Aberdeen Inspired, founded in 2011, is the City of Aberdeen's Business Improvement District (BID). Recently reaccredited for the 5th consecutive year by ATCM's Purple Flag, as a safe, vibrant, and well-managed night time economy, Aberdeen City Centre was the first in Scotland to achieve this coveted status, and now proudly hosts a purple flag working group including over 40 partner organisations.

Aberdeen Inspired proudly represents a large number of businesses across a diverse range of sectors including those in the city who underpin our vibrant night time economy.

Over the past few years, Aberdeen Inspired has continued to work hard to help improve the city centre and one of our key objectives is to make the city centre a safe environment for visitors day and night whilst supporting a vibrant and flourishing night time economy. A key element of this support was the creation of the Night Time Economy Manager's role ("NTE Manager"), to which I was appointed in June 2017. Aberdeen is undergoing economic and cultural transformation, with the City recognised on the global stage as not just an energy hub, but a growing cultural and artistic one too. The City is looking to diversify its offering, with Aberdeen Inspired and partners at the heart of developing a wide range of ambitious cultural and sporting events and festivals.

The City Centre itself has a visionary masterplan and we are beginning to see the fruits of our labour with exciting capital projects coming on line, such as the re-developed Music Hall, Art Gallery and the designated event space of Broad Street. In the wider City we have the world class new Aberdeen Exhibition and Conference Centre and new South Harbour development, delivered through the City/Region deal and all very exciting.

Multi award-winning Aberdeen Inspired, the current European BID of the Year, work with partners in driving the city forward, with creative and innovative ideas to significantly improve and enhance the management and experience of the cultural offering. Delivering award winning cultural events such as the globally acclaimed NuArt Street Art Festival, Aberdeen Inspired’s primary aim to increase footfall into the City Centre and showcase Aberdeen to the world as a destination city to explore, live, work and above all else enjoy.

Since being appointed, I have gained an awareness that there are a number of challenges which our night time businesses face in Aberdeen. In my role as NTE Manager a key concern I have is for the continued ability for our bars, clubs and music venues to nurture new musical and artistic talent from the city and across the North East of Scotland generally. As well as catering for the growing demand for entertainment by visitors and locals these venues provide the platform that up and coming bands and artists need to establish and grow. I have found that many are
under serious threat. Established venues have increasingly had to bear the burden of changes in the local development plan which have seen industrial, commercial and office premises redeveloped into residential. City centres across Scotland are under pressure to redevelop premises into dwellinghouses, hotels and apartments to relieve pressure on the existing stock. Under the current planning system the existing business can find it difficult, if not impossible, to unilaterally attenuate the noise source. They are reliant on noise mitigation within the proposed development over which they have no control. Leisure premises such as bars and clubs which offer live music, as well as specialist live music venues, face increasing difficulties and costs of what I believe has now become an unbalanced and disproportionate approach to dealing with noise complaints. South of the Border in particular there have been a number of high profile instances of popular music venues being subject to challenge from residents. This in turn has led to some venues proactively challenging residential and hotel development planning applications. If Aberdeen, and Scotland generally, is to continue to position itself as a leading world centre of hospitality and musicianship, then Parliament must give serious consideration to introducing the 'agent of change' principle under the Planning (Scotland) Bill. In a planning context, allowing new residential beside an established music venue creates a probability that the newcomer will be the potential "victim" of noise rather than the "perpetrator". At present there are often no express conditions in the planning permission obliging attenuation measures are put in place in new development thus it is the existing premises which faces enforcement/abatement. I would argue those who would effect the change should bear the burden of the negative impact.

As a leading UK BID who represents many such music venues, Aberdeen Inspired is in a unique position to support the agent of change movement.

Scottish Ministers will be aware that Westminster has now formally proposed adopting the agent of change principle in the planning laws of England & Wales following a Ten-Minute-Rule Bill sponsored by John Spellar MP and supported by a litany of professional musicians from Sir Paul McCartney to Feargal Sharkey. It is to be hoped that Holyrood can look south of the border, where a similar concern about the closure of premises, due to noise complaints, has ultimately led to the UK Government agreeing to adopt the principle.

Aberdeen City Council recognised the importance of protecting venues back in 2016 and formally wrote to the Scottish Parliament to propose adopting the agent of change principle. This followed a petition which attracted over 400 signatories from across the city. We are also aware of support for the principle out-with Aberdeen. A number of Glasgow music venues have formed an alliance to push for the agent of change principle to introduced, including King Tut's Wah Wah Hut, SWG3, Sub Club, the O2 and O2 ABC.

Support for the Westminster Bill also has links back to individual English local authorities, many of which had already been making efforts to introduce the principle into their local policies – perhaps most famously the City of London Plan 2018,
introduced by Mayor Sadiq Khan. The full detail of the London proposed policy makes for a useful reference point:

A. The Agent of Change principle places the responsibility for mitigating impacts from existing noise-generating activities or uses on the proposed new noise-sensitive development.

B. Boroughs should ensure that planning decisions reflect the Agent of Change principle and take account of existing noise-generating uses in a sensitive manner when new development, particularly residential, is proposed nearby.

C. Development proposals should manage noise and other potential nuisances by:
- 1) ensuring good acoustic design to mitigate and minimise existing and potential impacts of noise generated by existing uses located in the area
- 2) exploring mitigation measures early in the design stage, with necessary and appropriate provisions secured through planning obligations
- 3) separating new noise-sensitive development where possible from existing noise-generating businesses through distance, screening, internal layout, sound-proofing and insulation, and other acoustic design measures.

D. Development should be designed to ensure that established noise generating venues remain viable and can continue or grow without unreasonable restrictions being placed on them.

E. New noise-generating development, such as industrial uses, music venues, pubs, rail infrastructure, schools and sporting venues proposed close to residential and other noise-sensitive development should put in place measures such as soundproofing to mitigate and manage any noise impacts for neighbouring residents and businesses.

F. Boroughs should refuse development proposals that have not clearly demonstrated how noise impacts will be mitigated and managed.

The London Plan's six steps seem to be a useful starting point for any proposed amendment to the Planning (Scotland) Bill.

Aberdeen Inspired have been moved to support the agent of change principle because a number of Aberdeen venues have been affected by what we believe is an imbalance in the existing regulatory approach, which seems to set the bar too high in expecting inaudibility from existing and well established premises. Well known city premises such as Krakatoa, Cellar 35, Coopers Bar, the Gilcomston, Underdog and Downstairs all appear to have suffered due to the introduction of noise sensitive receptors beside existing licensed businesses. In some cases the premises have gone out of business because of the current regulatory system which takes a very one-sided and therefore disproportionate approach. Most of the details on these cases are within the public realm.

It is my position that the correct approach is one whereby a balance requires to be struck – a balance between quite rightfully and sensibly expecting proper management of premises, whilst being realistic about the presence of activity in a

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1 City of London Plan 2018: Policy D12 (Page 136)
vibrant night time economy from existing and well established venues. Adopting the agent of change principle in Scotland would enshrine this much needed balance.

This general principle, of having a more balanced, considered approach, has been supported by certain licensing board decisions in other areas in Scotland. They were tasked with balancing the licensing objective of preventing public nuisance with particular licensed music venues providing public entertainment. Whilst not currently bound by the agent of change principle, I am aware of a number of decisions which appear to suggest that a body of thought is emerging in a number local licensing board areas. A common thread is that the regulatory approach to noise nuisance has gone too far towards a position of what might be termed "strict liability", or, to put it another way, licensing boards in some areas are moving away from what some may have termed a "polluter pays" approach. This highly loaded aphorism creates an unnecessarily negative association between live music and nuisance.

In Edinburgh, for example, the licensing board amended its policy on audibility from licensed premises in 2016 when a grass roots movement called "Music is Audible" won significant support across the capital and their petition was signed by thousands of people. Edinburgh had, under the auspices of the Licensing (Scotland) Act 2005, which came into force on 1 September 2009, adopted a licence condition which was applied to every single licensed premises in the city, which stated: "Amplified music shall be controlled so as to be inaudible in neighbouring premises". The effect of this condition decimated the live music scene in Edinburgh. Many venues simply stopped offering gigs because adhering to the condition, a breach of which is a criminal offence, proved impossible. The Music is Audible campaign fundamentally recognises that noise is a part of life and live music should be nurtured, not stifled, especially in long established and much loved premises. Edinburgh licensing board held public debates on the matter, and the condition was amended to say "Amplified music shall be controlled so as not to be an audible nuisance". This distinction is a subtle but significant recognition of what Aberdeen Inspired believes the agent of change principle can bring about. It sensibly shifts the focus on to a proper investigation of nuisance rather than audibility per se.

A key element of this is that the previous condition, which sided more towards a strict liability approach, gave no credence or platform to explore individual circumstances thus creating a form of "complainers charter" where the nuances, facts and degrees of occurrence in a particular case would be overlooked and often created an adversarial approach where a live venue would be unfairly presented as the "polluter". There were many high profile cases under the old Edinburgh licensing condition, for example Studio 24, whereby the complainer moved beside an existing venue owing to reclassification and redevelopment to residential.

There are other examples. I understand that East Dunbartonshire followed the Edinburgh model wording in 2017 in relation to an individual case concerning the grant of a new licence for a function venue in Kirkintilloch and will be asked to adopt this approach more generally as part of its current review into their licensing policy, which will be updated by November 2018.

At the same time, I am also aware that Perth & Kinross licensing board withdrew its own policy on 'inaudibility' following a hearing concerning noise complaints
emanating from a hotel premises. The licence holder was subject to a "review hearing" at which the licence could have been varied, suspended or revoked. However, the agent for the licence holder successfully argued that the Perth policy, not dissimilar to the old Edinburgh condition as narrated above, was inherently contradictory and based on what the board accepted was the "fiction" of true inaudibility. The board took no action against the hotel and decided to immediately withdraw the terms of the policy in full. The effect of this withdrawal is that all licensed premises in the Perth area are no longer subject to the policy concerning noise nuisance. The Perth board is also undergoing a policy review in 2018 and may also follow the Edinburgh approach.

In each of these cases, it appears to us that licensing authorities have reached a view that enforcing true inaudibility is a fiction. With any regulatory system, there must also be a degree of common sense. One cannot say, for example, that on the one hand what is expected of a licensee is that reasonable steps are taken to prevent noise, and on the other hand insist that such all activity be entirely inaudible. This type of approach is inherently contradictory. Is there such a thing as true inaudibility? Is such a thing desirable or even enforceable in law? The only way a premises can achieve true inaudibility is by having no music at all. The pendulum has swung too far and we must take steps to protect the vibrancy of our live music venues and night time economies.

The effect of live music venues closing down is of some concern to me. This will have a deleterious impact not just directly on independent businesses who find that their premises is no longer viable but could also have a major impact on jobs in the city and this is crucial at a time when Aberdeen is looking to its hospitality and leisure trades to provide a significant footprint of employment when other traditional sectors of strength for the city are not performing as well.

There is a wider intellectual poverty in losing grass roots venues where people can come together and socialise, experiment with music and art, and generally enrich each other's lives. That is particularly so when you consider the Scottish Government's stated concern over the public health impact of loneliness on us as humans. What better way to bring people together in a safe, regulated and enjoyable environment that to enjoy the talented artists the city has to offer. This can be particularly inspiring for young adults who can be brought off the streets and into a space where they can socialise and focus on creativity. To lose such venues would cause considerable harm to the city's culture, tourism and vibrancy. At a time when the City Council are trying to encourage people back in to the city, adopting the agent of change would give a real symbol of hope to venues, musicians and the good people of Aberdeen as well as the rest of Scotland to get out and enjoy themselves in some of our amazing venues.

I understand that there is to be oral evidence sessions at the Parliament and I would be delighted to attend and discuss the views of Aberdeen Inspired and the experiences of venues in the city.