

REPORT TO: FINANCE COMMITTEE - 12 DECEMBER 2005

REPORT ON: INVESTMENT IN TOBACCO

REPORT BY: DEPUTE CHIEF EXECUTIVE (FINANCE)

REPORT NO: 710-2005

1 PURPOSE OF REPORT

This report updates the Committee on the issue of Investments in Tobacco Companies being considered by the Superannuation Investment Sub-Committee and seeks wider approval of the recommendations.

2 RECOMMENDATIONS

The Committee is asked to note that the Sub-Committee has agreed that the Depute Chief Executive (Finance) writes to the appropriate Scottish Executive Minister advising him of the views of the Council and seeking a meeting with the Minister to discuss the need for new or clearer legislation enabling administering authorities of Local Government Pension Schemes funds to take social, environmental and ethical issues into account in their investment decisions and policies.

3 FINANCIAL IMPLICATIONS

None

4 LOCAL AGENDA 21 IMPLICATIONS

The Fund currently requires its investment managers to engage with companies on matters of social responsibility including Sustainability and the Environment.

5 EQUAL OPPORTUNITIES IMPLICATIONS

The Fund currently requires its investment managers to engage with companies regarding their performance in relation to Employee Care and Human Rights.

6 BACKGROUND

The Superannuation Investment Sub-Committee on 16 November 2005 (Report No 672-2005, copy attached at Appendix 1) considered a Senior Counsel opinion on whether it had the power to withdraw its investments in tobacco companies.

This opinion confirmed that the Fund's over-riding objective was the 'financial best interests' of its members and therefore the only grounds for disinvesting from tobacco companies would be for financial reasons.

The Sub-Committee considered that this was not aligned with other policies of Dundee City Council and the Scottish Executive relating to tobacco.

The Personnel Committee on 9 May 2005 (Report No 786-2005) reviewed the policy on smoking in the workplace. This included "encouraging employees and citizens to stop smoking and promoting a clean environment and health for all in Dundee."

The Scottish Executive have introduced a comprehensive ban on smoking in all enclosed public places in Scotland from Spring 2006.

The Sub-Committee felt it should be permitted to reflect these initiatives in investment decisions. In view of the Counsel opinion this would only be possible by seeking a change in current legislation.

The Sub-Committee unanimously agreed that the Depute Chief Executive (Finance) should be instructed to write to the appropriate Minister highlighting the intolerable situation that the members find themselves in regarding the legal constraints surrounding ethical investment decisions. The Sub-Committee also agreed to seek the backing of the Finance Committee for this action.

7 BACKGROUND PAPERS

None

DAVID K DORWARD
DEPUTE CHIEF EXECUTIVE (FINANCE)

29 NOVEMBER 2005

**REPORT TO: SUPERANNUATION INVESTMENT SUB-COMMITTEE
OF THE FINANCE COMMITTEE - 16 NOVEMBER 2005**

REPORT ON: INVESTMENT IN TOBACCO

REPORT BY: DEPUTE CHIEF EXECUTIVE (FINANCE)

REPORT NO: 672-2005

1 PURPOSE OF REPORT

This report reviews the opinion of Senior Counsel regarding whether the Sub-Committee has the power to withdraw its investments in Tobacco Companies. This was requested on 18 May (AN218-2005).

2 RECOMMENDATIONS

The Sub-Committee is asked to

- a note the Counsel opinion.
- b continue to comply with the over-riding objective of preserving the Funds 'in financial best interests' of the members.
- c agree that the Depute Chief Executive (Finance) writes to the appropriate Scottish Executive Minister asking for new or clearer legislation enabling administering authorities to take social, environmental and ethical issues into account.

3 FINANCIAL IMPLICATIONS

None

4 LOCAL AGENDA 21 IMPLICATIONS

The Fund will continue to require its investments managers to engage with companies on matters of social responsibility including Sustainability and the Environment.

5 EQUAL OPPORTUNITIES IMPLICATIONS

The Fund will continue to require investment managers to engage with companies regarding their performance in relation to Employee Care and Human Rights.

6 BACKGROUND

Report 75-2005 to the Sub-Committee on 23 February 2005 reviewed the Funds current exposure to tobacco products, with a view to the likely impact of withdrawing from these investments.

The Funds investment consultants, Hymans Robertson, produced an opinion that investment decisions should be made on financial interest only.

It was agreed that the Sub-Committee should seek Counsel opinion on this matter to ensure the correct legal decision was made.

7 COUNSEL OPINION

The Counsel opinion was received from S Neil Brailsford QC. It confirms Hymans Robertson's view that under the current regulations only financial interest should be taken into account in investment decisions. Reference is made to Regulation 2 - Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 1998. Counsel is clear that this is consistent only with a duty to preserve the Funds in the financial best interests of those entitled to the Funds.

The view is that investment needs to be aimed at achieving the best return. Therefore, the only reason for disinvesting from tobacco companies would be if it was in the Funds' best financial interests. This would represent a normal investment decision by the Fund Managers rather than a directive from the Sub-Committee.

8 CONCLUSION

It is accepted that the current regulations have an over-riding objective of financial interest. If the Sub-Committee wished to take social, environmental and ethical issues (which did not impact on financial values) into account the regulations would need to be amended. Accordingly, the Depute Chief Executive (Finance) will write to the Scottish Executive seeking such an amendment.

9 BACKGROUND PAPERS

None

DAVID K DORWARD
DEPUTE CHIEF EXECUTIVE (FINANCE)

9 NOVEMBER 2005