

Part 2 - Articles of the Constitution

Article 1 - The Constitution

Powers of the Council

- **1.1** The Council will exercise all its powers and duties in accordance with the law and this Constitution.

The Constitution

- **1.2** This Constitution, and all its appendices, is the Constitution of West Berkshire District Council.

Purpose of the Constitution

- **1.3** The purpose of the Constitution is to put in place a structure for decision making to help the Council realise its corporate aims, objectives and priorities in an efficient and effective manner whilst meeting its legal duties.
- **1.4** In particular the Constitution seeks to help the Council meet its stated corporate priorities and principles.
- **1.5** The Constitution provides the means to focus the Council's decision making to ensure that it:
 - reflects closely the needs and aspirations of local communities, towns and villages;
 - encourages community involvement;
 - helps Councillors represent their constituents effectively;
 - enables decisions to be taken efficiently and effectively;
 - creates a powerful and effective means of holding decision-makers to public account;
 - ensures that no one will review or scrutinise a decision in which they were directly involved;
 - is clear who is accountable for making specific decisions;
 - promotes community leadership.

Interacting with the Local Community

- **1.6** The Council sees its Constitution as more than a series of procedures and rules:
 - it will play a major part in demonstrating how all parts of the Council intend to engage actively with the local community;
 - it will bring about more efficient and effective decision-making, which in turn will ensure that the Council is able to realise its vision: "Keeping West Berkshire a great place in which to live, learn, work and do business in".

Interpretation and Review of the Constitution

- **1.7** Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option which it believes most closely reflects the objectives and values stated above (see 'Decision-Making' above).
 - **1.8** The Council will monitor and evaluate the operation of the Constitution as set out in Article 12.
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Article 2 - Citizens and the Council

Citizens' Rights

- **2.1** Citizens have certain rights as defined below. Their rights to information and to participate are explained in more detail in O-Part 8 (Access by the Public to Information Rules of Procedure).

Voting and Petitions

- **2.2** Citizens on the electoral roll for the District have the right to vote and sign a petition to request a referendum for an elected mayor for the Council (subject to the Regulation on time limits).

Definition of Citizens' Rights

- **2.3** Citizens have the right to:
 - **2.3.1** attend Meetings of the Council, its Committees and Sub-Committees except where confidential or exempt information is likely to be disclosed, and the Meeting is therefore held in private (see O-Part 8 (Access by the Public to Information Rules of Procedure));
 - **2.3.2** attend Meetings of the Executive (and any Committee which it may appoint) except where confidential or exempt information is disclosed and the Meeting is therefore held in private;
 - **2.3.3** find out at least 28 days in advance of any Key Decision to be taken by the Executive;
 - **2.3.4** find out from its Work Programme what items the Scrutiny Commission and its Sub-Committees are to consider;
 - **2.3.5** see reports, background papers and any records of decisions made by the Council, its Committees and Sub-Committees, except where this information is deemed to be exempt;
 - **2.3.6** see reports, background papers and any records of decisions made by the Executive, except where this information is deemed to be exempt;
 - **2.3.7** inspect the Council's accounts and make their views known to the external auditor.

Participation

- **2.4** Citizens have the right to:
 - **2.4.1** submit petitions to the Council, Executive, and certain Bodies, in accordance with Parts 3, 3.2 and 3.3;

- **2.4.2** submit written questions to the Council, Executive, and certain Bodies, in accordance with Parts 3, 3.1 and 3.3;
- **2.4.3** actively contribute to the work of the Scrutiny Commission or its Sub-Committees by providing written or verbal evidence when so invited;
- **2.4.4** speak at Area and District Planning Committee Meetings in respect of planning applications in accordance with Part 6.8;
- **2.4.5** speak at Licensing Committee and Sub-Committee Meetings in respect of licensing and gambling applications in accordance with Parts 6.6 and 6.6.1.

Complaints

- **2.5** Citizens have the right to complain to:
 - **2.5.1** the Council itself under its Corporate Complaints Procedure;
 - **2.5.2** the Local Government and Social Care Ombudsman after following the Corporate Complaints Procedure;
 - **2.5.3** the Monitoring Officer about any alleged breach of the Members' Code of Conduct (and the Monitoring Officer may refer such to the Governance Committee).

Citizens' Responsibilities

- **2.6** Citizens are expected to comply with the Council's Customer Service Charter and treat Councillors and Officers with respect - they must not be violent, abusive or threatening to Councillors or officers and must not wilfully harm property owned by the Council, Councillors or officers.

Article 3 - District Councillors

Composition

- **3.1** The Council comprises 43 District Councillors, also referred to in this Constitution in relation to membership of specific Bodies as Members.
- **3.2** One or more Councillors will be elected by the voters of each Council Ward (and thus referred to as a "Ward Councillor" or "Ward Member") in accordance with a scheme drawn up by the Local Government Commission and approved by the Electoral Commission.

Eligibility

- **3.3** Individuals who are aged 18 years or above, and who on the relevant day are registered voters of the District, or those living or working there, or having an interest in land in the District, will be eligible to be elected to the office of Councillor.

Election and Terms of Councillors

- **3.4** The regular election of Councillors will normally be held on the first Thursday in May every four years. The next ordinary elections are due to take place in May 2023, and then in May 2027.

- **3.5** The terms of office of the Chairman of Council, Vice-Chairman of Council and the Leader of Council shall be as set out in Parts 4 (Council) and 5 (Executive).
- **3.6** The terms of office of all other Councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election.
- **3.7** All Councillors should:
 - collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
 - individually and collectively advise the Council and its Scrutiny Commission and Sub-Committees on issues of policy;
 - represent their communities and bring their views into the Council's decision-making processes, thereby acting as the advocate of and for their communities;
 - contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision-making;
 - deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances in a fair and impartial manner;
 - balance different interests identified within their Ward and represent their Ward as a whole;
 - be involved in decision-making;
 - be available to represent the Council on other bodies;
 - maintain the highest standards of conduct and ethics.

Rights and Duties

- **3.8** All Councillors will:
 - **3.8.1** have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law; (but documents dealing with individuals or other confidential matters may not be available);
 - **3.8.2** not make public, information which is confidential or exempt without the consent of the Council or divulge information given in confidence by any person or body to anyone other than a Councillor or Officer entitled to know it
- **3.9** For the purpose of 3.7, the terms "confidential" and "exempt" information are defined in O Part 8 (Access by the Public to Information Rules of Procedure).

Conduct

- **3.10** Councillors will at all times observe the Code of Conduct and the Protocol on Member/Officer Relations (see O-Part 13).
- **3.11** Co-opted Members of Committees will be guided by the principles in the Code of Conduct.

Allowances

- **3.12** Councillors will be entitled to receive allowances in accordance with O-Part 14 (Members' Allowances Scheme).

Confidentiality - Non-Disclosure of Reports

- **3.13** Reports to Bodies and Sub-Bodies which are "not for publication", in accordance with the statutory provisions on the grounds that they contain confidential or exempt information, shall be treated as confidential and shall not be disclosed by Councillors or officers of the Council unless the Body in question decides otherwise.
- **3.14** After the meeting of the Body or Sub-Body the information shall continue to be treated as confidential except in so far as it ceases to be confidential by virtue of the statutory provisions or its inclusion in the Minutes of the meeting which are made available for public inspection.

Constitution to be given to Members

- **3.15** As soon as possible following the declaration of acceptance of office, each Member shall be given access to a digital copy of the Constitution.
 - **3.16** Amendments to the Constitution shall be made available to each Member in a digital format as soon as possible after their approval.
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Article 4 - Decision-Making

Responsibility for Decision-Making

- **4.1** The Council will issue and keep up to date a record of what part of the Council or individual has responsibility for particular types of decision or decisions relating to particular areas or functions.
- **4.2** This record is set out in O-Part 3 (Scheme of Delegation).

Principles of Decision-Making

- **4.3** Any decisions taken must be in accordance with the terms of this Constitution.
- **4.4** Under the Constitution, decisions will be taken by the full Council, the Executive (both collectively and by individual Members of the Executive), Bodies, Sub-Bodies and officers.
- **4.5** Whichever body or individual is responsible for taking a decision, the decision should be taken, as far as possible, in accordance with the following principles:
 - **4.5.1** there should be a presumption in favour of decision-making being open and transparent, with members of the public being afforded effective access to relevant information and the processes by which decisions are taken;
 - **4.5.2** decisions will be in an open and transparent manner and in accordance with the legislative framework, as detailed at O-Part 8 of the Constitution.

- **4.5.3** appropriate consultation should take place with those likely to be affected by a decision;
 - **4.5.4** so far as practicable, decision-taking should be planned in advance and the public given due notification of forthcoming significant decisions;
 - **4.5.5** decisions must be taken with regard to all relevant considerations and ignoring all irrelevant matters;
 - **4.5.6** decisions should be taken on the basis of the Council's corporate priorities and principles and have regard to any approved policies or procedures of the Council;
 - **4.5.7** appropriate professional advice from suitably qualified officers should be obtained and considered;
 - **4.5.8** decisions must be taken with regard to proportionality - the action must be proportionate to the desired outcome;
 - **4.5.9** decisions must be taken with regard to any relevant statutory requirements and with respect for human rights;
 - **4.5.10** any decisions taken must be formally recorded in accordance with the requirements of this Constitution;
 - **4.5.11** where the decision is taken by the Executive, or a Member of the Executive, the formal record should state what alternative options were considered and the reason for the decision that was taken.
- **4.6** In some cases (eg where urgent action is necessary, or confidential matters are under discussion) it may not be practicable to fully comply with all of these principles, but decision-makers should satisfy themselves that they have been complied with so far as reasonably practicable in the circumstances.
 - **4.7** Decision-makers may be held to account for any failure to comply with these principles.

Full Council Decisions

- **4.8** Certain decisions are reserved to Council in accordance with the Budget and Policy Framework, detailed in Part 7. Further functions are reserved by law to Council, and details of these are set out in the Scheme of Delegation in Part 3 of the Constitution.

Executive Decisions

- **4.9** Any decision that is not a Council decision is reserved by law to the Executive.

Decision-making

- **4.10** Subject to 4.16, when considering any matter:
 - **4.10.1** the Council will follow Part 3 (Meeting Procedure Rules) and Part 4 (Council);
 - **4.10.2** the Executive will follow Part 3 (Meeting Procedure Rules) and Part 5 (Executive);

- **4.10.3** an individual Executive Member will follow the Part 4 (Executive) and the Individual Decision Protocol (O-Part 13, Appendix B);
- **4.10.4** the Scrutiny Commission and its associated Sub Bodies will follow Part 3 (Meeting Procedure Rules), Part 5 (Executive) and Part 6.9 (Scrutiny Commission);
- **4.10.5** other Council Bodies and Sub-Bodies will follow Part 3 (Meeting Procedure Rules), Part 6 (Council Bodies) and the relevant Appendix to Part 6;

Article 5 - The Full Council

Part 3 (Meeting Procedure Rules) and Part 4 (Council) also refer.

Role and Function of the Chairman

- **5.1** The Chairman and Vice-Chairman will be elected by the Council on an annual basis.
- **5.2** The Chairman is the civic head of West Berkshire and will represent the Council at official engagements arranged by the Council or to which the Council is invited.
- **5.3** The Chairman (or in their absence, the Vice-Chairman) has precedence within the District but not prejudicially as to affect the monarch's Royal Prerogative (the Chairman therefore takes precedence over the Town Mayors of Newbury, Thatcham and Hungerford).
- **5.4** In addition, the Chairman also has the following responsibilities:
 - to uphold and promote the purposes of the Constitution, and to interpret the Constitution where necessary;
 - to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the interests of the community and the rights of Councillors;
 - to ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which Members who are not on the Executive are able to hold the Executive to account;
 - to promote public involvement in the Council's activities;
 - to act in a neutral manner on matters that affect the Council;
 - to attend such civic and ceremonial functions as the Council and the Chairman determines appropriate;
 - to ensure that good working relations are maintained between Councillors and officers.

Article 6 - The Executive

- **6.1** Part 3 (Meeting Procedure Rules) and Part 5 (Executive) also refer.

Executive Portfolios

- **6.2** The Executive Portfolios are determined by the Leader and are currently as follows:
 - Leader, Strategy and Communications
 - Deputy Leader, Planning and Housing
 - Adult Social Care and Public Health
 - Children and Family Services
 - Culture, Leisure, Sport, and Countryside
 - Environment and Highways
 - Transformation and Corporate Programme
 - Public Safety and Capital Projects (Built Environment)
 - Community Engagement, Economic Development and Regeneration and Devolution and Local Government Reorganisation
 - Finance and Resources
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Article 7 - Overview and Scrutiny

- **7.1** Part 3 (Meeting Procedure Rules) and Part 6.9 (Scrutiny commission) also refers.
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Article 8 - Regulatory and Other Committees

- **8.1** Part 3 (Meeting Procedure Rules) and Part 6.2 (Governance Committee), Part 6.6 (Licensing Committee), Part 6.7 (Personnel Committee), and Part 6.8 (Planning Committees) also refer.
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Article 9 - Joint Arrangements

Joint Arrangements

- **9.1** The Council and Executive may enter into arrangements with a person or body to co-operate with, or facilitate or co-ordinate the activities of, such person or body, and may exercise on behalf of that person or body any functions of that person or body. If Council or Executive enter into joint arrangements with a third party, the following rules will apply:
 - **9.1.1** the Council may establish joint arrangements with one or more local authorities to exercise functions in any of the participating authorities, or advise the Council;
 - **9.1.2** the Executive may establish joint arrangements with one or more local authorities to exercise functions which are Executive functions.
- **9.2** Joint arrangements may involve the appointment of Joint Committees with these other local authorities.

Delegation to and from Other Local Authorities

- **9.3** The following conditions will be put in place in respect of delegation to and from other local authorities:
 - **9.3.1** The Council may delegate non-Executive functions to another local authority or, in certain circumstances, the Executive of another local authority.
 - **9.3.2** The Executive may delegate Executive functions to another local authority or the Executive of another local authority in certain circumstances.
 - **9.4** The decision whether or not to accept such a delegation from another local authority shall be reserved to the Council or Executive as appropriate.
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Article 10 - Officers - The Constitution will be updated as necessary to record details of any joint arrangements.

- **10.1** Part 12 (Management Structure) also refers.

General

- **10.2** The Council may engage such staff (referred to as 'Officers') as it considers necessary to carry out its functions.

Conduct

- **10.3** Officers will comply with the Officers' Code of Conduct and the Protocol on Officer/Member Relations set out in Part 13 (Codes and Protocols) of this Constitution.

Employment of Officers

- **10.4** The recruitment, selection and dismissal of Officers will comply with the Personnel Rules of Procedure set out in Part 6.7 of this Constitution.
- **10.5** By law the Council is required to designate officers to the positions of Head of Paid Service, Monitoring Officer and Chief Financial Officer. Those designations are currently as follows:-
 - Head of Paid Service - Chief Executive
 - Monitoring Officer - Service Director, Strategy & Governance
 - Chief Finance Officer - Executive Director Resources
- **10.6** The Council will provide the Monitoring Officer and Chief Finance Officer with such Officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.
- **10.7** The Head of Paid Service will determine and publicise a description of the overall structure of the Council, showing the management structure and deployment of Officers. This is outlined in detail in Part 15 of this Constitution.

Functions of the Head of Paid Service

Discharge of Functions by the Council

- **10.8** The Head of Paid Service will report to full Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grade

of Officers required for the discharge of functions and the organisation of Officers.

Restrictions on Functions

- **10.9** The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer if a qualified accountant.

Functions of the Monitoring Officer

Maintaining the Constitution

- **10.10** The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by Members, staff and the public.

Ensuring Lawfulness and Fairness of Decision-Making

- **10.11** After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the full Council, or to the Executive in relation to an Executive function, if they consider that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

Supporting the Governance and Ethics Committee

- **10.12** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Governance and Ethics Committee.

Conducting Investigations

- **10.13** The Monitoring Officer will conduct investigations or appoint an investigator into matters referred by the Governance and Ethics Committee and make reports or recommendations in respect of them to the Governance and Ethics Committee or its relevant Sub-Committee.

Executive Decisions within the Budget and Policy Framework

- **10.14** The Monitoring Officer will advise whether decisions of the Executive are in accordance with the Budget and Policy Framework.

Providing Advice

- **10.15** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and Policy Framework issues to all Councillors.

Restrictions on Posts

- **10.16** The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

Functions of the Chief Finance Officer

Ensuring Lawfulness and Financial Prudence of Decision-Making

- **10.17** After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the full Council, or to the Executive in

relation to an Executive function, and the Council's external auditor, if they consider that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency, or if the Council is about to enter an item of account unlawfully.

Administration of Financial Affairs

- **10.18** The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.

Contributing to Corporate Management

- **10.19** The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.

Providing Advice

- **10.20** The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and Policy Framework issues to all Councillors and will support and advise Councillors and Officers in their respective roles.

Giving Financial Information

- **10.21** The Chief Finance Officer will provide financial information to the media, Members of the public and the community.

Article 11 - Finance, Contracts and Legal Matters

- **11.1** Parts 9 (Financial Rules) and 8 (Contract Rules) also refer.
- **11.2** The management of the Council's financial affairs will be conducted in accordance with the Financial Rules set out in Part 9 of this Constitution.
- **11.3** Every contract made by the Council will comply with the Contract Rules of Procedure set out in Part 8 of this Constitution.

Legal Proceedings

- **11.4** The Monitoring Officer is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Monitoring Officer considers that such action is necessary to protect the Council's interests.

Authentication of Documents

- **11.5** Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Monitoring Officer or other person authorised by them, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.
- **11.6** All contracts entered into by the Council must be in writing in a form approved by the Monitoring Officer or their delegated Officer. Standard Forms of Contract must be used wherever possible.
- **11.7** The Council's seal (including the electronic seal) must be witnessed by the Monitoring Officer or any nominated representative on any documents to which

the Council is a party and the seal affixed in accordance with Article 11.8 (Common Seal of the Council).

Common Seal of the Council

11.8 The Common Seal of the Council will be kept in a safe place in the custody of the Monitoring Officer. A decision of Council, Executive, or any decision under delegated powers, will be sufficient authority for sealing a document necessary to give effect to the decision. The Common Seal, including an electronic seal) will be affixed to those documents which in the opinion of the Monitoring Officer should be sealed. The affixing of the Common Seal will be attested or witnessed by the Monitoring Officer or some other person authorised by them.

Article 12 - Review and Revision of the Constitution

Duty to Monitor and Review the Constitution

- **12.1** The Council, via the Finance and Governance Group, will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

Protocol for Monitoring and Review of Constitution by Monitoring Officer

- **12.2** A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended in order better to achieve the purposes set out in Article 1. In undertaking this task the Monitoring Officer may:
 - **12.2.1** have regard to changes in legislation;
 - **12.2.2** observe meetings of different parts of the Member and Officer structure;
 - **12.2.3** undertake an audit trail of a sample of decisions;
 - **12.2.4** record and analyse issues raised with them by Councillors, Officers, the public and other relevant stakeholders; and
 - **12.2.5** compare practices in this Authority with those in other comparable authorities, or national examples of best practice.

Changes to the Constitution

- **12.3** Changes to the Constitution will only be approved by the full Council with the exception of Part 12 (Management Structure) which will be updated by the Head of Paid Service in accordance with agreed changes to the Council's Management Structure.
 - **12.4** The Monitoring Officer may make minor amendments to the Constitution in order to ensure that legislative provisions are current and any typographical or other errors are corrected.
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Article 13 - Suspension, Interpretation and Publication of the Constitution

Suspension of the Constitution

- **13.1** The Articles of this Constitution may not be suspended.
- **13.2** The Rules specified in Parts 3, 4, 5, and 6 of this Constitution may be suspended in the following circumstances:
 - **13.2.1** Where specific provision for suspensions are included within the Rules. In such a case, the Procedure outlined in that provision must be followed.
 - **13.2.2** By decision of the Council, provided that notice has been given in the form of a formal Notice or Notices or in a report within the agenda papers for the meeting; or
 - **13.2.3** By decision of the Council, with at least half the total number of Councillors present.
- **13.3** The extent and duration of any suspension of Rules must be proportionate to the result to be achieved, and must take account of the purposes of the Constitution set out in Article 1.

Interpretation of the Constitution during Council Meetings

- **13.4** The ruling of the Chairman of Council as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution contained in Article 1.

Publication of the Constitution

- **13.5** The Monitoring Officer will ensure that the Constitution is published and available for inspection on the Council's website.