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# REGENERATION

public good or private profit?



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## ABOUT THE AUTHOR

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## 'Doing' PPP

Commodities cannot themselves go to market and perform exchanges in their own right. We must, therefore, have recourse to their guardians, who are the possessors of commodities. Commodities are things, and therefore lack the power to resist man. If they are unwilling, he can use force; in other words, take possession of them...commodities must be realized as values before they are realized as use-values.<sup>60</sup>

Having taken a brief overview of regeneration from a citywide perspective, it is time to return to St. Michael's Estate and the detail of using a Public Private Partnership for the regeneration of the Estate. Once the broad agreements on critical issues such as housing tenure were reached in negotiations on the core content of the PPP, a new phase of the process effectively began. In a somewhat simplified sense, this can be broken down into two distinct components. Firstly, there was the development of a brief that would be given to those developers tendering for the project. In the language of PPP, the brief is known as the 'Request for Proposals' (RFP). The RFP would contain a set of expectations on the design and financing of the project to be met by interested bidders. The second broad element of regeneration to be worked on was the development of a new regeneration structure within which all of the parties to regeneration would come together.

I want to begin with the latter of these, the formal, structural arrangements between all of the relevant parties. The St. Michael's Estate Task Force had fulfilled this function in an *ad hoc* capacity for much of the early history of regeneration from

the time demolition was agreed in 1998 right up until 2004. In April 2005, the Task Force was officially disbanded and all members of the Task Force resigned as did the Chair. The new St. Michael's Estate Regeneration Board was formally constituted in 2005 and a new Chair agreed by all of the parties was appointed. Many organisations that had been formerly represented on the Task Force would also be represented on the new Board. Perhaps the critical difference between old and new structures was the fact that the new Board would be allocated resources, premises, staff and administrative support to work on the project full time. (Such resources as well as the City Council Project Team, would ultimately be funded through the PPP). In theory, the Board would function as a forum within which all of the parties to regeneration would agree a common regeneration agenda. It would be made up of local tenants, community groups and organisations working in and around the Estate, officials from state agencies including Dublin City Council and the Gardai, and elected City Councillors.

## TAKING THE CHAIR

The establishment of the Regeneration Board was in many ways an attempt to re-establish the regeneration process. Given the recent tumultuous history, it would undoubtedly be a challenge to develop a structure which could successfully mediate the relationships between all of the parties to the process, in particular relations between community and state. The role of Chair would be critical to successfully steering a course for the future St. Michael's Estate. At a first, exploratory meeting in April 2005, the new Chair, Finbarr Flood, expounded the following view on the role and purpose of such a Board:

We agree what the project is and whatever we arrive at we coordinate all the various skills and bodies to a common purpose. The Board will agree the framework for the bricks

and mortar and the social agenda. It is very positive, we need both but sometimes it is very difficult. One without the other is no good. My job is to drive and focus. You will have preferences for who you represent. When the Board is set up you will have a different role. It doesn't mean you give up your own role. The overall good of the project becomes the priority and it is not an easy role.

With this approach, the Regeneration Board becomes the pivotal funnel through which everything must pass and within which the core energy of regeneration resides. All of the respective parties are asked to put aside their differences and work together as a collective in the pursuit of a singular regeneration agenda. The Board attempts to develop a singular vision and a unilateral sense of purpose. Given the difficulties that had arisen in St. Michael's Estate the management of the various perspectives was going to be a critical task. In practical terms, all detailed work on regeneration was delegated to sub-groups or working-groups of the Board. The Board itself received progress reports from such sub-groups and the Chair placed these within the context of an overall regeneration programme. Modifications were made where necessary or as required. For the new Chair regeneration was, above all, a pragmatic task to be accomplished.

## DESIGNING A SCHEME FOR REMAINING RESIDENTS

Setting up new structures was paralleled by continuing work on the physical design of the new Estate. There were still 40 to 50 families left on St. Michael's Estate in desperate need of housing. Most of these had women as the heads of household, and many were single parents. It was usually these women who attended meetings and who were, for many years, the backbone of community involvement in the regeneration. Work had been ongoing to fast track the design of a housing scheme for these remaining tenants on a specific section of the Estate. A four acre site adjacent to the graveyard and the canal towards the back of

the site, which had been developed in the original 'Moving Ahead' plan, was reactivated and residents became actively involved in this process. Sketches were drawn up and a new architectural blueprint took shape quite quickly. Whoever was awarded the contract for the new Estate would do so on the condition that this section would be built first with the utmost immediacy. There was a strong sense that these last remaining residents had had it harder than most and that their housing needs should be treated with urgency. Because of this, the four acre site was designed to a high degree of detail. All of the house types, tenure, heights, materials, open space and play areas were clearly defined. Residents could see their new homes being developed in the plans and had acquired an intimate knowledge of this part of the scheme. Even so, residents were still uncertain as to whether they could sustain living on the Estate until new houses were built given the harshness of the conditions.

This design of the housing scheme for the remaining residents was crafted to a high level of detail because of the urgency of their housing needs. The rest of the site (10 acres) would be left to the imagination of architectural teams working for prospective bidders and would form the core content of the PPP competition. Ultimately there would be a holistic plan for the Estate comprising both sections which would cover an area of some fourteen acres. Bidders would be given a set of requirements in the RFP and they, in turn, would submit new master plans for the Estate. As well as outlining the physical and financial requirements of the PPP for St. Michael's Estate, the RFP also detailed the process by which proposals would be evaluated and measured.

## THE ASSESSMENT PROCESS FOR PUBLIC PRIVATE PARTNERSHIP

In accordance with the public procurement guidelines for PPP projects, a formal evaluation of the bids would take place ac-

ording to criteria laid down in the RFP. An 'Evaluation/Assessment Panel' would be set up specifically for this task and would include technical, financial and legal advisers to assess and evaluate bids for the appointment of the 'Preferred Bidder' for the project. ('Preferred Bidder' is the name given to the winning bid.) Residents and community organisations at the Regeneration Board had not encountered such a process before and had little knowledge as to how this would happen in practice. From the State's perspective, the make-up of this panel was unproblematic. It would be made up of 'various professional experts' from various departments of Dublin City Council, including architects, quantity surveyors and valuers. It would also include the Process Auditor from the Department of the Environment, representatives from the National Development Finance Agency (NDFA) and if needed, independent financial expertise would be utilised. However, the panel as proposed, left no space for community expertise and participation. Community representatives at the Board posed questions as to the exclusive nature of the panel. This ignited a dispute that was to run for considerable time. Initial reactions to this highlighted the sensitivity about access to such a space.

City Council officials argued that the community could influence the process locally and should trust the 'professional experts' with making the critical decision on a new masterplan for the Estate. They also maintained that being a participant on the Assessment Panel carried with it potential legal liability and risk to the individual. The intimation was that developers could potentially sue individuals if they were unhappy with the outcome of the panel's deliberations. And while state employees, by their very location, appeared to have a superhero-like protection against any impending lawsuit or legal action, community representatives, at this stage, could not be afforded the same cover. However, the community sector was determined in its belief that participation on the Assessment Panel would be critical to the future of the new Estate. This view was encapsulated in a statement to the Regeneration Board:

...we feel it is imperative that we be represented on the Assessment Panel of the procurement process for a developer for St. Michael's Estate. At its simplest our position is based on the belief that we should be active participants of the process at every level within which the developer is being chosen for the regeneration of St. Michael's Estate. If we were building a house we would want to choose the builder would we not? The Assessment Panel as it is currently set up gives undue weight to planners, architects, officials etc., and has no input or direction from the community sector. We feel that residents and community groups should be part of the assessment process in order to facilitate community input at this phase of the regeneration process (St. Michael's Estate Blocks' Committee Position Paper to the Regeneration Board, 7 July 2005).

The City Council eventually conceded to one person from the Regeneration Board being a participant on the panel. The council was also strongly of the view that this person should preferably have 'planning or technical expertise'. Residents and community groups had argued that two places on the panel should be given over to community participation. After a protracted period of time, a final resolution to this was achieved when the City Council reluctantly agreed to two community members of the Board going forward as members of the Assessment Panel.

The debate over participation on the Assessment Panel had gone on for over a year, but the community's persistence and determination achieved a positive result in the end. The length of time it had taken had shown just how difficult it was to alter a single element of the PPP structure. Perhaps the most critical of the issues raised was the community's right to be part of the decision of choosing a developer and a new masterplan for the Estate. The way the Assessment Panel had originally been constituted would have denied residents and local organisations the right to such a choice. Instead, the choice would have been made by others and delivered locally as a *fait accompli*. The agreement that there would be two places at the Assessment Panel for

community representatives from the Regeneration Board was a breaking of new ground. Two community representatives would now be present at the assessment of all of the bids for the new St. Michael's Estate.

## WRITING A JOB DESCRIPTION FOR PPP; A REQUEST FOR PROPOSALS

Because the regeneration of St. Michael's Estate was to be done through PPP the entire structuring of the project had different characteristics to a traditional tender. The first part of this process involved an 'Expressions of Interest' advertisement being placed in the *Irish Times* on 30 May 2005. This is also known as a 'Request for Qualifications' (RFQ). This marked the official entry of St. Michael's Estate into the public sphere as a PPP project. The RFQ was a first trawl for interested developers/consortia with the requisite skills, capacity, experience and money to undertake a project of this scale. There was a surge of interest in the development in these initial stages. Within the first week of the advertisement being published in the *Irish Times* a dozen parties had already paid the €200 fee for general information on the development. Initially, there were some twenty five expressions of interest in the development in St. Michael's Estate.

Over time, however, it became clear that there were only a handful of developers/consortia who possessed all of the necessary capacities to take on a project of this scale. Many of those who had sought information on the proposed project did not retain their interest. In the end a small group of four developers/consortia were short-listed for the project. Each of these was given a copy of the detailed 'Request for Proposals' (RFP). The core elements of the RFP were the agreements reached between the community and the City Council as part of the recent protracted negotiations around social, affordable and private housing, community and commercial facilities, public open space and agreed heights for the development. The RFP was effectively a

job specification for the regeneration of St. Michael's Estate and set out Dublin City Council's requirements in terms of technical, performance, contractual and procedural requirements for the procurement process of PPP. The RFP outlined the conditions under which Dublin City Council would enter into an arrangement whereby the private partner would design, build and finance the social and affordable housing and civic/community elements of the project in exchange for being granted the development rights to a specific amount of commercial development space and to a specific number of private residential accommodation units. In general, all of the material presented in the RFP can be brought together under the general headings of finance and design. There were two printed documents to the RFP, one set out the financial requirements for the bid, while the other set out what was required in design terms. The two categories were both given overall weighted values which would then be used as measurement indicators when the bids were being assessed. The weightings for the PPP in St. Michael's Estate were as follows

- Finance 50 per cent
- Design 45 per cent
- Timescale 5 per cent

On the financial side of the PPP, the RFP stipulated that, to be compliant, all bidders had to clearly indicate in their completed financial model the nature of any 'cash offer' (in addition to the provision of 165 social units and civic/community facilities) they were prepared to offer Dublin City Council in consideration for being awarded the project, or if they thought they could not do this, they should indicate the subsidy they required from the City Council to provide the 165 social units and community facilities and the other requirements outlined in the RFP and final contract.

Understandably, the design aspect of the project was extremely important to residents and community representatives. There were disagreements as to how much design detail should be

included in the RFP. The City Council argued that less was more and that developers should be given flexibility and latitude in their development of a master plan. By contrast at community-based meetings, there was intense debate and discussion on design issues. Residents and community groups worked closely with an experienced architect and in the end there was a strong belief that the more detail in the RFP the better it would be for current and future residents of the Estate. The instructions given out in the RFP would have clear effects not just on what could be built but also on the quality of the new housing and facilities. This came right down to the numbers of sockets in rooms, the materials used in windows, the energy efficiency ratings of the housing units etc. There was a fear that if all of these things weren't indicated clearly then developers would invariably take the cheapest option.

#### CHOOSING A NEW PLAN FOR ST. MICHAEL'S ESTATE

In the end, the design element of the RFP was developed to quite a high level of detail and it subsequently went out to the respective developers. They in turn responded with their proposed plans for the Estate. On 31 October 2006, the Assessment Panel met for the first time in a windowless room in the bowels of Dublin City Council's offices on Wood Quay. This was the first official engagement of the Panel and the meeting was heavily laden with formality. Seated around a large board table, a number of State officials were present from Dublin City Council, the National Development Finance Agency and the Department of Environment. All of the officials, both male and female, were formally dressed for the occasion. The two community representatives present on the day were a female tenant of St. Michael's Estate and myself. We were formally present as community members of the St. Michael's Estate Regeneration Board. It struck both of us forcibly that many of the officials present on the panel had never visited St. Michael's Estate nor were they ever likely to do so.

These initial viewings of the various bids were filled with an-

ticipation and expectation. Formally, each of the bids was checked against a compliance check list. Over the course of the morning City Council workers carried in each of the glass encased miniature models and the accompanying paraphernalia for each plan. Each scale model was accompanied by a set of evocatively designed hard cover folders which were contained in a holding case. Each presentation contained one folder with information specifically on finance and one specifically on design. Each plan had been branded with a phrase or slogan in an attempt to give them individualised identities. It was clear that substantial resources had been invested in the production of plans and supporting documentation.

The accountants and valuers present in the room immediately began to assess the financial detail and hardly passed a second glance at the information on design. After each of the plans had been assessed for general compliance with the demands of the RFP, two sub-groups of the panel were set up. One would tackle the financial aspects of each bid while the other would assess the merits of design. The City Council Project Manager for St. Michael's Estate would chair both sub-groups. The community representatives would also be present on both. The finance sub-group was, in effect, led by officials from the National Development Finance Agency (NDFFA), and by City Council officials who had responsibility for assessing key financial aspects of the plan. The design sub-group was led by a senior architect from the City Council who was supported by another architect and planner also from the City Council.

## READING ARCHITECTURE

Almost all of the design sub-group meetings took place in an elevated board room with an expansive view down upon the river Liffey. A ritual was quickly established for each plan whereby the miniature model and folders were placed on the board table while drawings and architectural boards were placed haphazardly around the walls of the room. For much of the early period of the

design sub-group individual members took time moving through each of these forms of presentation. Some would read while others slowly circled round the miniature model trying to make sense of this newly reconfigured landscape. Over the course of a number of days all of the plans were assessed according to the design and architecture criteria set out in the RFP. There were a number of key elements to this including the quality of street patterns, the use and design of open space, aesthetic treatment of buildings, connections to local heritage, energy and sustainability, and the range, type and quality of materials to be used in the construction. Even though the RFP had within it a set of explicit and non-negotiable core demands in that developers had to build a specific number of houses and facilities, clear differences in architectural vision gradually emerged. (All of the bids adhered rigidly to the non-negotiable demands on tenure, heights etc. in the RFP). Each of the plans presented a unique vision for the future estate. No two were alike and each provided a striking variation on the same theme. However, over the course of the assessment process it became clear that some were closer to the job specification than others. A hierarchy gradually emerged amongst all of the plans presented. Each plan was graded according to a marking system which awarded a score out of a possible 100 marks for design. According to the rules of the PPP competition if a plan did not achieve more than 70 marks on design, it was deemed to have failed in its overall bid and was thereby eliminated from the competition. Each of the plans was also given a mark on its proposed timetable (5 per cent of the overall marks) for completion of the project at this point.

## THE FINANCIAL STRUCTURING OF PPP

At the first meeting of the financial sub-group of the Assessment Panel it was explained that each of the plans would have to be assessed against a Public Sector Benchmarking (PSB) standard. This standard was the State's estimation as to what it would have cost for the State to do the regeneration project itself. Ac-

ording to an official on the Assessment Panel, the PSB standard was there to ‘guarantee that the State got value for money on its asset’. The four key elements to be assessed using the PSB standard were: revenue, costs, project surplus/deficit and developers’ “cash offer”. PSB estimated the potential revenue that could be generated from the sale of affordable and private housing and commercial facilities in the new development. It also projected the hard (housing/facilities etc.) and soft (landscaping etc.) costs that the development would incur. Costs were then deducted from revenue to see if one was left with a surplus or a deficit on the project. Developers’ projections for revenue, costs and surplus/ deficit were then contrasted directly with those of the PSB standard and judged accordingly. Officials on the Assessment Panel described PSB as a test of the robustness of each of the developers’ projections as to how real and achievable they were for the project.

As well as testing developers’ projections for revenue, costs and surplus/deficit against those of PSB there was also an assessment of each development consortia’s “cash offer”. The “cash offer” was a sum of money offered by bidders to the City Council after everything else had been taken into account. Once developers had taken into account the cost of providing the housing and facilities required by the State and the revenue they would gain on the sale of private housing they were left with the puzzle as to how much cash they would offer to the City Council. (While the “cash offer” was undoubtedly connected in developers’ projections to the surplus/deficit on the project, the figure itself appeared to be completely arbitrary). In conversations during the financial sub-group’s deliberations it was felt that developers had mastered the art of taking such risks.

At the St. Michael’s Estate Regeneration Board there had been very little discussion as to how the scoring system for finance would actually work. Beyond the fact that 50 per cent of the overall marks would go for finance, there had up until now been no outline as to how this would break down in detail. This only became fully clear at the final meeting of the finance sub-

group. Each of the bids would be awarded a score out of a possible 100 marks based on their respective “cash offers”.

**Marking scheme for Financial aspect**

|                                |     |
|--------------------------------|-----|
| • Best Financial Offer         | 100 |
| • A lesser bid by >0 and <5m   | 90  |
| • A lesser bid by >5 and <10m  | 80  |
| • A lesser bid by >10 and <15m | 70  |
| • A lesser bid by >15 and <20m | 60  |
| • Other bids                   | 50  |

(Financial score represents 50 per cent of the overall marks available.)

The best financial offer would therefore get a full 100 marks, i.e. 50 per cent of the overall marks available in the project. Beneath the top offer, a sliding scale operated whereby a plan with a “cash offer” within five million euros of the top offer would receive 90 marks, a plan within ten million of the top offer would receive 80 marks and so on down the scale. The minimum a plan could receive on finance was 50 marks or 25 per cent of the overall marks for the project. The bigger the financial distance between the “cash offers”, the bigger the gulf would be in terms of the number of marks given. Each of the bids was assessed using this scale. The “cash offer”, therefore, came to be critically important in the overall assessment of the bids. Even though financial robustness and the general financial compliance were important, no specific marks were given for these nor for any other financial component.

Using this system meant that there was a potential difference of 50 marks (25 per cent of the total) between the best and worst “cash offers”. The greatest possible distance between plans on design by contrast was 30 marks (15 per cent of the total). When the RFP was originally constructed it had seemed that there was a relatively minor (5 per cent) difference between the design and financial weightings. And yet, primarily due to the gradient scale, it became clear that there was in fact a significant inequality in the weightings whereby finance potentially had a much greater

determining influence on the overall outcome than did design. If the design component of the RFP sought to elicit the architectural skills and vision of architects and developers, this was contrasted with a financial component which appeared, as time went on, to be based crudely on money.

Over the course of the assessment process, one of the submitted bids was deemed to be non-compliant according to the criteria set down in the RFP. The remaining three developers' "cash offers" were subsequently marked according to the scoring system above. Just as it did in relation to design, although much more quickly and clearly defined here, a hierarchy emerged between the respective developers. The highest financial offer, as stipulated, was given 100 marks. Those in second and third places were marked by their distance from this in packets of five million euros. At a final meeting of the full assessment panel on 28 November 2006, both sets of scores were added together. Based on the design, finance and timetable criteria set out in the RFP a plan and a Preferred Bidder was chosen by the Assessment Panel for the regeneration of St. Michael's Estate. The developer chosen was McNamara/Castlethorn. In January 2007, all of the material relating to the bid was brought back to the St. Michael's Estate Regeneration Board for approval. The decision of the Assessment Panel was formally endorsed by the Regeneration Board in St. Michael's Estate early in 2007.

## THE PROJECT AGREEMENT

Once the bid had been awarded, a formal, legal contract between Dublin City Council and the Preferred Bidder needed to be drawn up and agreed upon. This phase was about contractualising the content of the winning bid into a legal format. In the language of PPP this contract is entitled the 'Project Agreement'. In the Project Agreement for St. Michael's Estate there were two parties to the contract, Dublin City Council and 'Trimera', a subsidiary company set up by McNamara/Castlethorn for the dura-

tion of the project. Between the bid being approved and the Project Agreement being formally signed a series of contract negotiations took place in relation to outstanding issues in the bid. Many of these were design issues that had been highlighted by residents, community groups and other members of the Board while examining the content of the plan after the Preferred Bidder had been chosen. There was also the critically significant issue of the level of financial resources which would be devoted to the Social Regeneration of St. Michael's Estate.

The community sector made a formal request at the Regeneration Board that it be a participant in the contract negotiations in the drawing up of the Project Agreement. The City Council rejected the request out of hand and defended its position with much the same logic that it had defended the Assessment Panel. In the end, the contract negotiations took place solely between the City Council and the Preferred Bidder. Rough drafts of the Project Agreement were available to members of the Regeneration Board, but only under very strict conditions. The Project Agreement could only be read within the City Council offices adjacent to St. Michael's Estate and could not be taken away for a thorough analysis. It proved extremely difficult therefore to get a clear understanding of the detail of the Project Agreement.

The two central issues that arose in relation to the Project Agreement revolved around outstanding design questions and the financial resourcing of social regeneration. One of the critical design issues to arise was the energy and sustainability ratings of the new homes on the Estate. Increasing the energy ratings of the new housing would reduce costs for residents and would function as a very direct anti-poverty measure. Over time, a long list of recommendations were put together to deal with all of these outstanding issues. All of these were eventually incorporated into the Project Agreement prior to its official signing. At the same time, an agreement was also reached on the funding of the Social Regeneration of the Estate.

## SUMMARY

The Department of the Environment had advocated PPP as the best of all possible regeneration models. From the State's perspective it was the fastest, most efficient and also offered the possibility that the State might make money out of the project. However, the propaganda revealed nothing as to the actual workings of PPP. The experience in St. Michael's Estate would suggest that there were many aspects of the PPP process that were problematic. These included the larger political issues which arise in relation to the housing tenure mix of newly regenerated estates. There were also internal issues within the PPP mechanism itself. These ranged from the different weightings given to finance and design in the RFP, to the fact that critical stages of the PPP process were inaccessible to the community. Had it not been for the community's perseverance and insistence on changing these, they would have remained so. There are many questions which have arisen over the course of this process. In the final chapter I try to deconstruct regeneration and, in doing so, make some sense of it all.