

MAYORS' EXECUTIVE DECISION MAKING

Wednesday, 23 November 2011

(Re-consideration of decision called-in and referred back)

Mayor's Decision Log No. 009(R)

1. CONTRACT FOR 2012 OLYMPIC FESTIVAL LIVE SITE (Pages 1 - 16)

The Mayor's Decision Log No. 009 (Contract for 2012 Olympic Festival Live Site), taken on 20th October 2011, was 'called in', in accordance with the Overview and Scrutiny Procedure Rules.

The 'call-in' was considered by the Overview and Scrutiny Committee on 22nd November 2011, which agreed to refer the matter back to the Mayor for further consideration and proposed an alternative course of action.

The Mayor has subsequently given further consideration to this matter in the light of the comments and recommendations of the Overview and Scrutiny Committee as set out in the attached document.

Following this further consideration the Mayor has decided to **confirm** his decision of 20th October 2011 (Mayor's decision Log No. 009 – copy attached).

If you require any further information relating to this decision, would like to request a large print, Braille or audio version of this document, or would like to discuss any other special requirements, please contact: John S. Williams, Service Head, Democratic Services
Tel: 0207 364 4204, e-mail: johns.williams@towerhamlets.gov.uk

Agenda Item 1

LONDON BOROUGH OF TOWER HAMLETS

PROFORMA:

MAYORAL DECISION SUBJECT TO CALL-IN AND REFERENCE BACK

Mayoral Decision Log No: 009

Title: *CONTRACT FOR 2012 OLYMPIC FESTIVAL LIVE SITE*

Is this a Key Decision: *No*

UNRESTRICTED / RESTRICTED: *Unrestricted*

DATE OF OVERVIEW AND SCRUTINY COMMITTEE: *22nd November 2011*

DECISION OF THE OVERVIEW AND SCRUTINY COMMITTEE:

To refer the above decision back to the Mayor for further consideration.

REASONS FOR THE REFERENCE BACK

The Call-in requisition in relation to the above decision set out the following reasons for the call-in:-

The motion on Victoria Park events passed by Full Council on 8 December 2010 resolved to ask officers to: bring forward a separate policy that addresses the particular needs of the 2012 Live Site during Olympic year, recognising that this is a one-off occasion but also recognising the needs of local residents.

This policy fails to consider impacts on residents living around Victoria Park.

Officers did not consult with residents or local ward councillors to inform their negotiations, despite knowing that residents had had serious concerns about commercial events in Victoria Park.

The taking of this decision behind closed doors denied residents and councillors that represent them the opportunity to make representations in advance.

The hours of operation are significantly longer and later (midnight and 00.30am) than those currently in operation for commercial events that have caused residents serious disturbance.

850,000 – 1.2million visitors to the park over the course of three weeks is likely to leave the park in a very poor state and make large parts of it unusable for the months that follow. This receives no consideration within the report.

The profit share should come to the Council to be spent either on the park or on local amenities.

The Council's statement that it has reserved its normal programme of commercial events in the park – and adverts for these events – make clear that this use of the park would be additional to the normal programme of commercial events that have caused residents problems.

There is no consideration of the cumulative impact of this within the report, nor of limiting events either within the Live Site or the commercial programme to limit the impact on residents.

ALTERNATIVE ACTION RECOMMENDED BY THE OVERVIEW AND SCRUTINY COMMITTEE (IF ANY)

The Call-in requisition proposed the following alternative action in relation to the Mayor's decision:-

Not to sign the contract until local residents, the Friends of Victoria Park Group and ward councillors have been consulted to ensure that their concerns can be reflected in the agreement;

To take any decision at Cabinet, where residents and councillors can make representations

To limit the hours of operation to a 10 pm close on week nights and 11pm on weekend nights

Reduce the noise levels permitted at events

To make a commitment not to run commercial events in the same year as the park is used as a live site.

ANY OTHER COMMENTS

The Overview and Scrutiny Committee considered the call-in request which was presented by Councillor Joshua Peck.

During consideration of the matter, at the invitation of the Chair the Committee received contributions from members of the public who were present. They stated that there had been a lack on consultation in relation to the Mayor's decision, and provided information on the impact of commercial events in the park on local residents.

They were concerned that the Live Site proposals could have a very significant impact and that the transport infrastructure and policing/security agencies would not be able to cope.

Following discussion, the Overview and Scrutiny Committee endorsed the reasons for the call-in and alternative action proposed as submitted by the call-in Members and set out above.

The Committee also expressed great concern about the extent of the indemnity given in the contract to Live Nation and sought urgent advice on the responsibilities of Members in this regard.

In addition they sought clarification of the programme of commercial events that was proposed in 2012 separately from the Live Site.

In relation to the process for the decision, the Committee felt that the Mayor's decision not to treat this matter as a Key Decision, thereby avoiding the requirement for prior publicity and/or consultation with the Chair of the Overview and Scrutiny Committee on the matter was wrong.

The Committee agreed to make a report to the next Cabinet meeting on this matter and to discuss with the Mayor guidelines for dealing with such matters in future.

The Committee further expressed disappointment that neither the Mayor nor the relevant Cabinet Member was in attendance at the O&S Committee meeting, leaving officers to represent the executive and denying the Committee and public the opportunity to hear from the Mayor his reasons for the decision and for making it in private.

DECISION OF THE MAYOR

I have reconsidered my decision Log No. 009 in the light of the information provided by the Overview and Scrutiny Committee at its meeting on 22nd November 2011 as set out above.

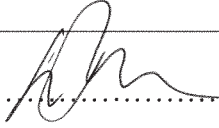
Having taken into account all of the relevant information I have decided to:-

(a) Confirm my decision of 20th October 2011 on the matter*; or

~~(b) Amend my decision of 20th October 2011 on the matter as follows*:-~~

.....
.....

(* Delete as applicable)

Signed 	Date <u>23/11/11</u>
Mayor Lutfur Rahman	

LONDON BOROUGH OF TOWER HAMLETS
MAYORAL DECISION PROFORMA

Mayoral Decision Log No:

9

Title: Contract for 2012 Olympic Festival Live Site

Is this a Key Decision: Yes / No

UNRESTRICTED / ~~RESTRICTED~~

EXECUTIVE SUMMARY

This decision sets out the negotiated position on the 2012 Olympic Live Site in Victoria Park and asks the Mayor to consider the proposed terms of the contract and if satisfied to (1) authorise the Corporate Director of Communities, Localities and Culture to approve the final version of the contract in consultation with the Assistant Chief Executive (Legal Services) and (2) authorise the Assistant Chief Executive (Legal Services) to execute the Festival Live Sites contract on behalf of the London Borough of Tower Hamlets as soon as it can be agreed by all parties, in the terms set out in the attached report.

Full details of the decision sought, including reasons for the recommendations; other options considered; background information; the comments of the Chief Finance Officer; the concurrent report of the Assistant Chief Executive (Legal Services); implications for One Tower Hamlets; Risk Assessment; Background Documents; and other relevant matters are set out in the attached report.

DECISION

The Mayor is asked to:

- 2.1 Consider the proposed terms of the contract and if satisfied:
- 2.2 Authorise the Corporate Director of Communities, Localities and Culture to approve the final version of the contract in consultation with the Assistant Chief Executive (Legal Services)

- 2.3 Authorise the Assistant Chief Executive (Legal Services) to execute the Festival Live Sites contract on behalf of the London Borough of Tower Hamlets as soon as it can be agreed by all parties, in the terms set out in this report.

APPROVALS

1. Corporate Director

I approve the attached report and recommendations above for submission to the Mayor.

Signed  Date 20/10/11

2. Chief Finance Officer

I have been consulted on the above recommendations and my comments are included in the attached report.

Signed  Date 20/10/11


3. Assistant Chief Executive (Legal Services)

I have been consulted on the above recommendations and my comments are included in the attached report.

(For Key Decision only – delete as applicable)

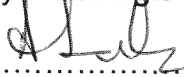
I confirm that this decision:-

- (a) has been published in advance on the Council's Forward Plan OR
- (b) is urgent and subject to the 'General Exception' or 'Special Urgency' provision at paragraph 18 or 19 respectively of the Access to Information Procedure Rules.

Signed  Date 20/10/11

4. Chief Executive

The recommendations above are consistent with the Council's agreed Budget and Policy Framework and will contribute to the achievement of the authority's Strategic Plan.

Signed  Date 20/10/2011

5. Mayor

I agree the recommendations above for the reasons set out in the attached report.

Signed *[Handwritten Signature]* Date *20/10/11*

PRO-FORMA

BRIEFING PAPER FOR MAYOR'S EXECUTIVE DECISION

TITLE	AUTHOR	ITEM NO	MAYOR'S ADVISORY BOARD MEETING DATE
Title of Subject Matter 2012 Live Site and borough wide programme	Authors name, Directorate /Job Title & ext. Steve Murray Head of Arts and Events x7910		

INTRODUCTION/SUMMARY

- 1.1 This report reports on progress of the development of the Festival Live Site in Victoria Park during the 2012 Olympic Games and seeks approval from the Mayor to enter into the contract for the Live Site at Victoria Park in 2012.

FOR THE MAYOR TO CONSIDER

The Mayor is asked to:

- 2.1 Consider the proposed terms of the contract and if satisfied:
- 2.2 Authorise the Corporate Director of Communities, Localities and Culture to approve the final version of the contract in consultation with the Assistant Chief Executive (Legal Services)
- 2.3 Authorise the Assistant Chief Executive (Legal Services) to execute the Festival Live Sites contract on behalf of the London Borough of Tower Hamlets as soon as it can be agreed by all parties, in the terms set out in this report.

3. BACKGROUND

Temporary Live Site

- 3.1 Victoria Park, together with a limited number of other key London sites (including Hyde Park), was identified by the London Organising Committee of the Olympic Games (LOCOG) as a possible temporary Games Time Live Site several years ago, but little information on how this was to be progressed was available. Live Sites are key locations where local communities, as well as visitors to the area, can enjoy the

spirit and excitement of the Games in an informal atmosphere together with other entertainment.

- 3.2 In December 2009 responsibility for delivering the temporary Live Sites and the “look” of London during the Games was passed to the Greater London Authority (GLA). No budget provision was given to the GLA for providing the sites; the expectation was that costs would be met from a combination of commercial events and official sponsorship.
- 3.3 In January 2010 the GLA approached LB Tower Hamlets to open discussions on the possibility of jointly commercially tendering the management of Live Sites in Victoria Park, Hyde Park, Potters Fields and Trafalgar Square. The intention was that the process would be used to secure a major entertainment entrepreneur who would, through a combination of paid for commercial events and sponsorship, (which they would be responsible for securing) run free to access events on these key location during the Games; the site would include one or more large screens broadcasting live coverage of the Games.

Alternative Courses of Action

- 3.4 The LBTH Olympic Board discussed this proposal as well as the option that the Council develops its own Live Site programme. Whilst the GLA proposal had the benefit of reducing the risk to the Council of incurring costs that could not be recovered through its own commercial events programme and sponsorship, it also presented a risk to the continuity of the existing annual programme of commercial events in Victoria Park that the Council has carefully developed over several years. The Board therefore agreed that a feasibility report be commissioned to measure the benefits and risks to the Council of the various options available.
- 3.5 The report by Festival and Events International, advised that, whilst the options were balanced, the least risk to the Council would be to join in with the GLA tendering process and recommended that as the way forward.

Tender process

- 3.6 The specification for the Live Site required it to be located within a shielded site on the east side of Victoria Park, (i.e broadly where Lovebox is held) and of a similar size to the largest of the summer festivals. The tender proposed a maximum of eight commercial music events in the two weeks leading up to the opening of the Games on 27th July 2012, with a maximum attendance of 50,000 at each. (This mirrored the Hyde Park opportunity). A high-quality free-to-access programme would then run to the 12th August on the same site.
- 3.8 The Council required that there would be no cost or financial risk to the Council from the Live Site and that it would generate a fee of £600,000

to the borough. It was intended that this would meet any savings target for 2012, including £100,000 income required under the terms of the Victoria Park Heritage Lottery Project, with any remaining income to go towards the additional costs of the management of the site across council services or to support any other Olympic events. In addition the Council required that the successful tenderer be responsible for the cleanliness and security of the site, the park and its environs, as well as costs such as road closures, licensing and planning permission.

- 3.9 The cost of the Live Site and meeting our income requirements will amount to several million pounds, hence the requirement to enable the contractor to generate income from commercial events prior to the opening of the Games to supplement their sponsorship arrangements.
- 3.10 Tender submissions were received on 10 December 2010 and were considered by officers from the three organisations. In the event only one organisation, Live Nation, submitted a tender that addressed the specification albeit its proposals differed in several respects. A joint Tender Evaluation Panel took place on 22 December and heard a submission from the tenderer; it was the view of the Joint Panel that negotiations should continue with Live Nation with a view to enabling a contract to be executed by all parties by 1 April 2011. A Letter of Intent was signed in February 2011.
- 3.11 The contract will be concluded between The Greater London Authority of City, The Secretary of State for Culture, Olympics, Media And Sport acting through The Royal Parks Agency, The London Borough of Tower Hamlets and Live Nation (Music) UK Limited

Proposed Contract

- 3.12 The negotiations for the contract have been very protracted as several unforeseeable issues have arisen and Live Nation remain concerned about the affordability of the project. The key elements of the contract on offer are:
- A Venue Hire Fee of £442,285.69 to be paid. In addition there will be an £80k reinstatement fee. All or part of the Venue Hire Fee (on a pro rata basis) is refundable if the events cannot proceed through no fault of Live Nation (this includes not being able to get planning permission or a premises license from LBTH).
 - Live Nation are considering the viability of holding commercial concerts in Victoria Park prior to the start of the Games. They have reserved the right provided in the specification of a maximum of three commercial event days in the week preceding the opening, but are currently stating that it is increasingly unlikely they will take these up. The proposed hours of operation to be applied for are 12.00 to 23.00.

- The Free to Access site will run from 27th July to the closing ceremony on 12th August 2012.
- The site will operate during the Games hours, so depending on the schedule it is likely to be open from 12.00 noon until midnight or 00:30 (on 27th July and 12th August) but this will be subject to licensing conditions. It is planned to close the site when the last sporting session of the day is concluded.
- The License application will be for maximum attendance of 30,000 and actual ticketed capacity will be a minimum of 20,000 up to a maximum of 30,000 at any one time depending on the levels of sponsorship secured to cover costs of infrastructure. If the option is taken up, the three Commercial Non Olympic events would have a capacity of up to 30,000 on 20th, 21st and 22nd July. .
- Live Nation predict (depending on final capacity) between c850,000 and 1.2 million visitors to the Park during the period before and during the Games, with audiences turning over 2.5 times per day on average
- Tickets will be available on the day, in advance and with an allocation for hospitality, athletes and invited guests
- Under the contract the Council will not be able to “endorse promote or conduct” any competing events involving more than 1000 people from 2nd June to 14th September without obtaining Live Nation’s consent (we have reserved our normal commercial programme in Victoria Park and the Queen’s Jubilee celebration events for the month of June)
- The indication from Live Nation is that the theme of Victoria Park will be orientated towards young people, families and sport.
- The programme content for the free to access days is to be funded jointly by GLA, Live Nation and LB Tower Hamlets who will each contribute £100,000

3.13 The negotiations for this contract have been protracted as several commercial issues have emerged to cause concern. Live Nation are effectively funding a £50 million project for the Live Sites with no guarantee of payment. Their costs and profits will be met from the success of the sites. They are understandably cautious about the commercial viability of the project and have sought to reduce their risk as much as possible.

- The policing costs are to be met from the GLA
- The original inclusion of Potters Fields as a Live Site has now been dropped
- The Council is indemnifying Live Nation against a breach of the contract if we issue unauthorised press statements or breach their commercial confidentiality.
- Our liability under the contract is limited to £20 million but this includes up to £250,000 in respect of loss of profits.

- 3.14 However the Council has been able to negotiate some additional benefits for residents
- The ticket strategy allows priority booking for 4000 tickets for Tower Hamlets residents for each Free to Access day for a small booking fee of £3.50 for up to 4 tickets. .
 - Live Nation will donate a sum between 5 to 10% of any profit in excess of £2m to a charitable cause to be selected in consultation with this Council, the GLA and the Royal Parks

4. ANY IMPLICATIONS

4.1 Impact

- 4.1.1 The impact of the Live Site on the area local to Victoria Park would be significant with a large shielded site staying in the park for a period of six weeks plus build and take down periods. The levels of activity and numbers in attendance would vary through the Games and pre-Games periods. The contractors would be contractually obliged to manage tightly any impact locally and work closely with the Council's own officers who would monitor the events throughout. Any physical impact on the park itself would be covered by the £80,000 bond deposit, with any additional accidental damage being covered by their insurance.
- 4.1.2 The benefits to the borough would be to engage thousands of residents in a positive Games experience, encourage sports participation among young and old, positively profile the borough and generate income.
- 4.1.3 The Tendering process with the GLA brings no financial liability to the borough. The risks are therefore limited to the Borough's reputation i.e. if the programme is not considered to be of a high enough quality, or the site is poorly managed
- 4.1.4 Security during the Olympic Period is a major factor for any event management. The Live Site would be covered the wider City Operations plans and security on site would be much higher than normal year i.e. full search regime at entrances, CCTV and higher numbers of trained stewards. These costs would be met by Live Nation.
- 4.1.5 If the Council wished to support any other free community events in 2012 in addition to a Live Site and/or add its own programme to the Live Site programme, it would need to generate income from additional commercial activity across the borough. One such event would be celebrations surrounding the arrival of the Olympic Torch in the Borough, for which there is no budget. The annual commercial programme, or part thereof, of music festivals is all due to take place within the month of June.

5. CONCLUSIONS

- 5.1.1 The joint procurement exercise with the GLA and Royal Parks has provided the Council with the opportunity to minimise risk whilst achieving its target income. Whilst there will undoubtedly be a considerable impact on locally residents this is seen as a once in a lifetime opportunity for the Borough to shine as a Cultural Centre and will provide a unique opportunity to engage our local community as well as visitors to London.
- 5.1.2 Officers have considered whether it is feasible for the Council to manage the Victoria Park Live Site itself. Whilst there are the necessary professional skills within the Council to achieve this, it is considered that the financial risk would be too great bearing in mind the restrictions placed on the Council by LOCOG with regard to sponsorship. This risk would be enhanced because the major venues would then be in competition for a limited pool of major sponsors.
- 5.1.3 A decision will be required for the Mayor to authorise the Corporate Director of Communities, Localities and Culture to sign the negotiated contract and continue to develop the detailed plans that will enable a high quality programme are to be delivered for the Games.

6. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 6.1 This report seeks the Mayor's executive decision to enter into the contract for the Festival Live Site at Victoria Park 2012.
- 6.2 Paragraph 3.12 of the report refers to the agreed Venue Hire fee to the Council of £442k along with a reinstatement fee of £80k. In addition the contract allows for the Council's own programme of events which may (based on 2011/12 income) generate income of up to £350k.
- 6.3 The generated income will be required to meet the 2012/13 income target of £200k and the Victoria Park Heritage Lottery Project agreed income of £100k. The resource will also be required to fund the council's contribution for the free to access programme of events of £100k. The Council will be expected to stage events for the Olympic Torch Relay, the Diamond Jubilee and other community events such as the annual fireworks events during 2012, for which there is no budget provision and will therefore need to be funded from this resource. Staffing and other cost implications related to the events will also need to be met from the income.
- 6.4 There are potential risks for the council around indemnifying Live Nations against loss of profit and breach of contract. Also, there is a budget risk to the hire fee, should the event not be held. A proportion of the fee will then need to be refunded to Live Nations
- 6.5 The programme of the free to access days will be jointly funded by the GLA, Live Nation with LBTH contributing £100k which is intended to be

funded from the agreed fee but will pose a budget risk should any of the fee need to be refunded.

- 6.6 The income from the Festival Live Site will not, on its own, provide sufficient income to fund savings requirements, the Victoria Park income requirement, Olympic, Jubilee and Community events and costs associated with the Live Site and other events. These will only be achievable if the Council's programme of commercial events proceed in June.

7. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL)

- 7.1. This contract has been procured through a competitive tendering procedure to ensure that the Council gets best value as it is required to do through Section 3 of the Local Government Act 1999.
- 7.2 The contract contains provisions which will safeguard Victoria Park and ensure it is fully restored after the event.
- 7.3. The main legal issues arising from the contract are

7.3.1 Indemnities

Given by LBTH The contract as drafted gives LN an indemnity that if any of the clients i.e. GLA, The Royal Parks or LBTH breach the contract they will be entitled to recover their direct losses which will include all of the artists and suppliers contracts and loss of revenue from sponsors. This indemnity includes up to £250,000 for loss of profits. LN claim they are investing £50 million in the project and if it goes wrong it could impact on their worldwide business as artistes will refuse to work with them. The indemnity is limited to £20,000,000.

Given by LN an indemnity against all claims demands actions proceedings and all damages losses costs and expenses (including legal and other professional advisers' fees).

Given by LBTH a similar indemnity against "all claims demands actions proceedings and all damages losses costs and expenses (including legal and other professional advisers fees) where the claim is due to a breach by us of a specific clause namely clause 12".

The relevant part of Clause 12 is

- a) Marketing and promotion

We agree to consult in good faith regarding all marketing and promotional activity and to work together on it.

We agree not to undertake any marketing or promotional activity without LN's prior approval.

We agree to comply with the Joint Communications Plan.

We agree not to discuss with any third party any of the commercial rights without LN's prior approval.

Where approval is given we agree a LN representative will be present at all discussions.

A potential breach of contract is the making of press announcements relating to the events where the wording hasn't been agreed in advance.

LN have agreed to restrict this so it only covers press releases by the Council not individual Members, but should a statement be made to the press that hasn't been agreed by LN the Council is under an obligation to take steps to mitigate the effects of any such statement. The liability on this is up to £20,000,000.

Given by both parties an unlimited indemnity against claims by third parties relating to personal injury death or damage to property resulting either from the other parties' negligence. This is a standard contractual indemnity and legally cannot be limited.

Liabilities The 3 clients (LBTH, The Royal Parks (TRP) and the GLA have what is termed in legal language "several" not joint liabilities. This means that LBTH cannot be liable for TRP or GLA's defaults but the liability under the contract is capped at £20,000,000.

Programme Content This is still under discussion with LN and will continue to be discussed after the signing of the contract. GLA, LN and LBTH are each contributing £100,000 each into the content of the free to access days. LBTH's contribution is being funded from the hire fee. Should that have to be refunded there is a potential budget shortfall

Hire Fee Under certain circumstances, mainly due to no fault of either party, where the events cannot be held a proportionate part of the £600,000 hire fee will be returned to LN. There is a risk that the Council will be out of pocket as a result of this where work has been commissioned from third parties e.g extra cleaning of the park. One example of such an event is if onerous conditions are imposed on the planning permission or the premises licence.

8. ONE TOWER HAMLETS CONSIDERATIONS

- 8.1 Tower Hamlets in one of six host Boroughs for the 2012 Olympic Games. The Temporary Live Site will provides a unique opportunity for our local community to come together with communities from across the World and for the mutual enjoyment of sport, music and other arts and entertainment; the proposed promoter, Live Nation, has an excellent record for promoting major international events and will partner with the council, which has a sound record of managing events in Victoria Park, to minimise their impact on the local community from noise, litter and asb.

9. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 9.1 The promoter will be required to provide a substantial bond to ensure that any damage arising from the event is re-instated. They are advised of council's policies on sustainability and required to adhere to them

10. RISK MANAGEMENT IMPLICATIONS

- 10.1 The proposals in this report provide the least risk to the Council in terms of cost and reputation and in addition will secure required income generation levels

11. EFFICIENCY STATEMENT

- 11.1 It was assessed that their was a reduced risk from jointly procuring the event promoter with other partners and the opportunity to promote the Live Site was subject to a tender joint tender process and detailed negotiation top secure the most advantageous outcome for the Council