outstanding section of tram track and carry out ancillary work, erecting overhead line poles, associated equipment and to install the street furniture at the tram stop.
- Period 5** 27th April 2012: Target completion date for all remedial works. This is subject to the assumption that there is no slippage due to adverse or severe weather. Princes Street will re-open to bus, taxi and bicycle traffic from 30 April 2012.

Princes Street Remedials 2011 Detailed Site Layout - Pre-Festival

Ref: BSC-TM-1C-6-1001



- LEGEND:
- Approximate location of Pedestrian Crossing Points
 - General Traffic Routing
 - Site Boundary Fencing
 - Traffic Management Barrier

STATUS:
FOR APPROVAL

CAF

SIEMENS

BILFINGER BERGER

the

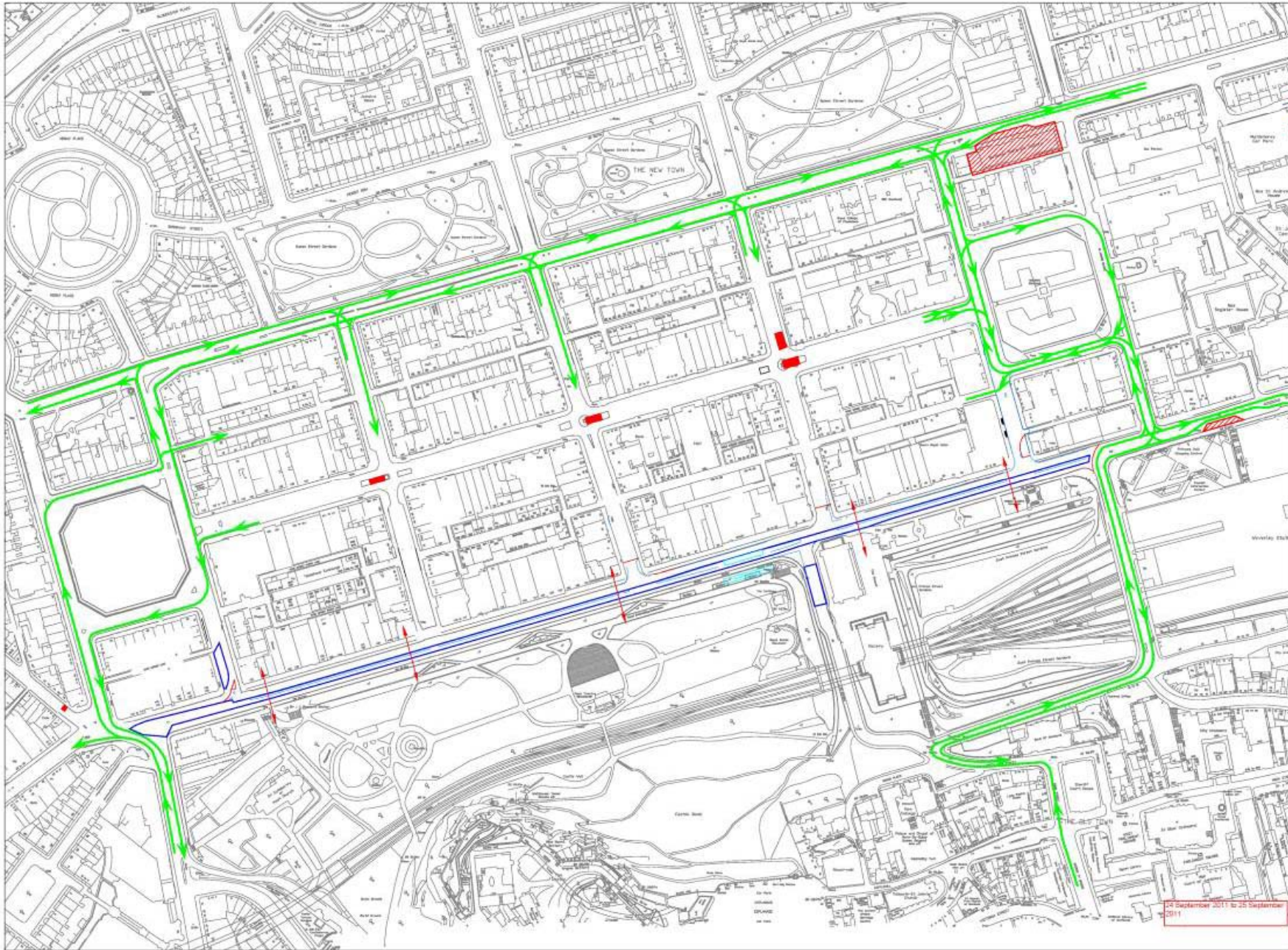
Edinburgh Tram Network

From 25 July 2011 to 25 September 2011

Princes Street Remedials 2011

Detailed Site Layout for Festival Fireworks

Ref: BSC-TM-1C-6-1002



- LEGEND:
- Approximate location of Pedestrian Crossing Points
 - General Traffic Routing
 - Site Boundary Fencing
 - Traffic Management Barriers

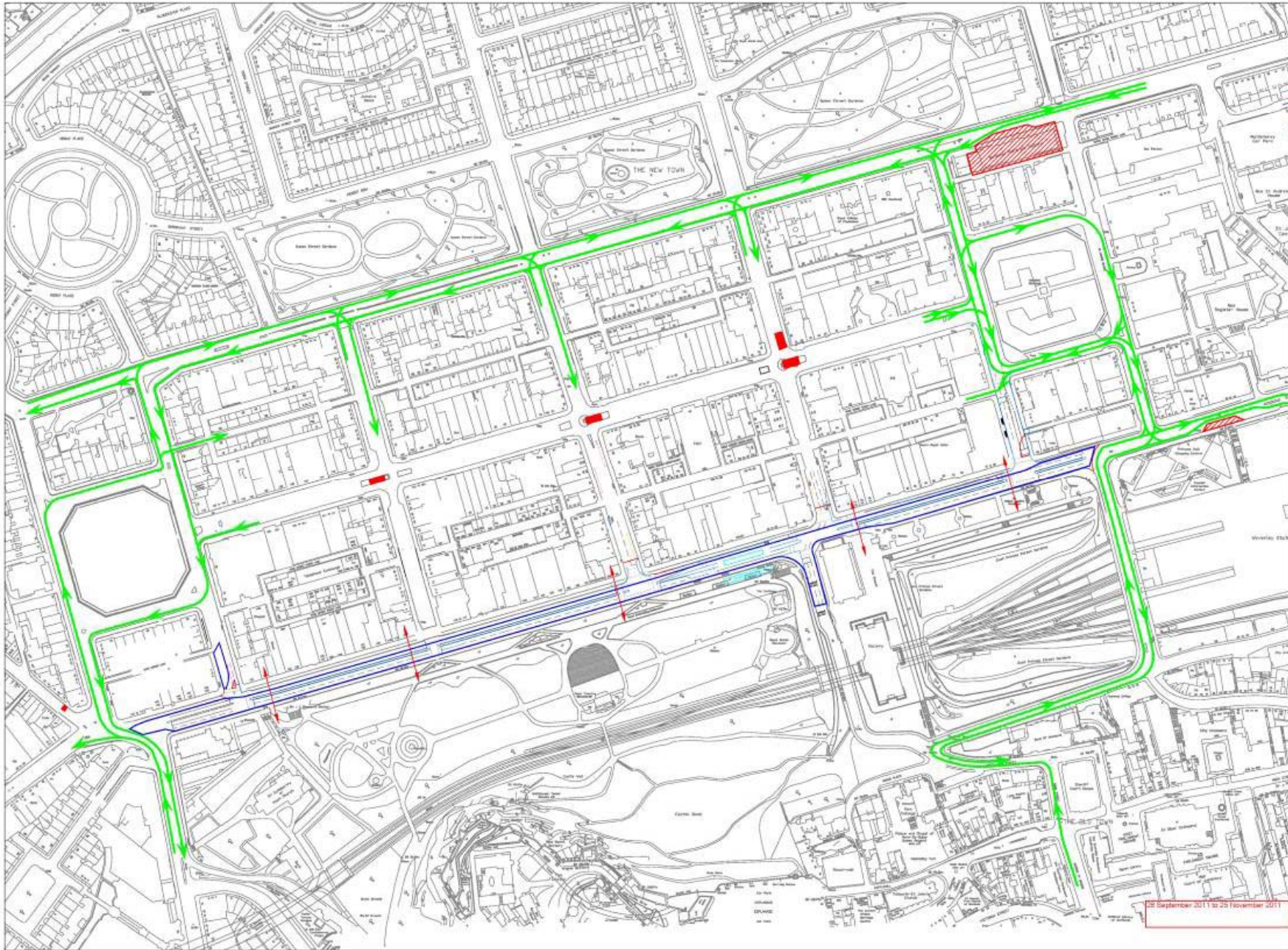
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FOR APPROVAL

CAF
SIEMENS
BILFINGER BERGER
the
Edinburgh Train Network

24 September 2011 to 25 September 2011
Private Use and Restricted 2011
Site Layout for Footcords

Princes Street Remedials 2011 Detailed Principal Site Layout

Ref: BSC-TM-1C-6-1003



- LEGEND:
- Approximate location of Pedestrian Crossing Points
 - General Traffic Flowing
 - Site Boundary
 - Fencing
 - Traffic Management Barrier

STATUS:
FOR APPROVAL

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BILFINGER BERGER

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Edinburgh Tram Network

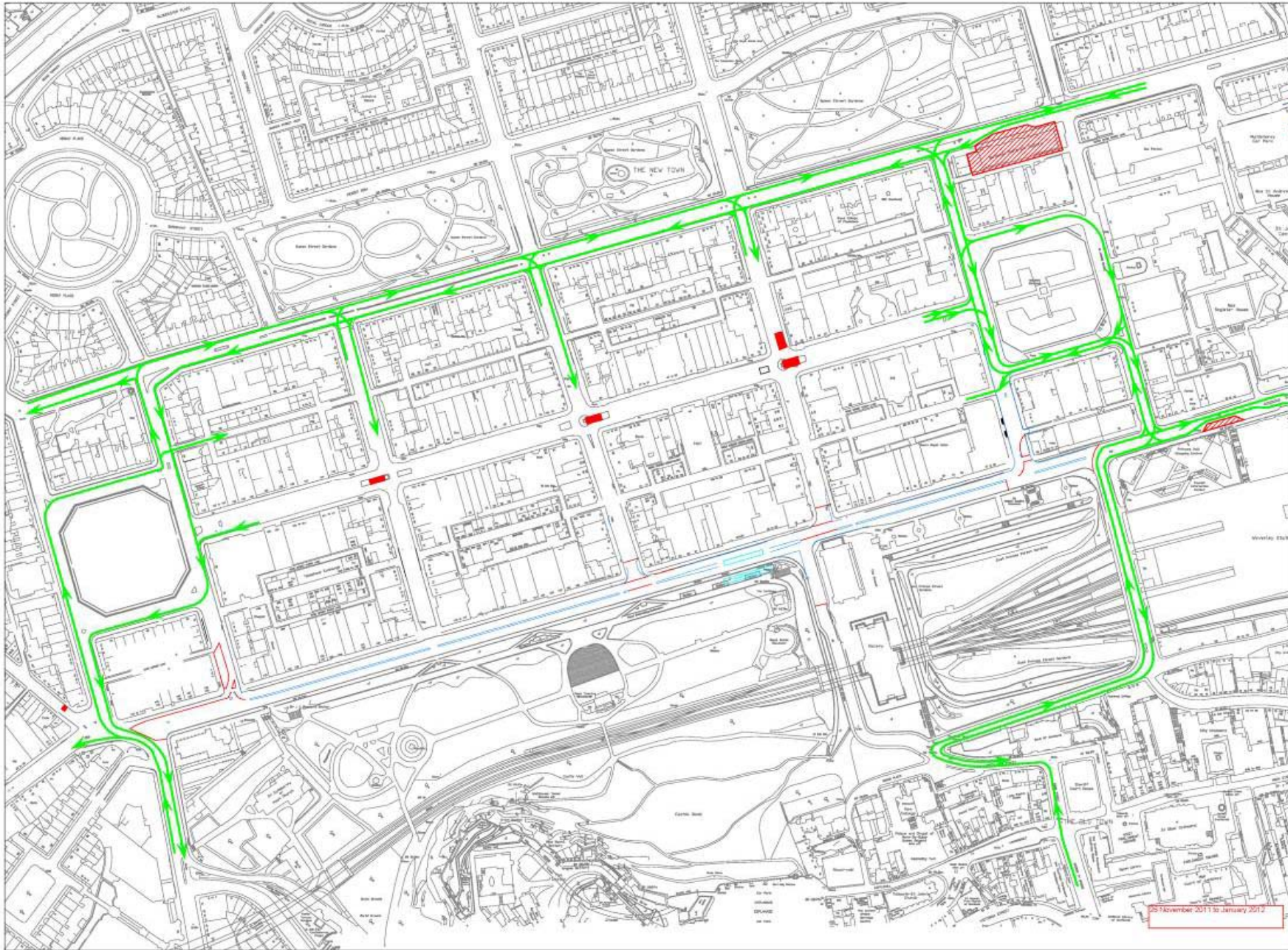
25 September 2011 to 25 November 2011

Private Use of Roadworks 2011
Article Layout

Princes Street Remedials 2011 Detailed Christmas Embargo Layout

Ref: BSC-TM-1C-6-1004

Rev B.



- LEGEND:
- Approximate location of Pedestrian Crossing Points
 - General Traffic Routing
 - Site Boundary
 - Traffic Management Barrier

1	10	10	10	10	10
2	10	10	10	10	10
3	10	10	10	10	10
4	10	10	10	10	10

STATUS:
FOR APPROVAL

Private Street Network 2011 Christmas Emergency Layout

25 November 2011 to January 2012