


Commissioner Decision Report 13th May 2015	 TOWER HAMLETS
Report of: Acting Corporate Director, Resources	Classification: Unrestricted
Boishakhi Mela 2015	

Originating Officer(s)	Chris Holme
Wards affected	All
Key Decision	Yes
Community Plan Theme	One Tower Hamlets

Executive Summary

The Boishakhi Mela is a major Bengali New Year celebration that attracts people from within the borough, nationally and internationally. It was founded in the late 1990s and currently attracts upwards of 100,000 people. As a popular celebration it aims to celebrate diversity and improve community cohesion through arts and cultural activity, and in particular promoting the rich heritage of Bangladeshi arts.

The festival was organised by the Council between 2009 and 2011, but was returned to community management in 2012, following a procurement exercise, and rights to manage the Mela were secured by the Boishakhi Mela Community Trust Ltd (the Trust). The Council also agreed allocation of an unspecified annual grant award, to be determined through the mainstream grants process for three years, as part of a wider package of support to the Mela.

The Trust applied and were successful in securing grants awards in 2012, 2013 and 2014, funded from a provision of £954k set aside in June 2012 for further appropriate support to third sector organisations.

The 2015 Mela is scheduled to take place on the 17th May and the Trust has submitted a new application for grant funding. However following the outcome of the Election Petition Hearing relating to the Mayoral Election in 2014 on the 23rd April, a new election for Mayor, as well as councillor for the Stepney Ward will now take place on the 11th June.

Recommendations:

The Commissioners are recommended to:

1. Note the 2015 Boishakhi Mela is scheduled to take place on the 17th May in Victoria Park, and that responsibility for arranging and managing the event rests with the Boishakhi Mela Community Trust Ltd
2. Note the requirement, under the agreement with the Trust, for the Council to provide a number of services free of charge, as outlined in paragraph 3.7, which represent a subsidy estimated to be £25,000.
3. Note the position with regard to 2013 and 2014 conditions and payments set out in paragraphs 3.10 to 3.14 of the report
4. Note the amount sought from the Trust for 2015 (para. 3.20)
5. Note that following the outcome of the Election Hearing, and subsequent Mayoral election and Ward of Stepney by-election, the Mela will take place during the pre-election period (paras. 3.21 to 3.23)
6. Agree either:
 - 6.1.1 Not to approve grant to support the 2015 Boishakhi Mela, or
 - 6.1.2 To grant award to the Boishakhi Mela Community Trust of a specified amount of up to £75,000, to support the 2015 event
7. Subject to 6 above, agree that any award be subject to the conditions and phased payment arrangements set out in paragraphs 3.25 and 3.26 of the report
8. To agree that consideration for 2016 and 2017 grant support to regularised as part of the 2015-18 mainstream grants process, as outlined in paragraph 3.28.
9. Consider the equalities assessment set out as Appendix A to the report

1. REASONS FOR THE DECISIONS

- 1.1 The Boishakhi Mela is due to take place on the 17th May. They have applied for a grant, but outside any grants process agreed by the Commissioners. The timing of the event has been impacted by the outcome of the Election Petition Hearing of the 23rd April, which has ruled that a new Mayoral election and by-election for the Ward of Stepney must take place. The date of that election has now been announced as the 11th June 2015 and, accordingly, the Mela is due to take place in the pre-election period.

2. ALTERNATIVE OPTIONS

- 2.1 There are, in effect only two options available to the Commissioners – not agree to the payment of a grant, or agree to pay. If Commissioners agreed the latter, then officers' recommendation would be that it be limited to a maximum of £75k, and subject to a number of conditions outlined in the report.

3. DETAILS OF REPORT

- 3.1 The Boishakhi Mela is a major Bengali New Year celebration that attracts people from within the borough, nationally and internationally. It was founded in the late 1990s and currently attracts upwards of 100,000 people, with some 20,000 at the event at any one time during the day. As a popular celebration it aims to celebrate diversity and improve community cohesion through arts and cultural activity, and in particular promoting the rich heritage of Bangladeshi arts.
- 3.2 Following a disagreement within the community as to the management of the festival, which culminated in two separate organisations seeking to run the event on Weavers Field in 2008, the Council took the decision to organise the event directly, and did so between 2009 and 2011.
- 3.3 In August 2011, the former Mayor, in Cabinet resolved to return the Mela to community management, following a procurement exercise. In addition Cabinet determined;
- That the right to manage the Mela be granted for a period of nine years, subject to reviews at year one, three and six by an independent panel
 - That recommendation of the successor organisation be delegated to an independent panel supported by staff
 - That the outline specification of event and governance requirements set out in the report be agreed
 - That financial and other support be provided by the Council, including award of grants for a minimum of three years
- 3.4 The Council entered into an agreement in April 2012 with the Trust for exclusive rights to manage the Mela. The contract is set to run until 30th June

2021. In 2013 the agreement was amended to relocate the event to Victoria Park. The intention of the financial support was that it be considered as part of the mainstream grants process, and tapered over the lifetime of the agreement.

- 3.5 The agreement also grants the Trust other exclusive commercial rights;
- The right to seek and obtain sponsorship
 - The right to sell food and drink (including alcoholic) and to sell the right for others to sell the same
 - The right to operate hospitality facilities
 - The right to control all merchandising
 - The right to design develop exploit applications on all forms of social media including hand held platforms
 - The right to film and record in any form of media (including live transmission) the event plus the right to subsequently sell this on to other channels and distribution networks. This also includes over the internet.

All these rights include the ability to sublicense without the Council's consent

- 3.6 The agreement states that the Council will in years 1,3 and 6 appoint an independent panel within 2 months of the event taking place to review the agreement and make future recommendations. Unsatisfactory review can allow the Council to require service improvements and if recommended by the panel termination of the agreement.

- 3.7 In supporting the event, the Council is required, for the period of the agreement, to provide;

- Free road closures and parking suspensions
- Free food training
- Access and use of Victoria Park
- Clear up assistance free of charge

The estimated cost of providing these services is £25,000.

- 3.8 The 2012 agreement set out grant award of £180,000 (of which £30k was a one-off payment from an appropriate S106 planning agreement, to support the parade). In April 2013 the former Mayor, by way of an executive decision, approved £170,000 to support the Mela in that year. The amended agreement of May 2013 makes clear that for subsequent years the "event organiser may apply for grant funding from LBTH's mainstream grants process but no further funding is guaranteed."

- 3.9 In 2014 the former Mayor agreed a grant of £100,000 to support the 2014 Mela. Both this and the previous 2013 award were funded from a specific provision set aside by Cabinet in June 2012 of £945k to create a secondary grant allocation to be used for the same funding priorities as the existing mainstream grants fund.

- 3.10 The original agreement stipulated clear requirements with regard to maintenance of proper, up-to-date accounts and records for grant funding – including a requirement that LBTH grant funding should be treated as a

restricted fund. The Trust is also required to provide a copy of its annual accounts within six months (or such lesser period as LBTH may reasonably require) of the end of the financial year in respect of each year in which the award or grant monies is paid. The accounts and governance arrangements are subject to independent audit through Deloitte.

- 3.11 The financial conditions were amended for 2013 to the effect that 80% of the agreed funding be allocated in the year of the event, with the remaining 20% subject to a satisfactory outcome of the independent audit.
- 3.12 To date, Deloitte have carried out two audits, for 2012 and 2013. The 2013 audit has only just completed, but it is clear that a number of the audit recommendations required as improvements from 2012 had not been fully implemented, and a number of payment claims discounted. As a consequence the balance for 2013 has not been paid.
- 3.13 An independent review panel did meet in November 2012 to consider the 2012 event, and concluded that, subject to a satisfactory conclusion of audit matters, recommended that the Trust continue to manage the Mela for 2013. The panel also made a number of recommendations to the Trust to improve their business planning and accounting arrangements, and ensure co-operation with the external auditors to resolve outstanding items to facilitate release of grant retainer.
- 3.14 The Trust has yet to submit their 2014 accounts for audit review and so the £20k retainer for that year also remains held back.
- 3.15 The Trust have now submitted an application for further grant award to support the 2015 Mela, which is scheduled to take place in Victoria Park on the 17th May and has been widely advertised.
- 3.16 The application sets the Mela's aim to enable, through arts and culture, increased participation in;
 - Events which celebrate and improve community cohesion
 - Art and cultural activities
- 3.17 The Trust work with local people to come up with new ideas for the procession (a key part of the celebration) and take part in it, and also with local schools to improve cultural learning.
- 3.18 The stated outcomes of the project are;
 - The Mela and Procession will form an integral part of the Council's festival and events programme,
 - through community engagement increase the involvement of young people in dance, music and performing arts,
 - A sustainable Mela.
- 3.19 As such, the outcomes broadly reflect those set out in the agreed 2015-18 mainstream grants "Community Engagement, Cohesion and Resilience" theme.

- 3.20 The application seeks an award of £181,900, which is significantly in excess of last year's award, and runs contrary to the stated intention that funding taper downwards throughout the duration of the agreement, hence facilitating a longer term sustainable and self-financing Mela.
- 3.21 On 23rd April 2015 the outcome of an Election Petition Hearing relating to the Mayoral Election in 2014, which had been heard at the Royal Courts of Justice was announced. The Mayoral election of 22nd May 2014 was deemed to be void. There must now be a new Mayoral election and by-election for the Ward of Stepney. These elections have been set for the 11th June.
- 3.22 The judgement and subsequent requirement for a new election means that the Mela will now fall within a pre-election period when special provisions apply. Where it is necessary to hold an event that generates publicity, or dealing with a particular topic which may be controversial, care must be taken to avoid publicity that may contravene the code. In this regard there is a risk, that in providing financial support the Council could be deemed in breach of the code.
- 3.23 During the election period, Section 75 of the Representation of the People Act 1983 specifically prohibits anyone (other than a candidate or their agent) incurring expenditure with a view to promoting or procuring a candidate at an election by holding public meetings or organising any public display, issuing advertisements, circulars or publications, or otherwise presenting to the electors the candidate or their views or the extent or nature of their backing, or disparaging of another candidate. Breaking this prohibition is a 'corrupt practice' under election law and may result in prosecution of offenders and/or cause an election to be declared void. Should any prospective politician be given a public platform, partially funded by Council resources, then the Council would be at risk of incurring unlawful expenditure.
- 3.24 In addition to the above, there are concerns about the outcome of the 2013 audit, which included a recommendation to submit quarterly accounts to the Council. So far no accounts have been submitted for 2014, even though the event took place in June 2014, and this has impacted on the Council's ability to convene the year 3 independent panel review. It is unlikely that arrangements can be put in place in the limited timescale prior to the event to effect a decision of whether or not to provide financial support.
- 3.25 In 2014 arrangements were put in place for phased payment arrangements to be made to the Trust. As a consequence only 50% of agreed funding was paid in advance of the actual event. Given concerns raised above officers would recommend a similar approach for 2015 if Commissioners were still minded to agree a grant award. Should Commissioners determine not to award a grant for 2015, that decision should be taken after consideration of the equalities implications in accordance with the public sector equality duty. An equalities assessment is set out as Appendix A to this report.

- 3.26 In the event Commissioners were minded to agree a grant, then additional safeguards are recommended;
- The Trust provide access to the 2014 accounts for the Acting Director of Resources to review
 - The Trust provide written assurances that no politician, prospective politician, or representative of any politician (official or otherwise) be afforded any platform to speak at the 2015 Mela
 - Tranche 2 payment (25%) subject to satisfactory outcome of monitoring report following a visit in accordance with updated practice
 - Outstanding 2014 payments subject to both satisfactory audit and recommendations of independent 3 year review panel
 - Final 2015 20% retainer not paid until satisfactory independent audit with evidence that all outstanding weaknesses have been fully addressed, in addition to positive recommendation from year 3 independent review panel.
- 3.27 In line with previous reductions, an award in excess of £75,000 would not be recommended by officers.
- 3.28 To mitigate against uncertainty for the remainder of the current medium term financial plan, and given that the original intention was funding via the mainstream grants process, it is recommended that the application process from the Trust for 2016 and 2017 Boishakhi Melas be regularised as part of the 2015-18 MSG process and timetable (i.e. one application for both years.) A maximum of £100k would be transferred from the MSG provision, earmarked for additional mainstream grant priorities, as allocated by Cabinet, in June 2012. It would be at the discretion of the Commissioners how, if at all, the £100k would be allocated.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1. The Council determined to return the Boishakhi Mela to community management from 2012 onwards, run by a not-for-profit trust, and that the Council would provide grant support for a limited period. It was anticipated that any such grant be on a sliding scale so that after a period of years the event should be self-financing.
- 4.2. The not-for-profit trust that has secured from the Council exclusive rights to manage the Mela is the Boishakhi Mela Community Trust Ltd, and those rights are set out in an agreement with the Council from 2012. There is no ongoing contractual commitment for the Council to provide additional financial support – although the Council is required to provide other assistance, some of which represent a subsidy, as outlined in paragraph 3.7 of the report.
- 4.3. As this is a cultural event then it falls within the overriding aims and desired outcomes of the mainstream grants programme. However this application falls outside the timescale for application and assessment of either the 2012-15 or 2015-18 programmes. So far funding has been made available for 2013 and 2014 from the provision of £954k set aside by Cabinet in June 2012. That allocation was earmarked to create another mainstream grants fund to

support to third sector organisations in accordance with the same funding priorities as the existing mainstream grants fund.

- 4.4. The risk of incurring Council expenditure on a large event that could be used as a platform for any political end is a serious concern.
- 4.5. Furthermore, given concerns raised in the report, and following the outcome of the 2013 independent audit, should the Commissioners still be minded to agree some financial support, then it would be prudent to mitigate financial risk to the Council by phasing payments in a reasonable manner, and requiring additional safeguards, as outlined in the report.
- 4.6. Not providing any funding does, of course increase the risk of potential cash-flow problems for the Trust in delivering a successful event. In this regard, it is noted that in accordance with additional conditions placed on the Trust last year, outstanding retainer payments are yet to be deemed eligible for payment.
- 4.7. If grant is to be approved, the Trust will need to ensure that Council funds are used in compliance with Council contracting procedures and provide evidence to demonstrate no subsidy from public provided funds to support commercial activities outside the terms of the agreement, and further adhere to the contractual requirements regarding record-keeping, accounting and independent audit.
- 4.8. Subject to any agreement funding a maximum amount of £175k would be transferred from the MSG provision, with up to £75k earmarked for the 2015 Mela and £100k as a supplement to the 2015-18 MSG programme – provisionally to support the Community Engagement, Cohesion and Resilience theme – although the actual allocation of resources towards priorities is at the discretion of the Commissioners.

5. LEGAL COMMENTS

- 5.1. The power of the commissioners to make decisions in relation to grants arises from directions made by the Secretary of State on 17 December 2014 pursuant to powers under sections 15(5) and 15(6) of the Local Government Act 1999 (the Directions). Paragraph 4(ii) and Annex B of the Directions together provide that, until 31 March 2017, the Council's functions in relation to grants will be exercised by appointed Commissioners, acting jointly or severally. This is subject to an exception in relation to grants made under section 24 of the Housing Grants, Construction and Regeneration Act 1996, for the purposes of section 23 of that Act (disabled facilities grant).
- 5.2. The report outlines a grant application received from the Boishakhi Mela Community Trust Limited for the running of the 2015 Boishakhi Mela. As outlined in the report, the Council entered into a nine-year agreement with the Trust in 2012, under which the Trust is responsible for (amongst other things) the promotion, organising, staging and running of the Boishakhi Mela in Banglatown Brick Lane. The agreement identifies funding which the Council

would provide to the Trust in 2012 (later amended to include 2013), but specifies that no funding is guaranteed from the Council for 2013 to 2021 (later amended to 2014 to 2021), although the Trust may apply for grant funding from the Council's mainstream grants process.

5.3. The following powers appear relevant to the grant application –

- The Council has power under section 145 of the Local Government Act 1972, relevantly, to do, or arrange for the doing of, or contribute towards the expenses of the doing of, anything (whether inside or outside Tower Hamlets) necessary or expedient for the following purposes: the provision of entertainment of any nature in Tower Hamlets; or the development or improvement of the knowledge, understanding and practice of the arts and the crafts which serve the arts.
- The Council is required by section 507B of the Education Act 1996 to secure sufficient educational and recreational leisure-time activities for young people in Tower Hamlets.
- Section 1 of the Localism Act 2011 gives the Council a general power of competence to do anything that individuals generally may do, subject to specified restrictions and limitations imposed by other statutes. This general power of competence may support the giving of grants to community groups, provided there is a good reason to do so. There may be a good reason for giving a grant if it is likely to further the Council's sustainable community strategy under section 4 of the Local Government Act 2000, which is contained within the Tower Hamlets Community Plan.

5.4. The Commissioners will need to be satisfied that it would further one or more of these powers to award a grant for the Boishakhi Mela. The report contains some information which may be relied upon for this purpose, although it may be considered that the case is not strongly made. For example, it is not clear to what extent the cultural content of the programme is considered to be of sufficient quality, or whether it will promote one or more objectives of the Community Plan.

5.5. The Council is obliged, as a best value authority under section 3 of the Local Government Act 1999, to "make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness". The Council generally seeks to deliver upon this duty in respect of grants by: advertising grant opportunities and allowing applications from the whole community; evaluating applications against predetermined criteria, including value for money; and considering finance and other advice before taking grant decisions. In this instance the application has been made outside of the mainstream grants process, there are no predetermined evaluation criteria and the report provides information regarding past performance which may impact negatively on an assessment of value for money.

- 5.6. Paragraph 3.22 of the Code refers to a risk that the Council may breach the code, which is understood to be a reference to the Code of Recommended Practice on Local Authority Publicity. The Council is prohibited by section 2 of the Local Government Act 1986 from publishing, or arranging for the publication of, any material which, in whole or in part, appears to be designed to affect public support for a political party. In coming to any decision on publicity, the Council is required to have regard to any code issued by the Secretary of State under section 4 of the Local Government Act 1986. Such a code was issued in March 2011 and it is understood that paragraph 3.22 refers to that code.
- 5.7. The code provides that local authorities should not issue any publicity which seeks to influence voters. During the pre-election period, the Council should not: publish any publicity on controversial issues or report views or proposals in such a way that identifies them with any individual members or groups of members; or publish any publicity relating to individuals involved directly in the election unless authorised to do so by statute. It is not clear how providing the grant funding would lead to a contravention of the code but it would be sensible to have a clear understanding of the programme of the event and how it is to be publicised. It may be appropriate to condition any grant funding to prevent a potential breach.
- 5.8. The report refers to the prohibition in section 75 of the Representation of the People Act 1983 against incurring expenditure with a view to promoting or procuring the election of a candidate at an election by any person other than the candidate, the candidate's election agent or a person authorised in writing by the election agent. The prohibition makes clear the type of expenditure to which it relates and this, relevantly, includes holding public meetings, organising any public display or otherwise presenting the candidate or the candidate's views to electors. It is an offence for a person to incur such expenditure and there is an ancillary offence of aiding, abetting, counselling or procuring. If an organisation commits the offence, a director, general manager, secretary or other similar officer may be indirectly liable unless one of the defences in section 75 can be made out. It is not obvious that providing grant funding for a cultural event would contravene the prohibition. However, it is understood that politicians have been allowed to speak at the Mela in previous years and, given that the 2015 Mela is to take place shortly before a mayoral election, it would be sensible as a minimum to have a clear understanding of the programme and how it would be proposed to prevent it being used for promotion of a kind which cannot be funded. It may be appropriate to condition any grant funding to prevent a potential breach.
- 5.9. When deciding whether to make a grant to support the Mela, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector equality duty). An equality analysis is provided with the report. It identifies that the event is accessed predominantly by the Bangladeshi community, who share a protected characteristic as an

ethnic minority group. A refusal of funding may thus impact in fact on a protected group more significantly than on other groups and consideration should be given to whether that potential impact would be proportionate, having regard to the other matters set out in the report. Regard should also be had to whether the funding may have positive effects in terms of fostering good relations between people who share one or more protected characteristics and those who don't.

- 5.10. Should a grant be made, the Council and the grantee must ensure that the grant is used solely for the purposes for which it is intended and a grant agreement should be concluded. In any event, the sum granted must not include any sums in respect of profit for the grantee. If it can be shown that any sum included in the grant has led to a profit this amounts to either state aid or commercial activity.
- 5.11. Reference is made in the report to other action taken by the Council in support of the Mela. It is understood that those matters are provided for in the Council's concession agreement with the Trust, which was tendered on a commercial basis. It is arguable that this in-kind support is consideration given by the Council against the Trust's promise to provide the Mela, rather than it being a grant.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1. The Boishakhi Mela is one of the largest celebrations of the Bengali New Year outside of Bangladesh. It is a significant cultural festival celebrating the secular heritage of the Bangladeshi community. It is also considered to be of great importance to members of the local community as well as an opportunity to spotlight the borough and its diversity in a positive way. The primary focus is to showcase the best of traditional and modern Bangladeshi culture, but it attracts and is promoted to visitors from other cultures and ethnic backgrounds who come to experience the music, food and activities.
- 6.2. An equality analysis is being undertaken to clarify the equality implications of the option to withdraw funds which will include an assessment of impacts should the withdrawal of council funding result in the Mela not going ahead.

7. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 7.1. No specific implications arising from the recommendations

8. RISK MANAGEMENT IMPLICATIONS

- 8.1. There is a risk that as the event takes place during the pre-election period, with the election taking place on 11 June 2015, the event is viewed as being a promotion of a Mayoral candidate standing in the election, contrary to the Code of Recommended Practice on Local Authority Publicity, section 4 of the Local Government Act 1986. Breach of this code could result in any election being voided, resulting in financial and reputational damage to the Council.

8.2. The report also raises risks relating to the financial governance arrangements at the Trust. An audit of the 2013 Mela has highlighted recommendations that the Council raised with the Trust in March 2012 that the trust agreed to implement have not been fully implemented. Further, the Council is yet to receive from the Trust, financial information relating to the 2014 Mela. The report seeks to mitigate financial risks in para 3.25 and 3.26 of the report.

8.3. There is also a risk that the Trust is not able to generate sufficient funding to be able to run a successful event. This risk will be mitigated by reviewing the financial arrangements out in place by the Trust, including arrangements to secure external funding to ensure a successful event.

9. CRIME AND DISORDER REDUCTION IMPLICATIONS

9.1 The Mela is intended to be a major contributor to community cohesion in the borough, but there is a risk, if not managed properly managed, of anti-social behaviour and disorder.

10. BEST VALUE

10.1 Whatever decision is taken with regard to financial support for the 2015 Mela and beyond, a key aim is the ongoing reduction of public funding and self-sufficiency.

11. SAFEGUARDING IMPLICATIONS

11.1 No specific implications arising from the recommendations

Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

- Appendix A – Equalities Assessment.

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- None.

Officer contact details for documents:

- Chris Holme x4262