

## ANGUS COUNCIL

## RESOURCES AND CENTRAL SERVICES COMMITTEE – 2 DECEMBER 2004

## ABOLITION OF FEUDAL TENURE LEGISLATION – CARNOUSTIE GOLF COURSES

## REPORT BY THE DIRECTOR OF LAW AND ADMINISTRATION

**ABSTRACT**

This Report confirms that the title position regarding the Carnoustie Golf Courses has not been affected as a result of the recent Feudal Reform legislation.

**1. RECOMMENDATION**

It is recommended that the Committee note the position as outlined in this Report.

**2. BACKGROUND**

Members will be aware from previous reports that the Abolition of Feudal Tenure Etc (Scotland) Act 2000 and the Title Conditions (Scotland) Act 2003 both largely come into force on 28 November 2004 although a few measures were in force earlier. Members will also be aware, from letters they have received, that there has been some concern in Carnoustie regarding the possible impact of this legislation on the Carnoustie Golf Courses, with particular reference to the burdens expressed in the title deeds.

**3. LEGAL POSITION**

While I had given advice to a number of parties that my view was that the new legislation would not affect the title position of the Carnoustie Golf Courses, given the concerns which were raised locally I felt it appropriate to obtain an opinion from a recognised expert on the new legislation. I discussed this course of action with the Chairman of the Links Management Committee and the Links Management Committee's solicitor and a solicitor who was approached in this regard by the Carnoustie Golf Club. An opinion has now been obtained from Professor Paisley of Aberdeen University.

Professor Paisley states that "the vast majority of the restrictions on use in these deeds are now ineffectual and have been so for some time. There is nothing that the Council should do (or could do) in terms of the 2000 or 2003 Acts to preserve any of the restrictions." He goes on to state that there are some qualifications to that first general statement, which are dealt with in detail in his opinion. These are fairly technical legal matters regarding the enforceability of the title conditions and do not in any way detract from the general position that there is nothing that the Council should, or could, do.

Further, with regard to the 1896 Disposition which is the main title deed for the golf course itself, Professor Paisley states that "it is not a feudal deed and the restrictions therein are not abolished by feudal reform or terminated by reason of any acquisition of a superiority. Nothing will change by reason of the coming into force of the 2000 or 2003 Acts."

A copy of Professor Paisley's opinion is in the members' lounge for information and I have also sent a copy to the local councillors and members of the public who have contacted me in this regard.

**4. FINANCIAL IMPLICATIONS**

There are no financial implications arising from this Report.

**5. HUMAN RIGHTS IMPLICATIONS**

There are no human rights implications arising from this Report.

**6. CONSULTATION**

This Report has been subject to consultation with the Chief Executive and Director of Finance.

CATHERINE A COULL  
Director of Law and Administration

**Note:** The background paper, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) which was relied on to any material extent in preparing the above Report is:

Letter from Professor Paisley dated 16 November 2004.