

## ABERDEEN CITY COUNCIL

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COMMITTEE	Communities Housing and Infrastructure
DATE	25 August 2016
DIRECTOR	Pete Leonard
TITLE OF REPORT	Agent of Change Principle
REPORT NUMBER	CHI/16/135
CHECKLIST COMPLETED	Yes

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### 1. PURPOSE OF REPORT

The Petitions Committee of 20 April 2016 considered a petition (submitted by the owner/manager of Krakatoa Bar, Aberdeen) (Appendix 1) asking the Council to make representation to the Scottish Government asking that they strengthen Scottish Planning Policy, by adopting the “Agent of Change Principle”, whereby the person who causes a change should be responsible for ameliorating any consequences of that change. This report is in fulfilment of a request from that Committee that a report should go to the August meeting of the Communities, Housing and Infrastructure Committee August to investigate the impact of adopting the Agent of Change principle as a Council.

It should be noted that the Committee also requested that a letter be sent to the Scottish Government to get clarity on the term ‘Agent of Change’ and how the Council could safeguard established music and cultural venues in the future. This letter has been sent, and has been acknowledged, but no response has been received to date.

### 2. RECOMMENDATION(S)

It is recommended that the Committee note the petition and write to the Scottish Government requesting that the agent of change principle is embodied in the next version of Scottish Planning Policy with similar wording to Section 123 of England’s National Planning Framework.

### 3. FINANCIAL IMPLICATIONS

It is considered that “agent of change principle”, as defined by the petitioners, could be embodied in Scottish Planning Policy in the same way as it has been in England’s National Planning Framework. Notwithstanding the foregoing, it is considered that the principle is

already effectively an integral part of existing Planning and Environmental Health legislation and regulations and, consequently, the day to day operation of these two services in terms of assessing planning applications and enforcing noise complaints. With that in mind it is considered that adopting the “agent of change principle” for the purposes of the operation of these two services would have no significant financial or resource implications for the Council in as far as it constitutes a continuation of the principles and practices already carried out by the respective services.

#### 4. OTHER IMPLICATIONS

None

#### 5. BACKGROUND/MAIN ISSUES

The Agent of Change Principle has been adopted as law in Australia and has been a matter of debate for a number of years in England. This has been led by the music industry which is concerned about impact of residential uses being created close to live music venues, resulting in noise complaints and consequent impact of enforcement of noise abatement orders by Councils on these venues – sometimes forcing the closure of these venues.

The Agent of Change Principle states that the person or business responsible for a change is also responsible for managing the impact of the change. This means that an apartment block built near an established live music venue that would create a nuisance for residents would have to pay for soundproofing, while a live music venue opening in a residential area would be responsible for the costs of mitigating its impact on adjoining residents. A resident who moves next door to a music venue would, in law, be assessed as having made that decision understanding that there is going to be some music noise, and a music venue that buys a new sound system would be expected to carry out tests to make sure the noise emissions from the venue would not increase. At the moment, UK law says that whoever is making a nuisance is always responsible for that nuisance. Pertinent considerations such as how long the venue has existed, whether there were any historic instances of the same noise being a nuisance or whether somebody knowingly moved right next door to the noise are currently not relevant to British law. If a noise exists, residents can move next to it and demand it be turned off and UK law will support that.

The principle has been influential in the wording of Section 123 of the English National Planning Framework (the equivalent of Scottish Planning Policy in England) which states amongst other things that :

123. Planning policies and decisions should aim to:....

- Recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them

because of changes in nearby land uses since they were established (Subject to the provisions of the Environmental Protection Act 1990 and other relevant law)

It is also understood that this wording will also be incorporated into a new Section 58A of forthcoming amendment to the English Town and Country Planning Act 1990.

With regard to the planning process, as an integral part of the existing Scottish Planning system the impacts of any proposal on adjoining land uses and the impacts of any adjoining land uses on that proposal are considered as part of the evaluation of any planning application. This applies to both change of use of an existing premises or the construction of a new building. In considering planning applications relating to extension of existing music venues account is taken of the fact that the use is one that already exists and that there may well be a certain level of existing impact adjoining residential property. The important thing is not to exacerbate this impact significantly.

This means that the agent of change principle is to a large extent inherent in the existing planning process. With regard to music venues, for instance: if an application for construction of, or change of use to, residential property is submitted on a site in proximity to a music venue the impact of noise from the venue on the amenity of future residents of that property is assessed by the planning authority in consultation with colleagues in Environmental Health who are notified as a matter of course on all planning applications. The framework for this assessment is laid down clearly by the Scottish Government in Planning Advice Note 1/2011 "Planning and Noise". If noise is a concern the planning authority can request the submission of a detailed specialist noise impact assessment by a qualified noise consultant which in turn is assessed by specialists in the Council's Environmental Health service. Environmental Health will recommend to the planning case officer whether there would be a noise nuisance for residents and, if so, whether this can be mitigated by the imposition of suitable conditions requiring for instance the installation of noise insulation measures within the residential property prior to occupation. If the noise cannot be mitigated then it is perfectly legitimate for the application to be refused although account is always taken of the pre-existing situation with regard to noise already emanating from the premises. A similar assessment process is carried out if a music venue is proposed close to existing residential property except in this instance the assessment would focus on whether the venue was likely to cause a nuisance and whether the venue itself could be subject to planning conditions that would adequately control that nuisance eg installation of noise insulation or hours of operation etc.

It is considered that the "agent of change principle", as defined by the petitioners, could be formally embodied in Scottish Planning Policy with similar wording to England's National Planning Framework. Notwithstanding the foregoing, it is considered that the principle is already effectively an integral part of existing Planning and

Environmental Health legislation and regulations and, consequently, the day to day operation of these two services in terms of assessing planning applications and enforcing noise complaints. With that in mind it is considered that adopting the “agent of change principle” for the purposes of the operation of these two services would have no significant financial or resource implications for the Council in as far as it constitutes a continuation of the principles and practices already carried out by the respective services.

It is recommended that the Committee note the petition and write to the Scottish Government requesting that the agent of change principle is embodied in the next version of Scottish Planning Policy with similar wording to Section 123 of England’s National Planning Framework.

## 6. IMPACT

### **Improving Customer Experience –**

The recommendation in this report does not result, at this time in any direct impacts on customers. Any impacts would be considered on the publication of, or through a consultation process on, a revised Scottish Planning Policy by the Scottish Government. Any such impacts cannot be determined at this time.

### **Improving Staff Experience –**

The recommendation in this report does not result, at this time in any direct impacts on staff. Any impacts would be considered on the publication of, or through a consultation process on, a revised Scottish Planning Policy by the Scottish Government. Any such impacts cannot be determined at this time.

### **Improving our use of Resources –**

The recommendation in this report does not result, at this time in any direct impacts on the use of staff or financial resources. Any impacts would be considered on the publication of, or through a consultation process on, a revised Scottish Planning Policy by the Scottish Government. Any such impacts cannot be determined at this time.

### **Corporate -**

The report and its recommendations aligns well with the two main aims of Community Planning: making sure people and communities are genuinely engaged in the decisions made on public services which affect them; allied to a commitment from organisations to work together, not apart, in providing better public services.

The improvement of planning performance will support the aims of outcomes of the Single Outcome Agreement which relates to high quality, continually improving and efficient public services which are responsive to local people’s needs.

The recommendation of this report aligns with the Five Year Corporate Business Plan.

The recommendation of this report does not impact on the implementation and delivery of the Strategic Infrastructure Plan

**Public –**

The protection of residential amenity and the economic and cultural benefits from existing businesses (music venues) is of public interest.

There is no impact on equalities and human rights resulting from this report.

7. MANAGEMENT OF RISK

Adopting the “agent of change principle” for the purposes of the operation of these two services would have no significant financial or resource implications or risks for the Council in as far as it constitutes a continuation of the principles and practices already carried out by the respective services

8. BACKGROUND PAPERS

Scottish Planning Policy  
English National Planning Framework  
Scottish Government Planning Advice Note 1/2011 "Planning and Noise".

9. REPORT AUTHOR DETAILS

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