

Memorandum of Understanding between English Heritage and the Highways Agency



A1 Tempsford Bridge, River Great Ouse, Bedfordshire, Scheduled Monument and Trunk Road

May 2011 revision

ENGLISH HERITAGE AND THE HIGHWAYS AGENCY MEMORANDUM OF
UNDERSTANDING

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1 Introduction

- 1.1 The Parties to this Memorandum are solely the Highways Agency (HA), which operates and manages the national core road network in England, and English Heritage (EH), the Government's advisor on cultural heritage matters and a statutory consultee of the HA. For the purposes of this MoU cultural heritage has the meaning defined in the HA's Design Manual for Roads and Bridges volume 11:

'...a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. It includes all aspects of the environment resulting from the interaction between people and places through time.' (CE Convention Faro 2005)

Its use here is synonymous with the terms historic environment.

- 1.2 The Parties have a long-standing relationship that acknowledges their shared interest in the cultural heritage issues surrounding the trunk road network. This was first formalised in a Memorandum of Agreement signed in 1993 and the first version of this MoU was signed in 2006. Both agencies acknowledge the need to develop their partnership to maximise the benefits of continued consultation and understanding.

2 Background

- 2.1 The Highways Agency was established in 1993 to carry out the Secretary of State's responsibilities as highways authority for the national strategic road network. English Heritage is the Government's advisor on all aspects of the historic environment and the Highways Agency's statutory consultee on cultural heritage matters. Since the 2006 version of this MoU, national policies relating to the historic environment have developed, as set out in the Government's Statement on the Historic Environment for England (2010). Changes to the planning system include new procedures for nationally significant infrastructure projects and new planning policy guidance for the historic environment, embodying an holistic and proactive approach to the conservation of heritage assets. The HA has also developed in its approach both to the management of its network and also to its cultural heritage responsibilities, reflected in major revisions to its guidance and advice.

- 2.2 The government objectives for planning for the historic environment are three fold:

- to deliver sustainable development -- heritage assets are a non-renewable resource and their conservation has wider social, cultural and economic benefits
- to conserve heritage assets in a manner appropriate to their significance
- to contribute to our knowledge and understanding of the past – by ensuring that opportunities are taken to capture evidence from the historic environment and to make it publicly available, particularly where a heritage asset is to be lost.

- 2.3 Our perception of what constitutes the historic environment continues to evolve and is now seen to encompass relatively recent structures and historic landscapes as well as archaeological assets and historic buildings as traditionally understood. Consequently the range of approaches to investigating cultural heritage resources has also continued to

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develop. The effect of these changes, both on the management of the historic environment and on highways authority responsibilities, has been to require some minor revisions to the 2006 MoU. The important relationship between EH as the Government's advisor and HA's statutory consultee on cultural heritage matters, and the HA as the manager of the national strategic road network remains unchanged.

3 Scope

- 3.1 This document seeks to provide a framework for the Parties to continue to work in close partnership. The MoU reflects the understanding between the Parties about the services to be provided by, and the responsibilities of, both in respect of works related to cultural heritage affected by HA road schemes and studies.
- 3.2 Nothing within this agreement shall affect the Parties' statutory functions, nor affect the statutory duties or responsibilities of either party.
- 3.3 This MoU does not commit either party to the allocation of additional funds or other resources to support its delivery, although both parties will use their reasonable endeavours to deliver against the areas covered by the terms of this MoU, subject to their other duties and the financial frameworks within which they operate.
- 3.4 Detailed HA guidance on cultural heritage design and assessment is given in the HA's Design Manual for Roads and Bridges (DMRB), principally in volumes 10 and 11 respectively. The HA will normally follow the guidance in DMRB unless varied in agreement with statutory consultees. Nothing in this MoU shall modify the Parties' normal practice as guided by DMRB vols 10 and 11. The Parties shall have regard, in particular, to the Government's guidance notes on planning policy, and all other relevant Government guidance and legislation on planning and on cultural heritage, including relevant international instruments. There will be no payment due from the HA for any of the EH services referred to in this MoU.
- 3.5 This MoU is not legally binding as between parties. The HA reserves the right to consider EH's advice in the light of other factors, including overall value for money. EH shall seek solutions that offer the best value for money, but without compromising the principles of conservation that it champions. All correspondence regarding this MoU and the services and responsibilities of the parties will be routed through the MoU Co-ordinators whose names appear in Annex 5 – Contacts. This Annex will be updated as required to reflect relevant changes of personnel.

4 Joint Review

- 4.1 The MoU will be reviewed when necessary to reflect the development of services in response to the needs, policies and developments of both parties.

5 Aims of the Memorandum

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- 5.1 The involvement of EH with the HA will normally relate to issues of strategy, policy, standards or arbitration, where EH's role as the Government's advisor on cultural heritage matters is engaged. These issues may arise where:
- the HA requires strategic advice in relation to the development of cultural heritage policies and research.
 - the HA requires cultural heritage advice and input into the development and preparation of strategy and policy documents and advice manuals.
 - the HA require cultural heritage advice in relation to appraisal, assessment and design of road studies, road schemes and road management plans.
- EH works in partnership with local authorities, the curators of their area's historic environment. The extent of EH's involvement will be according to the Department of Communities and Local Government thresholds identified in Circular 01/01: Arrangements for Handling heritage Applications – Notification and Directions by the Secretary of State.
- 5.2 EH will participate with the HA in roads related environmental assessment and design research through Workshop and Steering Group involvement. Opportunities for partnership in research projects of mutual interest will be explored.
- 5.3 EH will advise the HA on appropriate standards and methods for assessing the impact of road schemes on the cultural heritage resource, and standards for procuring and implementing work such as mitigation, whilst achieving value for money at all times. EH will participate in the development of HA policy and strategy related to cultural heritage. EH will consult the HA on the development of EH strategy, advice and guidance related to road transport, through circulating draft documents and sharing training opportunities.
- 5.4 EH will contribute to, and provide comment on relevant documents and manuals as appropriate. The normal agreed liaison procedures, standards and timing of EH's input are set out in the HA's Design Manual for Roads and Bridges (DMRB) vols 10 and 11.
- 5.5 EH may be asked to mediate where, in relation to HA activities affecting cultural heritage resources, differences are raised about the correct assessment of the significance of heritage assets, or about the appropriateness of the measures proposed to locate, assess or mitigate impact on them. These differences may be between the HA and its consultants or contractors, between the HA's consultants and contractors, or involving the HA and other curators (other than EH), or any of the above parties if involved in HA activities. If resolution if not achieved at regional officer level then national officers may be involved.
- 5.6 Matters of difference between the HA or its agents and EH should first be discussed between the relevant HA Project Sponsors with their consultants and advisors, and the relevant EH regional officers. If no resolution is achieved at this level then national officers of the organisations should be involved, and ultimately if the problem persists then the relevant Secretaries of State will need to resolve it.

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- 5.7 The HA will endeavour to ensure that its works comply with Government cultural heritage strategies, policies and guidance, and best practice will be utilised when undertaking works involving heritage assets.
- 5.8 The HA will inform EH of its long term plans and immediate projects regularly at its National Environmental Forum. The HA will be responsible for convening these national meetings.
- 5.9 The HA will consult EH regarding HA policies for cultural heritage, and ensure that draft documents are circulated for comment. In particular the HA will liaise with representatives of EH throughout the development of the cultural heritage aspects of DMRB and other cultural heritage guidance issued by the HA.
- 5.10 The HA will ensure that sufficient time is given for consultation, normally 21 days, and that appropriate information is provided in order for EH to make a reasonable response to requests for advice.
- 5.11 The HA will consult EH regarding the cultural heritage aspects of its research programme and will explore with EH the possibilities of partnering.
- 5.12 The full range of HA projects will be subject to environmental scrutiny, and where heritage assets are involved the HA will ensure that an appropriate cultural heritage response is mounted. HA Project Sponsors may consult EH regarding scheme development at relevant stages of the procurement process, with particular regard to: pre-application discussions, road-based proposals arising from multi-modal or similar studies, treasury appraisals, contract requirements and contractor selection, screening and scoping, environmental assessment reports, key stages in the development of the scheme design, scheme-based liaison arrangements, and at other points when EH advice may be useful or necessary.
- 5.13 Cultural heritage aspects of HA's land acquisition, management and disposal may also be referred to EH for advice.
- 5.14 The HA and its agents will maintain an inventory of HA owned heritage assets, assess their condition and prepare and implement Cultural Heritage Asset Management Plans. The HA will identify any of its heritage assets at risk and consult with EH regarding remedial procedures. The inventory will also identify heritage assets adjacent to the HA network that may be affected by its activities.
- 5.15 The HA will follow the advice in the DMRB unless varied in agreement with statutory consultees. The Institute of Field Archaeologists' Code and IfA Standards and Guidance documents will be followed where appropriate by the HA and its agents.
- 5.16 The results of all fieldwork will be published in an appropriate form within three years of completion, including evaluation investigations where these have not led to follow-up mitigation works within a reasonable timescale. Results will be conveyed to local planning authority Sites and Monuments Records/Historic Environment Records on publication or before.
- 5.17 A National Heritage Liaison Meeting, convened by the HA, shall be held at least annually, including at least 2 representatives of each organisation. Reports of any Regional Heritage

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Liaison meetings will be received, and issues of standards, strategy and any requests for arbitration considered.

- 5.18 Regional Heritage Liaison meetings, convened by the HA, shall be held as appropriate, reporting to the National Heritage Liaison meeting. These regional meetings will be held in each HA region, and will be attended by regional representatives of each organisation, to review relevant heritage issues raised by HA projects in the region.
- 5.19 Contacts between regional offices will be maintained through a named member of each organisation, responsible for establishing and maintaining channels of communication.

6 Confidentiality Provisions

- 6.1 Subject to any statutory requirements to release information, and in exceptional circumstances, either party may request that commercially confidential information provided in connection with this MoU should not be disclosed. Any information regarded by either party as commercially confidential or otherwise restricted under the terms of the Freedom of Information Act 2004 should be provided separately, so as not to inhibit the disclosure of other information.
- 6.2 Any information regarded as restricted should remain confidential only as long as necessary, so that after an agreed period it can also be released, in accordance with the Freedom of Information Act 2004.

Signed on behalf of English Heritage

By: Dr Simon Thurley.....

Title: Chief Executive.....

Date.....

Signed on behalf of the Highways Agency

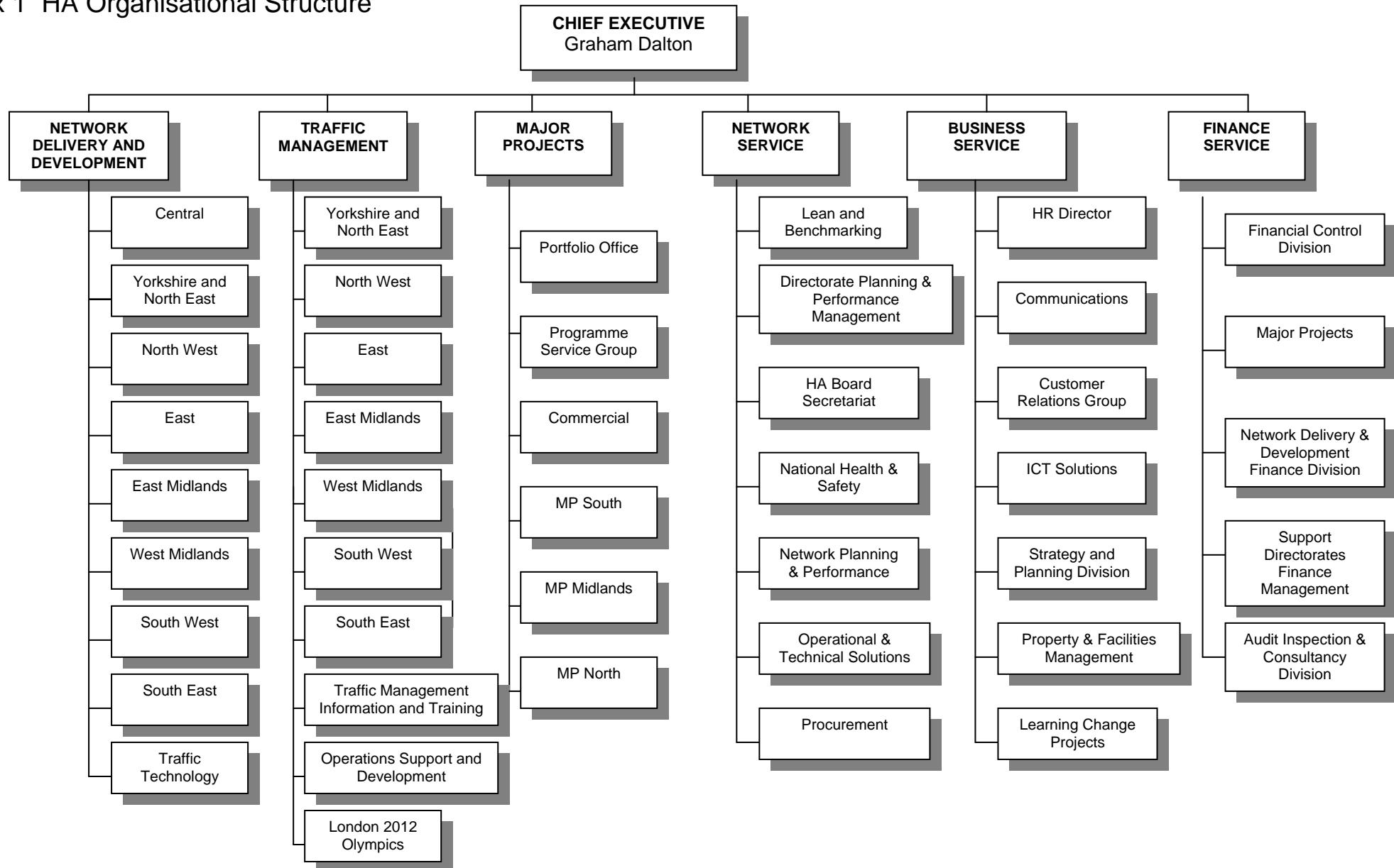
By: Graham Dalton.....

Title: Chief Executive.....

Date.....

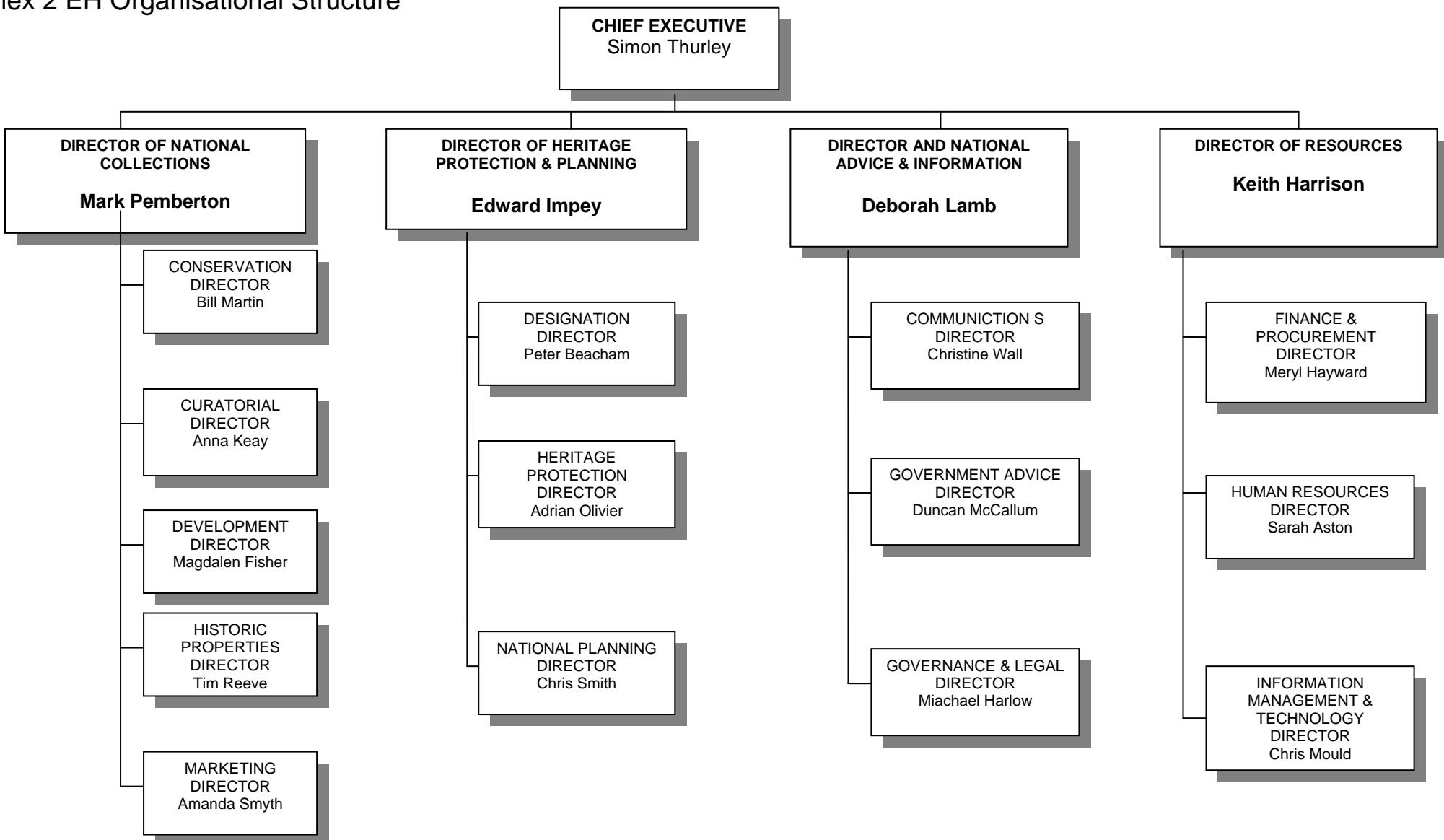
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Annex 1 HA Organisational Structure



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Annex 2 EH Organisational Structure



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Annex 3 Roles, Aims and Objectives

The Highways Agency

- A3.1 The HA's role as network operator is to act both as an asset manager and a traffic manager. This enables the Agency to deliver a service that supports the HA objective of providing a reliable, safe and integrated transport system that respects the environment. The HA also owns non-operational land and this will receive the same level of cultural heritage asset management as operational land. Our aim is to manage our heritage assets in a proactive manner, aware that transport features themselves are increasingly recognised as potentially having historic significance. .
- A3.2 The HA currently undertakes a range of road projects on its strategic network and land holdings. The largest schemes are Major Projects, followed by Local Network Management Schemes (LNMS) costing under £10m. The HA's Managing Agent Contractors undertake routine maintenance on its behalf, and private Design, Build, Finance and Operate companies have taken on the construction and maintenance of parts of the network under HA contracts. Technical improvements to the network, such as Hard Shoulder Running, and the Managed Motorways Programme can entail the construction of, for instance, new gantries, refuge areas and buried cabling. All these types of works may generate impacts on the cultural heritage resource. Future government policies and changing HA policies may alter these categories of work, but it is likely that a wide range of HA schemes will continue, and that there will remain the potential for impacts on cultural heritage, both positively and negatively.
- A3.3 The overall strategic aim of the Highways Agency is "to contribute to sustainable development by maintaining, operating and improving the trunk road network in support of the Government's integrated transport and land use policies". The Government's "*Securing the future*" sets the Government sustainable development (SD) strategy which aims to "*enable all people throughout the world to satisfy their basic needs and enjoy a better quality of life without compromising the quality of life of future generations*".
- A3.4 The HA's specific heritage priority is to "ensure that we minimise the impact of the network on the historic environment and where possible provide enhancement". Safeguarding and enhancing the built and natural environment is a key factor when the HA undertakes the maintenance and management of England's strategic roads and its non-operational land. This involves working with EH and others to review the HA's guidance on the treatment of heritage issues, and in considering initiatives to protect and enhance cultural heritage.

English Heritage

- A3.5 EH is a Non-departmental Government Organisation. It is the Government's advisor and a statutory consultee on all aspects of the historic environment and heritage assets in England. This includes archaeology on land and under water, historic buildings, sites and areas, designated landscapes and the historic elements of the wider landscape. EH was established as The Historic Buildings and Monuments Commission for England by the National Heritage Act (1983). Although sponsored by the Department for Culture, Media and Sport, which has overall responsibility for heritage policy in England, EH works closely with other Government departments responsible for planning, housing, transport and the

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constitutional framework within which most decisions affecting the cultural heritage resource are made (principally the Department for Communities and Local Government, and the Departments for the Environment, Food and Rural Affairs and for Transport).

A3.6 When assessing the impact of particular schemes, EH works in partnership with local authorities as curators of the historic environment. The extent of EH's involvement is defined by the Department of Communities and Local Government thresholds and instructions as contained in Circular 01/01: Arrangements for Handling Heritage Applications – Notifications and Directions by the Secretary of State.

A3.7 EH's overall objective is to ensure that the whole of the historic environment of England is properly maintained and cared for. EH's services cover three main areas:

- improving understanding of the past by research and study,
- opening up our national buildings to be enjoyed today, and
- helping to protect the value of important buildings, sites, and landscapes for present and future generations.

Sustainable development is at the core of English Heritage's strategy to help people understand, value, care for and enjoy England's historic environment. Our work makes a direct contribution to the government's commitment to sustainable development, not only as the champions of England's historic environment but also in the day to day operation of our estate and in supporting the Government's wider sustainable development objectives.

A3.8 EH seeks to unlock the potential of the historic environment through sustainable management of the best of the past, in partnership with national and local decision makers. One of EH's key responsibilities is to develop and promote good practice to assist decision makers on the management of heritage assets of national significance, for which it has a particular remit.

A3.9 EH identifies sites, buildings and landscapes of special national, regional and local significance, and ensures that opportunities for change take account of the past through the provision of statutory and non-statutory advice. EH distributes a variety of grants targeted at cases of real need, and these have ensured the survival of many of the most significant buildings and monuments in England. These grants programmes also support historic areas, and the work of other organisations concerned with the historic environment.

A3.10 EH is developing the National Heritage Protection Plan to help it and its partners protect the historic environment in a more efficient and effective way by:

- Refocusing resources within EH and across the sector on a set of agreed, common priorities;
- Identifying agreed priorities across the historic environment sector which will achieve efficiencies as a result of better coordination of activities;
- Allowing EH to pump prime effective management activities by others through the strategic input of our expertise and funding to initiate or support such activities.

A3.11 The Plan will support the Government objective of protecting the historic environment in a more responsive and effective way and ensure that action is carefully focussed on the most pressing need. It is intended to provide a framework that will encourage collaborative working with historic environment sector organisations, communities and other interested parties to protect what we value in an efficient and cost-effective way and to realise the potential of the historic environment to enrich our lives.

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Annex 4 Relevant Legislation, Guidance and Standards

Legislation

The Burial Act 1857
The Highways Act 1980
The Ancient Monuments and Archaeological Areas Act 1979
The National Heritage Act 1983 (as amended 2002)
Protection of Military Remains Act 1986
The Town and Country Planning Act 1990
The Planning (Listed Buildings and Conservation Areas) Act 1990
The Treasure Act 1996
The Planning Act 2008
The Marine and Coastal Access Act 2009

Statutory Instruments

Ancient Monuments (Class Consents) Order 1994
Hedgerow Regulations 1997
1988/1241 Highways (Assessment of Environmental Effects) Regulations
1994/1002 Highways (Assessment of Environmental Effects) Regulations
1999/369 Highways (Assessment of Environmental Effects) Regulations

Guidance

PPS5 Planning and the Built Environment 2010
DMRB vol 10: Environmental Design
DMRB vol 11: Environmental Assessment
New Approach to Appraisal (NATA) DETR 2000

Directives and Circulars

85/337/EEC Assessment of Effects of Certain Public and Private Projects on the Environment
97/11/EC Amendment to Directive 85/337/EEC Assessment of Effects of Certain Public and Private Projects on the Environment
18/84 Crown Land and Crown Development
8/87 Historic Buildings and Conservation Areas – Policies and Procedures

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- 15/88 Town and Country Planning (Assessment of Environment Effects) Regulations
- 01/01 Arrangements for handling heritage applications: notification and directions (DCLG).
- Protocol for the Care of the Government's Historic Estate (DCMS 2003)

International Conventions

Convention Concerning the Protection of the World Cultural and Natural Heritage, UNESCO Paris 1972

European Cultural Convention Council of Europe Paris 1954

Convention for the Protection of the Architectural Heritage of Europe Council of Europe, Granada 1985

European Convention on the Protection of the Archaeological Heritage (revised), Council of Europe, Valetta 1992

European Landscape Convention, Council of Europe, Florence 2000

European Strategic Environmental Assessment Directive, 2001/42/EC

Framework Convention on the Value of Cultural Heritage for Society, Faro 2005

Institute of Field Archaeologists Standards and Codes of Practice

Code of Conduct 2001

All IfA Standard and Guidance documents

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Annex 5 Contact Details

Owners

The responsibility for implementing the MoU will rest on the Owners identified here (the individuals may change as a result of organisational changes).

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