

# Edinburgh Trams November 2010

As any journalist knows there should be balance to each story and there are always two sides. So here are the two sides of the story surrounding what the outgoing chairman of Edinburgh Trams, David Mackay, possibly said last week.

✖ This then, from Bilfinger Berger, one of the companies in the BSC consortium who are building the tram system for Edinburgh:-

*"Bilfinger Berger is considering legal action against David Mackay, the now resigned head of the public transport authority in Edinburgh for damaging the company's reputation. Yesterday, he publicly discredited the company and its employees.*

*As leader of a consortium with Siemens and Spanish company CAF, Bilfinger Berger was commissioned to build an 18-kilometre long tram line in Edinburgh. The client alone is responsible for delays in the project schedule which have occurred as a result of numerous design changes and a lack of preparatory work.*

*The contract that was agreed between the public transport authority and the consortium prevents the Group from making any statement relating to content. Bilfinger Berger emphasizes, however, that the allegations are completely unfounded. This is also reflected in the numerous decisions already made at adjudication proceedings in which Bilfinger Berger's claims have been confirmed.*

*"Bilfinger Berger's behaviour in the Edinburgh tram project has complied with the contract", says Joachim Enenkel, Member of the Executive Board at Bilfinger Berger. "We have consistently presented the client with constructive proposals to solve his problems. To then be publicly insulted and slandered shows just how out of his depth the now departed*

*client representative was with a project of this size. We see the change of management on the client side as an opportunity to finally move forward with this project in an orderly manner."*

**This from Edinburgh Trams....**

*"This morning's activity and the subsequent statement issued by Bilfinger Berger is nothing less than farcical. It beggars belief. BB's press release is a deliberate misrepresentation of what actually happened in court and we reject it completely.*

- David Mackay has not withdrawn any element of his statement and stands by every word that he said.*

- At no time did David Mackay imply, make any allegations of, or introduce the subject of criminality . The issue of criminality was introduced by Bilfinger Berger, we do not understand why.*

- It was clear from David Mackay's statement what he was intending through his remarks and the use of the word 'delinquent.'*

- David Mackay has given no assurances about future comment.*

*"Here is a company who made a premeditated and very personal attack on David Mackay, relaying this attack widely to press and media and, unbelievably, also writing to many councillors through an open circular. When faced with our robust legal defence, they not only sought to back down, they actively tried to distance themselves from defending their challenge in open court. We are concerned about the gulf between the press statements and the facts as presented by Bilfinger Berger.*

*"Edinburgh Trams have consistently sought to protect the public purse on this project and will continue to do so. The last few days have been a waste of time, a waste of public resources and a waste of effort and we will be pursuing BB to recover the costs we have incurred in successfully defending this spurious action."*

✖ Some parts of the media have said that the words used by David Mackay (principally the word 'delinquent') were lost in translation, and that Bilfinger Berger misunderstood the meaning. Well perhaps they could have asked one of the members of their board, Kenneth Reid, (photographed left) who was born in Hamilton, near Glasgow? He might have been able to help.

Really is it not time that we, the public, knew more about what is really going on. The cloak of commercial confidentiality now appears to lie in tatters. We have to hope that the council will deliver trams in due course. But in the meantime could they perhaps tell us even just a little more about what is going on?

The next important date on the tram calendar is the full council meeting in December. We have to hope some real decision is made at this meeting. The difficulties with BB and the consortium have been ongoing for some time.

At the Council meeting on 14 October 2010, there was considerable discussion of the trams but one felt that no decision was really made except to defer the decision to December. Below you will find the text of the decision made by the full council, who next meet on 17th November, although trams will not be discussed then. (We have difficulty telling you what will be discussed since there is no agenda up yet on the council website....we are sure they will remedy that soon)

### **Decision**

- 1) To note the position regarding the Business Case and discharge the motion of 24 June 2010.
- 2) To note the disappointing lack of progress in relation to the negotiations and progress of physical works.
- 3) To endorse rigorous application of the contract by **tie**.
- 4) To note that, in the absence of robust remediation plans from the consortium and a change of behaviour in relation to progressing the works, serious consideration would need to be given to termination of the contract and re-

procurement.

5) To note the recent governance developments and future work streams.

6) To note that a report would be prepared for the December Council (or possibly an earlier special meeting) on the next steps.

7) To agree that the provision of commercially sensitive information on the current and future patronage and profits of Lothian Buses would represent an unnecessary risk to the company irrespective of whether or not there was a combined bus and tram operation in future.

8) To agree that a more detailed account of the updated Business Case, including further options as requested, will be made available to all members for the Council meeting in December (or earlier if there is a Special Meeting) while protecting the commercial interests of Lothian Buses but that members of each political group would be provided with access to the full update for scrutiny, subject to written undertakings by those individuals that they would not disclose commercially sensitive detail to any other individual or organisation.

9) To note that the report(s) to Council on 17 December 2009 referred specifically (Item 7.3a – para 2.20) to ‘remuneration matters for TEL and all other arms-length Council owned companies’ and that the decision that day (8) was to report ‘(on the remuneration matters for TEL and all arms-length Council owned companies)’.

10) To further note that the report before the Council today did not recommend any changes in remuneration.

11) To reaffirm the undertaking given in the report, detailed above, that a report would be provided on remuneration matters for Council owned arms-length companies and to instruct the Chief Executive to ensure that a report was provided to Council on remuneration matters at TEL before there was any change to remuneration for the Chief Executive or Chief Operating Officer positions at TEL.

12) To agree that the updated Business Case and the report

*on governance issues would also include detailed information not considered to be commercially sensitive about the impacts, specifically on Lothian Buses, of the different options for moving forward with the Tram Project.*