

9 State Pathology Building Project

- 9.1** The State Pathology Service provides independent expert advice on matters relating to forensic pathology and performs post-mortem examinations in those cases where there is a Garda investigation into a suspicious death. The Service operates as a stand-alone unit within the Department of Justice and Equality. Its expenditure is accounted for in the Department's annual appropriation account.
- 9.2** Since the 1990s, the State Pathology Service has operated from prefabricated accommodation in Marino Dublin on a site owned by Dublin City Council (the Council). The Dublin Coroner's Office — which operates with the support of the Council — has operated from similar facilities adjacent to the State Pathology Service. The Coroner's facilities include a mortuary and a morgue, also located in a prefabricated building.
- 9.3** The Department acknowledged that the State Pathology Service's accommodation lacked the facilities required for a modern pathology service. There were also concerns about security given the sensitivity of the work undertaken by the Service, and the dependence of certain prosecutions on the results of the Service's work. The location and physical condition of the Coroner's mortuary and morgue were also considered unsuitable and the mortuary had been the source of complaints from members of the public.
- 9.4** The Department and the Council decided in 2006 that the two services could be accommodated in one new building on the site in Marino and developed plans for a new 'medico-legal centre' project which included the construction of a new autopsy facility, body storage facility, a mortuary and other accommodation.
- 9.5** This report examines the expenditure charged to Vote 24 Justice and Equality related to the development of a new building, and the factors that gave rise to the situation where, despite a significant financial outlay, no new premises is available for the State Pathology Service and the Dublin Coroner's Office.

Administration and Management of the Project

- 9.6** The Department and the Council agreed that the Department would fund two thirds of the cost of the new centre, with the Council providing the site at its facility in Marino and funding the balance of one third of the construction costs. The Council took the lead role in project management, including procurement of the necessary professional services, contractor, etc.
- 9.7** The respective roles were agreed over a period, either through correspondence or meetings. However, there is no single document which sets out the respective roles. A Project Board was established and all decisions were taken by the Project Board. The Project Board consisted of members from the Department, the Council and the stakeholders.
- 9.8** A planning objection was raised by the Department of the Environment, Community and Local Government in March 2007 relating to the location of the project site adjacent to a national monument - the 18th century Casino. It took approximately a year to resolve this planning issue. Ministerial consent for the project to proceed was granted subject to detailed archaeological test excavation.

- 9.9** A tender competition was launched in August 2008. The tender invitation was based on the government departments and local authorities (GDLA) form of contract. Before the contract was awarded, objection was raised by the Department of Finance in October 2008 to the form of contract used. The Department of Finance had issued new forms of construction contracts in February 2007 under Circular 33/06 which were required to be used by all government departments and agencies, including local authorities. The new contract was designed to achieve better value for money on public works contracts. This necessitated revision of the original tender documentation to comply with the new form of contract and the re-tendering of the project.
- 9.10** Following the second public procurement competition, a contract between the Council and a builder was signed in June 2010. Work started on the site in July 2010 on what was expected to be a 13 month build. However, the building contractor went into receivership in November 2010, leaving a partially completed structure.
- 9.11** The receivership gave rise to a number of difficulties which necessitated detailed discussions by the Department and Council with the receiver, the Attorney General's Office, the bondsman and other professionals such as architects and engineers involved in the construction.
- 9.12** Following legal advice, a decision was taken to re-tender the contract to ensure completion of the project and to conform with public procurement rules. However, the Department informed the Council in 2012 that, due to insufficient funds being available and the expectation that funding would not become available in the foreseeable future, a new tendering competition should not go ahead. As a result, the project was indefinitely deferred.
- 9.13** According to the Department, other options to recommence the project were examined. The options included the completion of the build under a public private partnership (PPP) arrangement. However, after consultation with the National Development Finance Agency and the Council, the Department decided that this was not a viable option as it would be difficult to attract interest from the PPP market given the specialised and complex nature of the building and the need to include this project in a bundle with other less complex projects, so as to create a PPP of a marketable size.
- 9.14** The Department has stated that significant legal and procurement challenges were encountered during the project and it was advised that the option in the contract to allow the bondsman to appoint another contractor was not permissible under EU procurement law.
- 9.15** The Department, in conjunction with the Council, is now examining the feasibility of pursuing a significantly scaled down project using the former Whitehall Garda Station which is owned by OPW. (That site was in use as a Garda station at the time the original decision was taken to use the site in Marino). A decision on this project is to be taken when a detailed professional assessment and further costings are available.
- 9.16** A Project Team has been established with members from the Department, the Council and OPW to oversee the new project and to draft a revised business plan.

Costs Incurred

- 9.17** Up to the date that building work ceased in 2010, €3.61 million had been spent on the project.
- 9.18** Between November 2010 and early 2012, the stability of the partially-completed structure deteriorated which resulted in it becoming a risk to health and safety. Advice was received from a structural engineer that the structure should be demolished and this was arranged by the Council in 2013.
- 9.19** The expenditure incurred since 2010 was €550,000 which includes professional fees for the retendering exercise, ongoing security costs and demolition costs. The breakdown of the project costs up to July 2013 is given in Figure 9.1.

Figure 9.1 Project costs, 2006 to 2010

Expenditure category	€
Construction	1,061,878
Consultancy	1,887,131
Professional services	425,413
Council's professional staff costs	120,865
Site investigation	36,682
Miscellaneous costs	81,062
Total 2006 to 2010	3,613,031
Consultancy	123,364
Security	303,779
Demolition	52,062
Professional services	41,380
Plant hire	13,290
Miscellaneous costs	15,795
Total 2011 to date	549,670
Total cost of project	4,162,701

Source: Department of Justice and Equality

- 9.20** An amount of €862,500 was received from the bondsman in 2011 arising from the construction company's failure to complete the construction. This was used to fund costs arising since building work ceased. Therefore, the net cost of the project is €3.3 million.
- 9.21** The Department has paid a total of €2.78 million to the Council over the course of the project. In light of the demolition of the part-constructed building, the asset under development of €2.78 million was written off in the 2012 appropriation account for Vote 24 Justice and Equality. On the basis of the rate of apportionment agreed with the council, advance funding of around €578,000 is held on behalf of the Department to fund the new project.

- 9.22** Figure 9.2 indicates the sums provided in the Estimates for the Office of the Minister for Justice and Equality for the State Pathology building project each year from 2007 to 2013. Substantial provision was made each year. This level of funding would have allowed the Department to pay its share of the cost, had the project progressed in a more timely manner.

Figure 9.2 Capital funding provision and expenditure on the State Pathology building project, 2007 to 2013

	Capital estimate	Outturn
	€000	€000
2007	3,000	—
2008	8,000	1,272
2009	6,500	—
2010	4,500	1,507
2011	3,500	—
2012	2,450	—
2013	2,450	N/A

Source: Estimates for Public Service and the Appropriation Accounts

Conclusions and Recommendation

- 9.23** The project for the building of a new State Pathology Office and Dublin Coroner's facilities commenced in 2007. Because of delays relating to planning, procurement and the building contractor going into receivership, the project was ultimately abandoned. A suitable site is being considered for a scaled down 'medico-legal centre'.
- 9.24** The net project cost incurred after taking account of the bond payment was €3.3 million. The partially completed structure was demolished. The current State Pathology Office and Dublin Coroner's facilities remain in their existing accommodation.

Recommendation 9.1: The Department should review its project risk assessment procedures to ensure that adequate provision is made in project planning to secure planning permissions, and that the prevailing procurement and contracting rules are complied with.

Accounting Officer's Response: The Department agree that the recommendation represents best practice in relation to project management. In relation to planning permission, the only planning issue related to an objection raised by the Department of the Environment, Community and Local Government in accordance with its statutory remit in relation to national monuments. It is difficult, if not impossible, to predict what objections might arise in certain planning matters. Any procurement or contractual issues which came to light during this project were addressed in a timely and comprehensive manner by the Project Team.