


<p style="text-align: center;">Commissioner Decision Report 8st March 2016</p>	 <p style="text-align: center;">TOWER HAMLETS</p>
<p>Report of: Stephen Halsey Corporate Director (Communities Localities and Culture)</p>	<p>Classification: [Unrestricted or Exempt]</p>
<p>The Boishakhi Mela</p>	

Originating Officer(s)	Shazia Hussain (Service Head Culture Learning and Leisure)
Wards affected	All Wards
Key Decision	
Community Plan Theme	One Tower Hamlets

Executive Summary

The Boishakhi Mela (Trust) is a Bengali Cultural festival with links to the Bengali New Year. It has been delivered by both the council and by community organisations supported by the Council. The Council successfully ran the event for a four year period from 2009 – 2012. In 2013 the event was delivered by a community organisation, the Boishakhi Mela Community Trust (BMCT) who were successful in an open tender process and have had a 9 year contract to deliver the Mela on behalf of the council. The contract requires for independent reviews to take place in year 1, 3 and 6 of the contract by an independent review panel. The Year 3 review has taken place. It also requires that an annual audit is undertaken as part of the Councils due diligence processes. 3 follow up audits have been completed to date with the last one dealing with the 2014 Mela.

The DCLG Commissioners agreed at a Commissioner Decision Making Meeting on 13th May 2015 that they would not be supporting the BMCT with grant funding to assist delivery of the 2015 Mela as it would take place in a pre- election period. At that same meeting they also agreed that consideration for 2016 and 2017 grant support 'be regularised as part of the 2015-18 mainstream grants process' but made it clear when reaching that decision that 'an application of this kind was 'likely to fail to meet the requirements of the Main Stream Grants Programme'. Subsequent to this decision the Commissioners held a meeting with Acting Corporate Director of Resources and the Acting Service Head Resources, Development and Renewal on 20th May 2015 and the notes of this meeting state 'MC advised that there should be no decision made on the Mela in 2016, including booking a venue, until the Commissioners had seen the outcome of the audit into Year 3' . Commissioners subsequently confirmed their view that this position should prevail until all issues arising from the Audit report were satisfactorily resolved and reconfirmed to senior officers in February 2016 and that the arbiters of that judgement were considered to be the Independent Review Panel which met in November 2015.

No application for MSG was made to the Commissioners by the Mela Trust for the 2015-18 grant allocation process.

This report sets out the findings of the year 3 Independent Review Panel in respect of BMCT performance, the arrangements for the delivery of the 2016 Mela and the next steps associated with existing contract arrangements and future arrangements associated with Mela delivery for noting.

Recommendations:

The Commissioners are recommended to:

1. Note the conclusions and recommendations of the Independent Review Panel examining the performance of the BMCT.
2. Note the view of the Independent Review Panel that the continued delivery of the Mela by BMCT is not sustainable without monetary support from the Council.
3. Note that the Boishakhi Mela Community Trust have offered to provide the Mela without monetary assistance from the Council with the only support being “in kind” support of a similar variety provided under the contract previously and considered previously by the Commissioners.
4. Note that the Council has acted upon and resolved the issues arising from the meeting of the 20 May 2015 (referenced above and extracted minutes are attached at Appendix C) and that the relevant audit reports have been appropriately considered as evidenced by the recommendations of the Independent Review Panel and the Council’s subsequent actions thereon
5. Note also therefore, that the Council has taken into account the view of the Independent Review Panel relating to sustainability of the provision of the Mela and is therefore seeking to agree for the BMCT to provide the Mela for this year only, subject to agreeing appropriate amendments to the contract and in particular an alteration to the term of the contract causing the contract to cease following the successful delivery of the Mela for this year
6. Note the change of location of the Mela from Victoria Park back to Weavers Field and that allowing the use of Weavers Field is included in the overall level of “in kind” support offered by the Council for this year’s Mela.
7. Note the 2015 Boishakhi Mela is scheduled to take place on the 22nd May 2016 in Weavers Fields Park and that the BMCT has agreed to deliver it without any grant monies being receivable from the Council but that the Council will provide the ‘in kind’ support as detailed within the provisions of the contract to a maximum value of twenty five thousand pounds.
8. Note the requirement, under the contractual agreement with the Trust, for the Council to provide:
 - Free road closures and parking suspensions in relation to the event in Weavers Fields only
 - Free food training
 - Access and use of Weaver’s Field subject to the event obtaining a premises licence and producing adequate event planning documentation and without further charge
 - A defined level of clear up in and immediately around Weavers Fields assistance free of charge
9. Note that any failure to deliver against this contractual obligation would put the council at risk of a breach of contract and potential litigation. This has best value implications.

1. REASONS FOR THE DECISIONS

- 1.1 The report is for noting.

2. ALTERNATIVE OPTIONS

2.1 *Option 1 – No Change and continue with existing contract*

- 2.1 The contract between the BMCT and the council is for 9 years and is currently in year 5. The Independent Panel review for Year 3 made the recommendation that the contract with the Trust could be renewed for a further three years. However, the recommendation also made it clear that the Panel's view was this would only be sustainable if the Trust acquired financial support from the Council for the continual management of the Mela. The current contract only allows for money to be made available from the Council to the Trust through MSG. This programme of funding is currently the responsibility of DCLG appointed Commissioners and is now closed until 2018. The Council is therefore not in a position to provide the BMCT with any grant funds. The Trust has not been able to demonstrate on past performance that it will be able to raise the funds over the next 3 years to sustain the delivery of the Mela without this support. Therefore this option is untenable for the remainder of the contract.

2.2 *Option 2 – Terminate the contract and manage the Mela in -house*

- 2.3 In-house delivery provides the council with assurance that the event would be produced to the appropriate safety and operational standards with risk to the council reduced. This option would also require the council to fund the Mela for which there is no budget this year. The Mela's delivery date is May and with less than 3 months to plan for this the council would not have the time to commence to make the necessary practical arrangements for running the Mela (such as arranging for artists appearances and so forth) Therefore, the date would need to be moved back substantially to ensure that the event could be delivered. This would not be appropriate as the time of year itself is highly relevant to the timing of the Mela. This could cause the council some reputational damage in the community or invalidate the purpose of the Mela. The BMCT have confirmed that they will deliver this year's Mela without grant funding at the appropriate time of year provided the Council delivers the contracted 'in kind' funding specific to road closures etc. They are able to deliver within the timescales as it is understood that they have been preparing for this year's Mela since October last year.

2.4 *Option 3 – No Mela for 2016*

2.5 The council could consider the option to not hold a Mela for this year given the extremely short timeline and the lack of funds available to resource it. However, given the position of the BMCT in respect of this year's delivery outlined above and the disappointment amongst the local community if it were cancelled this option is not considered appropriate unless no reasonable alternative can be found such is the significance of the event to the people of the Borough.

2.6 Option 4 - Continued to be run by the BMCT for 2016 only and cancel current contract arrangements post-delivery pending a review of an alternative vehicle for Mela delivery.

2.7 The Trust has confirmed that without the availability of grant subsidy they are still able to deliver and manage the Mela for 2016. However, the Trust would need to have the agreed and continued in-kind support from the council. The Trust has also confirmed that the Mela can be delivered for May 2016 causing no delays to the original event date. The current Commissioners decision does not allow the Trust to access funds from the council for the delivery of the Mela through any other means other than the MSG. The Trust Board are aware of the Independent Review Panel's recommendation that the agreement is not fit for purpose in current circumstances and that the agreement should be terminated as it is unsustainable. However, in the light of the Trust's proposal and confirmation by the Trust that this year's Mela can take place without additional financial input from the Council, the Council has the opportunity to agree the production of the Mela for this year but only on the basis that the agreement terminates immediately afterwards. The Trust have agreed this position in principle but that they wish to clarify their own legal position. As regards the future years' provision of the Mela the Council is preparing to review the way it can achieve best value in securing a stable delivery mechanism for future Melas.

3. DETAILS OF REPORT

3.1 Background

3.2 In 2012 following a Cabinet decision the Council returned the delivery of the Mela to community management. The Boishakhi Mela Trust (Trust) was successful in tendering for the contract and received the right to manage the Mela for a period of nine years subject to reviews at year one, three and six by an Independent Review Panel.

3.3 A key aspect of the Mela management agreement was that the financial support from the Council would taper off over a period of years. In the first year the core grant was up to £150,000 along with a one off payment of £30k (section 106 monies) to support the parade element.

3.4 In 2013 the grant was £170,000, which was in part informed by the moving of the event from Weavers Fields to Victoria Park and associated costs this would incur.

- 3.5 In 2014 the Trust was approved a grant of £100,000 by the Mainstream Grants Board. However, 20% of the funding was to be withheld unless (as described under the contract) a satisfactory audit of the provision of the Mela showed that the Mela had been satisfactorily delivered. The independent panel review were satisfied regarding the delivery of the Mela. However, only limited assurance was given due to the identified structural and financial sustainability issues. To date the 20% funding remains unpaid until such time as Resources provide the necessary confirmation that assurance levels have been achieved sufficient to allow it to be paid.
- 3.6 In 2015 the decision for approval of grant funding to the Trust sat with the Commissioners who did not approve their grant funding application. One of the key reasons the Commissioners gave for this decision was the Trust's failure to fulfil its audit requirements under the terms of the Contract (see BMCT Audit History). The Commissioner decision also required that any future funding applications for the Mela should only be applied for under the MSG process and funding should be applied for a 3 year period. They also made it clear that an MSG application for the Mela would be 'likely to fail to meet the requirements of the Main Stream Grants Programme'. Subsequent to this decision the Commissioners further instructed that no future booking for the use of Council facilities nor any grant application for future funding be approved by the Council for the Boishaki Mela until all issues arising from the Audit Report were satisfactorily resolved. The Commissioners considered at the time that the arbiters of that judgement were considered to be the Independent Review Panel which met in November 2015. This was reconfirmed to Senior Officers in February 2016. The MSG process for 2015-18 is closed and no funding application for the Mela has been made by the Trust.
- 3.7 *BMCT Audit History*
- 3.8 When the Council made a decision to return the Mela to the community and set up an independent panel it also stipulated a set of financial and legal conditions that must be met by the successful provider. As part of the contractual arrangement with the Trust, in respect of the funding from the Council, the Trust is required to maintain effective financial governance of its affairs and submit an income and expenditure statement as it relates to the running of the Mela. The governance arrangement and the income and expenditure statement is then subject to an annual audit.
- 3.9 Each year the council's audit team commission an Independent Audit to ensure these conditions have been implemented. Following the successful completion of the Audit each year the Trust is paid its remaining 20% grant funding.
- 3.10 In 2012 the Trust successfully completed the audit and successfully implemented 81% of its priority recommendations.

The Status of the 2013 audit are set out in the table below:

Status	Implemented	Partially Implemented	Not Implemented
Number	5	3	3
Of which Priority 1	0	2	0
Of which Priority 2	5	1	3
Percentage	46%	27%	27%

In July 2015 an audit of the 2014 Mela was carried out. This audit was reported on 30th October 2015. A summary of key findings are reported below.

Status	Implemented	Partially Implemented	Not Implemented
Number	11	2	4
Of which Priority 1	2		0
Of which Priority 2	9	2	4
Percentage	59%	18%	23%

3.11 LBTH has an agreed performance indicator for implementation of recommendations for its activities at follow up audit stage. This requires 100% of priority 1 and 95% of priority 2 recommendations to be implemented after six months. These targets have not been met in any of the three Follow Up audits carried out to date. The audit report findings are attached as Appendix A.

3.12 The Year Three Independent Review

3.13 The Year Three Review was triggered by completion of the 2014 Mela. However, The Independent Review Panel required the findings of the 2014 due diligence audit which was completed at the end of October 2015. The Review Panel met in November 2015. The external independent members of that Review Panel comprised

- Event Manager for Vision Redbridge Culture and Leisure
- Lecturer on the Creative industries
- Artistic Director of Nutkhut and Founder of the London Mela
- Creative Director, London Notting Hill Carnival

Officers attending comprised

- Service Head Culture, Learning and Leisure
- Head of Arts, Parks and Events
- Contracts Team Leader Legal Services
- Service Head Risk Management
- Environmental Health Officers x 2

The Chairman of the Trust represented the BMCT.

- 3.14 The Year Three review embraced all areas of performance including financial management, all aspects of event delivery, finances and procedures and direction of travel.
- 3.15 It was particularly relevant to the current preparations for the 2016 Mela as Commissioners have looked to it to determine if all issues arising from the Audit report were satisfactorily resolved and had sought to prevent any future booking for the use of Council facilities or any grant application for future funding until such a determination had been reached.
- 3.16 *Recommendations for the Independent Panel from the Year 3 Review:*
- 3.17 The Independent Review panel met in November 2015 to review the Boishakhi Mela Community Trust (Trust) and their management of the Mela contract after 3 years. This was some months after the close of the 2015-18 MSG process and had been delayed as a result of late conclusion of the 2014 due diligence audit resulting from late submission of supporting paperwork from the BCMT. The report of the Independent Review Panel is attached as Appendix B.
- 3.18 As part of this review the Independent Panel considered the outcomes of the 3 Audits for the previous years, the Trust's future Business Plan for the management of the remaining contract and other general matters related to the contractual agreement for the successful delivery of the Mela. The Independent Panel was asked to make recommendations to the council on the levels of satisfaction of the audits completed, compliance with the management of the contract, the robustness of the Business Plan moving forward and recommendations for the future management of the contract by the Trust.
- 3.19 Having considered the evidence and heard from a range of technical officers of the Council (see paragraph 3.13) and from the BMCT the Independent Review Panel drew the following conclusions
- Based on the reports and information provided the Panel considered the Mela to be an important event for the Borough and wanted to see it continue to take place and improve in quality of delivery and content.
 - The Panel agreed that the Trust is capable of delivering the Mela, and that its capacities in organising the event and in meeting the audit requirements of the Council whilst not completely met have improved year on year.
 - There was no suggestion that the BMCT had underperformed in such a way or to such a degree that it should not be commissioned to deliver the Mela for the next three years.
 - The Panel concluded that the only alternative to the Trust producing the Mela next year would be for LBTH to return to organising the event itself.

- Although the Trust is capable of delivering the Mela, the evidence suggests that it is questionable whether the Mela can continue – at least at its present scale – unless there is appropriate funding available from the council.

3.20 The Panel made 6 specific recommendations. These were:

- i) That the contract with BMCT to produce the Mela should be renewed for a further three years.
- ii) LBTH should urgently consider whether it is willing to provide the BMCT with core funding in addition to ‘in kind’ support as without it the Mela may not be able to survive in its present form.
- iii) That LBTH should consider whether the present contract is ‘fit for purpose’ or if a simpler form of agreement might be drawn up.
- iv) That the BCMT urgently address key concerns expressed by Auditors and the Council in respect of event management and their own governance.
- v) That LBTH consider other ways in which it might support the development of the BMCT.
- vi) That LBTH give consideration to reconvening the panel in 2016 to review progress over the year with all the parties and help consider next steps.

3.21 *The Council’s position in respect of the Panel Recommendations*

3.22 The Independent Review Panel have considered all of the matters arising from the annual audit process and addressed them directly via their recommendations. All issues arising from the Audit report were satisfactorily resolved by this process which broadly concluded that the BMCT had not underperformed in such a way or to such a degree that it should not deliver the Mela. These recommendations have been the subject of active engagement by both the BMCT and the Council and a way forward agreed between the parties comprising delivery of 2016 Mela by the BMCT without any grant funding other than ‘in kind’ limited to £25k and subsequent termination of the contract between the parties in 2016. The review process fulfilled the requirements of the commissioners and allows the council to again work with the BMCT by providing access to council facilities and support in kind for completion of the 2016 Mela. Some of the recommendations were predicated on the assumption that both parties might continue with the current contracted arrangements which will not be the case following completion of the 2016 event.

3.23 The BMCT secured the contract with the Council on the basis that they would step down reliance on Council funding and move to a self-sustaining business model. Whilst last year’s Mela and this year’s Mela will have been delivered without any grant funding it is clear from the BMCT and from the opinion of the Independent Review Panel that the Mela in this form would be

unlikely to survive without core funding being provided by the Council. This would almost certainly represent a material change to the terms upon which BMCT were contracted and is not something that the Council could consider within the legal constraints governing its procurement practices. In any event the BMCT was not in a position to apply for MSG with any real prospect of success for the reasons outlined above.

3.24 For these reasons it is not considered prudent or desirable by the Council to extend the existing arrangements by another three years as these arrangements are not fit for purpose.

3.25 When considering alternative commissioning and management models for the Mela the Council will seek to draw on any constructive feedback that BMCT might want to provide and the continued expertise of the Independent Review Panel as well as any relevant input specific to current DCLG directions that the Commissioners may wish to provide.

3.26 *Mela Location*

3.27 The event has reduced in scale since 2013 and now features one large main stage programme that features both local and International Artists. Other attractions include a fairground, presenting a wide range of smaller children's rides and larger rides. The event also hosts a large craft market, food traders and a range of sponsor tents. Previous events have included a parade element, although the parade over the last 3 years has been reducing in scale and impact.

3.28 There is an aspiration to bring the Mela back to its original location of Weavers Field. This is something that is supported by the police who have stated that managing an event within a fenced area is more manageable unlike Victoria Park, which also brings cross-border gang tensions with gangs in Hackney. Brick Lane is considered to be the heart of the South Asian community in Tower Hamlets and has a natural cultural tie to the event. The event can also help raise the profile and opportunities for the local restaurateurs in and around the Weavers Field area.

3.29 For the above reasons the Council will be requiring the 2016 Mela to be delivered in Weavers Fields.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

4.1 The current contract between the council and the Boishakhi Mela Community Trust (BMCT) commissions the BMCT to delivery the Boishakhi Mela festival, and ,makes clear that any funding available will be provided by the mainstream grants programme (MSG). Therefore the contract does not guarantee any funding from the Council.

- 4.2 In 2012 the BMCT received £150,000 grant and an additional payment of £30k. The 2013 and 2014 grants of £170,000 and £100,000 were approved by the Mainstream Grants Board. The Commissioners appointed by CLG assumed grant making powers after government direction, and no grant was awarded for 2015. 80% of each grant tranche is paid to the BMCT in advance, the balance being paid upon delivery of the event to the council's satisfaction.
- 4.3 The report notes the recommendations of the Independent Review Panel which considered the performance of the BMCT in delivering the Mela and found it to be sufficiently well run to recommend that it continue to deliver the Event.
- 4.4 However the Review raised the question whether BMCT would be able to continue delivering the Mela in its present scale without funding being made available from the Council.
- 4.5 In addition the review took into account an internal audit report commissioned by the Council which gave a limited assurance on the Mela and its operations. The Council has not received the requisite assurances that these issues have been addressed, set out in paragraph 3.11, and will continue to withhold the remaining 20% of the funding for the 2014 Mela.
- 4.6 For 2016 an arrangement is sought for the where no grant aid is provided but the Council will contractually provide support 'in kind' limited to £25k. If an agreement can be reached to deliver the 2016 Mela the BMCT have agreed to mutual termination of the contract.
- 4.7 There is no option for the council to consider core funding without materially changing the basis of the original commission which could put the council at risk of legal challenge from unsuccessful or alternative bidders. As the only other alternative would have been MSG funding and no application was made during the 2015-18 grant allocation process there is no prospect of providing additional monetary support to the BCMT under existing arrangements. The Council will need to begin a procurement process as early as possible in 2016 to commission an alternative delivery partner, once the termination of the contract has been confirmed.

5. LEGAL COMMENTS

- 5.1. The Council has the following powers:-
- 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.

pursuant to which it has entered into contractual arrangements for the provision of the Mela.

5.2. 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”. In pursuance of that duty the Council has sought a variation to the contract for 2016 and thereafter to re-procure for future events.

5.3. There are no other immediate legal implications arising from this report.

6. ONE TOWER HAMLETS CONSIDERATIONS

6.1 There are no specific one tower hamlets implications.

7. BEST VALUE (BV) IMPLICATIONS

7.1 There are no specific best value implications.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

8.1 There are no specific implications for a greener environment.

9. RISK MANAGEMENT IMPLICATIONS

9.1 There are no specific risk management implications.

11. CRIME AND DISORDER REDUCTION IMPLICATIONS

10.1 There are no specific crime and disorder reduction implications.

11. SAFEGUARDING IMPLICATIONS

11.1 There are no specific safeguarding implications

