


<b>Individual Mayoral Decision Proforma</b>  Decision Log No: 125	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Corporate Director Communities Localities and Culture	<b>Classification:</b> Unrestricted
<b>Tower Hamlets Mela</b>	

<b>Is this a Key Decision?</b>	Yes
<b>Decision Notice Publication Date:</b>	16 March 2016
<b>General Exception or Urgency Notice published?</b>	Yes
<b>Restrictions:</b>	NA
<b>Reason for seeking an Individual Mayoral Decision</b>	The Mayor in Executive has the authority to take an individual decision.

## EXECUTIVE SUMMARY

1. The Boishakhi Mela 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.
2. 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. The contract is currently about to deliver against year 4 and the Independent Panel for year 3 has been successfully completed.
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 and for the Mela to become self-financing. The BMCT have confirmed that they are able to manage the event for 2016 without any additional grant from the council but would require the agreed in-kind support.
4. There is local demand to bring the Mela back to its original location of Weavers Field. 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 local businesses in and around the Weavers Fields area.

## DECISION

The Mayor is recommended:

1. That agreement is sought with Boishakhi Mela Community Trust to enter into a variation agreement amending the original contract for the delivery of the Mela for 2016.
2. Termination of the contract with Boishakhi Mela Community Trust from 30<sup>th</sup> June 2016
3. Should the Trust not agree to the terms of variation of the contract the contract will be terminated with immediate effect and the Mela will be delivered in house by the Council
4. Approve the transfer of the Mela from Victoria Park back to Weaver's Field Park
5. Agree to review the arrangements for the future delivery of the Mela to achieve best value and stable sustainable delivery of the event.

## APPROVALS

1. **(If applicable) Corporate Director proposing the decision or his/her deputy**

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

Signed  Date 18/3/16

2. **Chief Finance Officer or his/her deputy**

I have been consulted on the content of the attached report which includes my comments.

Signed  Date 21/3/16

**3. Monitoring Officer or his/her deputy**

I have been consulted on the content of the attached report which includes my comments.

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 ... 21/03/16


**4. Chief Executive**

I have been consulted on the content of the attached report which includes my comments where necessary.


Signed .....  ..... Date ... 21/03/16

**5. Mayor**

I agree the decision proposed in the paragraph above for the reasons set out on page 1 & 2 in the attached report.

Signed .....  ..... Date ... 24/3/16



<p><b>Individual Mayoral Decision</b></p> <p>Note before: 24 March 2016</p>	 <p><b>TOWER HAMLETS</b></p>
<p><b>Report of:</b> Corporate Director of Communities, Localities and Culture</p>	<p><b>Classification:</b> Unrestricted</p>
<p><b>Boishakhi Mela 2016</b></p>	

<b>Lead Member</b>	Cllr Asma Begum
<b>Originating Officer(s)</b>	Service Head Culture Learning and Leisure
<b>Wards affected</b>	All wards
<b>Key Decision?</b>	Yes
<b>Community Plan Theme</b>	A Great Place to Live

### Executive Summary

The Boishakhi Mela 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 (Trust) 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. The 2016 Boishakhi Mela is scheduled to take place on the 22nd May 2016 in Weavers Fields Park and the Trust 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. This report sets out the options and the Key Decisions required for the delivery of the Mela for 2016.

### Decision

1. That agreement is sought with Boishakhi Mela Community Trust to enter into a variation agreement amending the original contract for the delivery of the Mela for 2016.
2. Termination of the contract with Boishakhi Mela Community Trust from 30<sup>th</sup> June 2016
3. Should the Trust not agree to the terms of variation of the contract the contract will be terminated with immediate effect and the Mela will be delivered in house by the Council

4. Approve the transfer of the Mela from Victoria Park back to Weaver's Field Park
5. Agree to review the arrangements for the future delivery of the Mela to achieve best value and stable sustainable delivery of the event.

## **1. REASONS FOR THE DECISIONS**

- 1.1. The Mela is scheduled to take place on the 22<sup>nd</sup> May 2016 and the Boishakhi Mela Community Trust have agreed to the continuation of the delivery of the Mela under the contractual arrangement agreed with the Council. The agreement also includes the transfer of the event from Victoria Park back to Weaver's Field.

## **2. ALTERNATIVE OPTIONS**

- 2.1. The Mela is the Council's largest annual festival and holds high importance for the resident Bengali Community, it brings visitors from far and wide and helps to put the borough on the cultural map. It brings with it many challenges, which are not uncommon in large community events i.e. Notting Hill Carnival, but the council has for many years been successful in either ensuring effective delivery by third parties or delivering the event itself.

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

- 2.2. 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 the mainstream Grant Process (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.

### ***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.

***Option 3 – No Mela for 2016***

- 2.4. 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.

***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.***

- 2.5. 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. In 2011 following a Cabinet decision the Council returned 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 panel. The panel is made up of external members from the council and the borough. The completion of the 2014 Mela fell into year three and has triggered the second Independent Panel review to take place. However, the review can only take place following the completion of the 2014 audit. The audit was completed at the end of October 2015 and the review panel met in November 2015.



- 3.2. 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.
- 3.3. 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.
- 3.4. In 2014 the Trust was approved a grant of £100,000 by the Mainstream Grants Board. Each year the Trust is forward funded the grant of up to 80%.
- 3.5. 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. The Commissioners' 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.

#### *Audit History*

- 3.6. 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.
- 3.7. 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.

3.8. In 2012 the Trust successfully completed the audit and successfully implemented 81% of its priority recommendations.

3.9. 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%

3.10. 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.

3.11. Recommendations for the Independent Panel from the year 3 review:

3.12. 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. As part of this review the 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.

3.13. 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. On this basis the panel stated that the Trust should 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, because 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.

### 3.14. Mela Location

3.15. 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.

3.16. 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 from 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.

### 3.17. In house Event Delivery vs. Community Delivery

3.18. Over the lifetime of the Mela it has been run both by the in-house council Arts and Events team and externally by community sector providers. There are advantages and disadvantages to either model of delivery. These are listed below:

<b>Council Delivery - Pros</b>	<b>BMCT or other community delivery - Pros</b>
The Council would have assurance that the event would be produced to the appropriate safety and operational standards. The Council has successfully run the event before and retains the in house expertise that allow for it to do so again. The event will cater for a broader and more current Asian and community audience, it is more likely to be attractive to 2 <sup>nd</sup> and 3 <sup>rd</sup> generation younger people.	Delivery by a community trust should work to further embed the event within the community it largely serves.

<p>There are varying opinions in the local community as to who should be organising the event. Being a council run event would appease some members of the community and there was significant positive feedback when the Council last ran the Mela.</p>	<p>Being independent from the Council presents opportunities to the organisation to potentially attract funding from trusts and foundations that the council would not be eligible to apply to. Though the Trust has not previously brought in any funds from external Trusts or foundations.</p>
<p>A council run event could enable a more varied programme which would help develop it as a more multicultural event. This is particularly important given the criticism by some members of the community that this is an event for a single community rather than all residents of the borough. The Mela is now 1 of only 2 key community events the council manages so it is imperative that it is seen to be for all residents of the borough.</p>	<p>Delivery by the community should present strong opportunities to reach community members, increasing ownership of the event by some minority groups.</p>
<p><b>Council Delivery – Cons</b></p>	<p><b>BMCT Delivery - Cons</b></p>
<p>The Council could be seen as unsupportive if it was to remove the event delivery from a community organisation.</p>	<p>Despite having delivered the Mela for several years the BMCT did not have in house the appropriate expertise in Event Management and it's unlikely that any other community group would. As a result they do not always seem to see the importance of appointing suitable and competent people / contractors to ensure safe delivery. Left to its own devices the Trust could seek to make savings which would have an adverse effect on the level of professional input. The council as landlord is required under H&amp;S to ensure due diligence is being applied by the organisation delivering the event to protect both the public and the Council. This requires substantial officer time to manage and reputational risk is transferred to the council.</p>
<p>If the Council took the event on then it would either have to identify a viable option for alternative delivery in the future or risk some level of reputational damage if it had to stop the event due to financial pressures in the future.</p>	<p>The BMCT has been delivering the Mela under an SLA and has consistently struggled to provide the necessary paperwork for a satisfactory audit of their accounts for this event.</p>

The event would require substantially more officer time to produce and manage the event in its entirety.

The Council could still need to provide a range of services such as the internal and external traffic management and waste management to the event as these areas are high risk that would have a large impact on local people and the road network if not managed appropriately.

#### **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 deliver the Boishakhi Mela festival. It also 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. 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.
- 4.4. 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, and therefore will continue to withhold the remaining 20% of the funding for the 2014 Mela.
- 4.5. For 2016 an arrangement is sought as no grant aid is provided, the Council will continue to contractually provide support 'in kind' limited to £25k. If an agreement can be reached with BMCT to deliver the 2016 Mela there is then the further decision required to the termination of the contract by mutual consent.
- 4.6. 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.

- 4.7. 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. It is therefore recommended that a review of the future delivery of the Mela is carried out to ensure that it is a stable and sustainable event that achieves best value. The extent to which sufficient resources can be identified to fund future events will need to be considered in the light of the impact on the Council's Medium Term Financial Plan.

## **5. LEGAL COMMENTS**

- 5.1 The Council entered into a nine year contract commencing on the 26 April 2012 with the Boishakhi Mela Trust (the Trust) for the provision of the Mela festival. The terms of this contract were subsequently amended in an Agreement dated 10 May 2013.
- 5.2 The terms of the amended agreement were such that the Council could terminate the agreement where recommended to do so by an independent panel review.
- 5.3 Ultimately, the latest independent panel review recommended a number of items but in particular:
- 5.3.1 That the contract was not fit for purpose
  - 5.3.2 That the contract needed substantial amendment
  - 5.3.3 That the provision of the Mela in its current form was not sustainable without financial input from the Council
- 5.4 The effect of the recommendations is that:
- 5.4.1 The Council cannot amend the terms and conditions to the extent required without breaching the applicable domestic and EU law and
  - 5.4.2 It is not within the power of the Council's Executive to provide financial support
- 5.5 Therefore, the Council's only option to effect the independent panel's recommendations is to terminate the contract and potentially seek to reprocure the contract on alternative terms or determine another appropriate route for delivery of the Mela.
- 5.6 The nature of the arrangement to provide a mela is a concession agreement. Under the current prevailing European Law in the event that the Council decided upon utilising a third party for the delivery of the mela the Council would be required to run a procurement exercise appropriate to a concession contract. This would require a reasonable level of advertising and running a competitive exercise that would take at least 9 months to complete.

- 5.7 The European Law is about to change in this area which would leave the Council facing even more stringent tendering rules with which it would have to adhere and would increase the length of time that the procurement would take, in the event that the advert was not placed prior to the change in the law.
- 5.8 However, the Trust has offered to the Council to provide the Mela with no financial input from the Council for this year only and the Council is seeking to reach agreement around this point. However, if the Council is unable to reach agreement then the Council's only legal option is to terminate the existing agreement immediately. However, there is scope to agree that the termination occurs following this year's Mela subject to reaching a suitable agreement.
- 5.9 The nature of the agreement for this year is an agreement which amends the original contract to reflect that:
- 5.9.1 The main contract will terminate following successful completion of this year's Mela
  - 5.9.2 The venue for the Mela will be Weaver's Field
  - 5.9.3 The Trust will enter into an agreement for the use of Weaver's Field in the manner of the Council's venue licensing agreement
  - 5.9.4 The Trust will provide the Council with the identities of all groups associated in the delivery of the Mela
  - 5.9.5 The Council will only be required to provide the in kind support (for example road closures and clean up assistance in line with previous Mela festivals)
  - 5.9.6 The delivery of the Mela will be the subject of a final independent panel review
  - 5.9.7 The Trust will rectify the items recommended for rectification in the Council's Audit report (presented to and verified by the independent panel) prior to the production of this year's Mela.
- 5.10 In the event that the Council cannot reach a satisfactory agreement with the Trust the Council will have no legal option other than to terminate the existing contract forthwith and pursue some other methodology for delivery of the Mela. However, given the legal requirements surrounding a retender and in particular the timescales relating to the relevant procurement the Mela may not be deliverable this year within an appropriate legal framework.
- 5.11 The Council has a duty under the Equality Act 2010 to have due regard for the effect any decisions it has on people affected by such a decision who also have a protected characteristic. The Council should take all appropriate steps to ensure that it has a proper understanding of the effects this decision has on such persons and have such effects within its contemplation when making this decision.



**6. ONE TOWER HAMLETS CONSIDERATIONS**

6.1 There are no specific One Tower Hamlets implications.

**7. BEST VALUE (BV) IMPLICATIONS**

7.1. The re-procurement process of a new delivery partner will need to take account of the Best Value duty requirements that the Council must comply with, 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."

**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 implications for a greener environment.

**10. 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

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**Linked Reports, Appendices and Background Documents**

**Linked Report**

- NONE

**Appendices**

- NONE.

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

- NONE.

**Officer contact details for documents:**

- N/A