

# Proposed principles for the Risk Share Agreement between the proposed occupiers of the Worthing Integrated Care Centre

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## Background

The Borough Council of Worthing (WBC) acting in partnership with the local health system is leading the development of a new health centre for the benefit of the population of the town and surrounding population. It will utilise an underdeveloped site, currently a surface car park, owned by WBC in the centre of the town. An integral part of the scheme is the development of an adjacent multi storey car park (MSCP), costs associated with the car park development are not part of this risk share agreement.

WBC has agreed to provide the capital funding to develop the health centre in Worthing's Civic Quarter, it will be close to the Town Hall and a range of other civic buildings. Acting as developer the council has formed a partnership with a range of NHS Healthcare providers (listed below) who will ultimately become tenants and occupiers of the building.

The costs of developing the scheme to completion will be covered by the council, if the project does not proceed to completion then the costs incurred (sunk costs) by WBC, as a local authority, will need to be recovered from the participating healthcare partners. Each of the partners have previously provided letters of support for the project and agreed to participate in a risk share agreement.

Costs will be incurred in developing the scheme design, completing the Outline and Full Business Cases (OBC & FBC) and preparing the planning application for submission. The liability for the costs will be realised if the project does not proceed to completion and development costs cannot be capitalised as part of the overall project cost. If the project proceeds to completion the costs will be included in the total cost of the development and recovered through the rent paid by the building occupiers over the length of a lease.

The basis of the risk share is that the liability of each party will be based on the percentage area of the building that each party plan to occupy (dedicated % of Gross Internal Area (GIA)) at Outline Business Case (OBC) stage. The share of liability for common or shared areas will be in the same proportion as the dedicated area.

The protection provided by this agreement will only fall away once the building occupiers have signed a legally binding agreement to occupy the building and committed to pay the agreed rent and service charge. The exact form of agreement will be agreed at a later stage whether it is a lease or agreement for lease.

The basis of the agreement is that although the costs (liability) for each party will increase as the project proceeds increasing confidence in the scheme will reduce the risk of the liability being realised.

The points below explain how the share of liability is calculated and the control mechanism to prevent the costs exceeding the agreed amounts of expenditure or the project proceeding beyond the point where it is not viable.

Given the expansion of the scheme from the earlier concept stage the budget for the project has been updated and the liability will be baselined against projected development costs presented at the Civic Quarter meeting on the 19<sup>th</sup> September 2019.

## Parties

The Borough Council of Worthing (WBC) – Owner, funder and developer  
Coastal West Sussex CCG (CWSCCG) – on behalf of Worthing Medical Group (WMG) who will be a principal occupier of the building – Primary care commissioner and responsible for approving rental reimbursement for the space occupied by WMG  
Sussex Partnerships NHS Foundation Trust (SPFT) – Mental Health provider  
Sussex Community NHS Foundation Trust (SCFT) – Community Services Provider

## Principles

The proposed principles governing this risk share are as follows:

1. The share of liability will be calculated by dividing the cost of project development at the point of termination by the percentage of space that each partner had planned to occupy in the building on an exclusive basis. In order to cover the full cost the same proportion will be applied to the shared or common areas of the building.

As an example a health partner who has requested 42% of the building area in order to deliver their services will assume 42% of the liability for the costs incurred in developing the scheme to the point it is aborted.

2. This agreement will in principal cover costs expended from the point that the OBC is approved to the point that the Full Business Case (FBC) is completed and approved. Approval of the FBC will include signing a lease or agreement for lease and that will effectively transfer the liability of this agreement to an agreement that supersedes it.
3. Liability under this arrangement will fall away once it is agreed that:
  - a. the project will proceed to construction and;
  - b. the health partners have entered into a further binding agreement to cover the liability.
4. The maximum liability will be limited by the agreed budget for developing the scheme to FBC and a successful planning application divided by the percentage of space to be occupied by each partner.
5. In the event that the project terminates at a given point by agreement of all the participants the costs will be shared in proportion to the percentage of the area each planned to occupy, this amount will include any unavoidable costs that will need to be expended to bring the project to a stop, WBC will make all reasonable efforts to minimise those costs.

6. WBC and the project team will seek to minimise the cost of the project as much as possible but the partners do need to recognise that given the current size of the scheme the costs incurred between OBC and FBC and Planning Application will increase significantly and the closer the decision comes to full business case approval the higher the costs incurred.
7. As previously indicated the costs will be capped against a pre-agreed development budget which will be shared with health partners, this will include:
  - a. a budget setting out the planned expenditure on the project, these will either be budget figures or where contracts have been entered into actual amounts
  - b. a cost profile that will show cost to date and the anticipated cost at each stage of developing the business case.
8. Actual costs incurred will be monitored on an ongoing basis (as they occur) and reported to health partners on a monthly basis.
9. A program of planned activity with key milestone dates will also be provided that will be aligned to the cost profile so that the partners understand where their liability will increase. Any significant change to the programme will be communicated, this will include any impact on budget or liability.
10. Once the budget has been agreed any variation in cost over 10% will be reported to the partners so that they can agree or otherwise to the additional liability.
11. If circumstances force one of the partners to unilaterally withdraw from the project their liability to that point will be realised if the project is subsequently aborted. It will only be mitigated if the project proceeds to completion even in their absence.
12. If a partner leaves the project for any of the reasons above but the project is still considered to be viable with an amended scheme then the liability will not increase past the point when the partner has decided to leave the project, it will still have an active liability until either the project proceeds, at which point the cost will be mitigated once the cost is capitalised or the project aborts and the partner will be required to pay its share of the liability up to the point it left the project.
13. If a partner's withdrawal makes the whole project unviable each partner (or underwriting organisation) will become liable for its pre-agreed share of the costs up to that point.
14. If all the health partners agree that the project is no longer viable then costs to that point will be shared in the proportions already agreed.
15. It is the responsibility of each partner to give a clear indication of any known issues that would lead them to withdraw from the project in addition to the affordability criteria that have already been discussed or provided.