

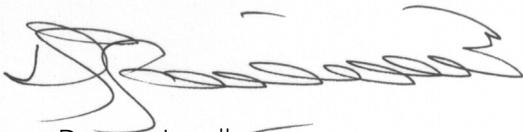
FACSIMILE

TO	Australian Stock Exchange	DATE	15 July 2009
ATTENTION	Ms Kate Kidson	FACSIMILE	+61 3 9614 0303
FROM	Duncan Jewell		
SUBJECT	Explanatory Memorandum and Notice of Meeting		

Dear Ms Kidson,

Please find attached an Explanatory Memorandum and Notice of Meeting for the Viridis Clean Energy Group (VIR).

Yours sincerely,



Duncan Jewell  
Company Secretary  
Viridis Investment Management Limited

P: +61 3 9677 8050

F: +61 3 9677 8080

## VIRIDIS CLEAN ENERGY GROUP

### EXPLANATORY MEMORANDUM AND NOTICE OF MEETING

Notice is hereby given by Viridis Investment Management Limited (ABN 51 099 788 431; AFSL No. 222 547) as responsible entity of Viridis Clean Energy Trust I (ARSN 115 340 442) and Viridis Clean Energy Trust II (ARSN 115 340 639), together known as Viridis Clean Energy Group, that meetings of securityholders of units in each of those trusts will be held concurrently and in conjunction with the other trust ("Meeting") at:

**Place: Level 61, 1 Farrer Place, Sydney NSW 2000**

**Date and Time: 10.30 am on 7 August 2009**



## IMPORTANT DATES

Last time and date for acceptance of proxies	10.30 am, 5 August 2009
Time and date for determining eligibility to vote at the Meeting	7.00 pm, 5 August 2009
Meeting of Securityholders	10.30 am, 7 August 2009

## IMPORTANT INFORMATION

This is an important document. You should read this Explanatory Memorandum and the accompanying Notice of Meeting (see Annexure D) in their entirety before making a decision as to how to vote on the resolutions and consult your professional adviser if you have any queries.

### What is this document?

This Explanatory Memorandum provides Securityholders with details of the proposal to internalise the management arrangements of Viridis Clean Energy Group (“VCEG”) (“**Proposal**”). The Proposal involves, among other things, Viridis Investment Management Limited (“VIML”) in its capacity as responsible entity of Viridis Clean Energy Trust II acquiring Viridis Energy Capital Pty Limited (“VEC”), which is the investment manager of VCEG. This Explanatory Memorandum also contains the Independent Expert’s Report prepared by Grant Samuel & Associates Pty Limited (“**Grant Samuel**”).

### This is not investment advice

This Explanatory Memorandum is not investment advice and does not take into account your financial position, needs and objectives. When deciding how to vote on the Proposal you should consider your particular financial position, needs and objectives. You should consult a licensed financial adviser or other professional adviser if you are in any doubt as to how to proceed.

### Defined terms

Some words and expressions used in this Explanatory Memorandum are capitalised as they have defined meanings. Capitalised terms are defined in the Glossary (Section 11) or elsewhere in this Explanatory Memorandum.

### Currency

Unless otherwise specified, a reference to ‘\$’ or ‘dollar’ is to Australian currency.

### Responsibility for this document

Except as provided below, the information in this Explanatory Memorandum has been prepared by VIML in its capacity as responsible entity of VCEG.

VEC in its personal capacity is responsible for the content of Sections 5.5, 5.6, 6.2.3, 10.3 and 10.4. None of VIML or its directors, officers or advisers assumes any responsibility for the accuracy or completeness of those sections.

VEC in its capacity as investment manager under the Investment Management Agreement has prepared the information in Sections 1.2.1, 5.1, 5.2, 5.3.1, 5.4, 5.7 and 7.2 and Annexure C and is responsible for the

content of those sections. However, it may be entitled to an indemnity from VIML in respect of any such liability in accordance with the terms of the Investment Management Agreement. None of VIML or its directors, officers or advisers assumes any responsibility for the accuracy or completeness of those sections.

Grant Samuel has prepared the Independent Expert’s Report (as contained in Section 8 of this Explanatory Memorandum) and takes responsibility for that report. Subject to any agreed disclaimer, waiver or indemnity, Grant Samuel is liable for the content of the Independent Expert’s Report and the Financial Services Guide accompanying the report. Grant Samuel is remunerated for its services.

### Regulatory information

A copy of this document has been provided to the ASX and ASIC. Neither of those bodies or any of their officers takes any responsibility for the contents of this document.

### Forecasts and statements of expectation and intent

This Explanatory Memorandum includes forecasts and statements based on current expectations. The prospective information is subject to risks, uncertainties and assumptions that could cause actual results to differ materially from the forecasts and statements included in this Explanatory Memorandum.

Forecasts and statements of expectation or intent should not be taken to be a prediction that those events will occur. Actual events or results may differ materially from the events or results expressed or implied in any forecast or statement. None of VIML, VEC or their respective officers or any person involved in the preparation of this Explanatory Memorandum makes any representation or warranty (either express or implied) as to the accuracy or likelihood of fulfilment of any forecast or statement of expectation or intent, or any events or results expected or implied in any such forecast or statement. You are cautioned not to place undue reliance on those forecasts or statements.

The statements of expectation and intent in this Explanatory Memorandum reflect views held by VIML only at the date of this Explanatory Memorandum.

### Date

This Explanatory Memorandum is dated 15 July 2009.

## Key Dates

Event	Date and Time
Date of this Explanatory Memorandum	15 July 2009
Last time and date by which proxy forms for the Meeting must be received	10.30 am, 5 August 2009
Time and date for determining eligibility to vote at the Meeting	7.00 pm, 5 August 2009
Meeting to be held at Level 61, 1 Farrer Place, Sydney NSW 2000	10.30 am, 7 August 2009 or such other date to which the Meeting is adjourned

*If the Resolutions voted on at the Meeting are approved by Securityholders:*

Completion Date	One business day after the Meeting, expected to be 10 August 2009
-----------------	---

All dates after the Meeting are indicative only and are subject to satisfaction of the conditions precedent to the implementation of the Proposal.

VIML reserves the right to vary these dates and time without prior notice. Any changes to the above timetable will be announced to the ASX.

Unless otherwise stated, all references to time in this Explanatory Memorandum are references to Sydney time.

# Explanatory Memorandum

## Table of contents

1. Overview of the Proposal .....	3
2. Frequently asked questions .....	6
3. Action required by Securityholders .....	9
4. Explanation of the Resolutions .....	10
5. Description of Viridis Clean Energy Group .....	12
6. Detailed description of the Proposal .....	15
7. Financial information .....	23
8. Independent Expert's Report .....	25
9. Executive Option Plan .....	69
10. Additional information .....	71
11. Glossary .....	75
Annexures .....	77
A. Internalisation deed .....	78
B. Supplemental deed polls .....	109
C. Post internalisation employment arrangements .....	111
D. Notice of meeting .....	112
Corporate directory .....	116

# 1. Overview of the Proposal

## 1.1. Summary of the Proposal

The Proposal involves the acquisition of VEC, the current investment manager of VCEG, by VIML, the responsible entity of VCEG. The shares in VEC are being acquired on an arm's length basis under the Internalisation Deed. VEC ultimately holds all of the issued shares in VIML.

The purchase price payable by VIML to the shareholders of VEC under the Internalisation Deed is \$3.22 million. The shareholders of VEC will reinvest the purchase price to subscribe for 14 million Stapled Securities at an issue price of \$0.23 per Stapled Security.

In addition, as part of the Proposal, two key executives of VEC, Edward Northam and Duncan Jewell, will become executives of VIML. These arrangements are set out in Section 6.2. VIML has agreed to provide new incentive packages to these executives, as set out in Section 9 and Annexure C.

There will also be other minor amendments to the administration of VCEG, as set out in Section 6.2.1.

Following implementation of the Proposal, Securityholders will continue to hold Stapled Securities in VCEG which will continue to carry on the business that it has carried out prior to the date of this Explanatory Memorandum.

## 1.2. Financial impact of the Proposal on VCEG

### 1.2.1. Management fee arrangements following internalisation

Following internalisation, the management fee arrangements will change. Under the current arrangements, the management fee to which VEC is currently entitled from VCEG comprises a base fee and a performance fee.

The base fee is the fee charged for the management and administration of VCEG. It is payable quarterly at the rate of 1% per annum of Net Investment Value. Importantly, the quantum of the base fee varies depending on the price of Stapled Securities.

Since the listing of VCEG to 30 June 2008, significant base fees have been paid to VEC, averaging (on an annualised basis) approximately \$2.2 million. Further details of base fees paid to VEC are set out in Section 6.3.1.

The performance fee is payable in the event that certain performance hurdles are met. To date, no performance fee has been paid.

The base fee and performance fee are payable over the life of the IMA between VEC and VIML, which has a term of 25 years from 1 July 2005. Accordingly, VCEG has the potential to make significant outlays over the 21 years remaining on the IMA in base fee alone. These outlays would be greater should circumstances arise under which performance fees are payable during the remaining term of the IMA.

If the internalisation proposal is approved, the fee arrangements described above will cease to apply and, instead, VCEG will need to meet the day to day costs of management incurred by VEC in providing services as investment manager. The costs incurred by VCEG on this basis will include costs associated with employees, premises, insurance and systems. Most of these costs are currently paid by VEC.

### 1.2.2. Potential cost savings from internalisation

Table 1.1 below illustrates the potential cost savings per year that may be achieved by VCEG following internalisation at various security price increments, based on adjusted estimated management costs for the financial year ended 30 June 2009. The potential cost savings set out in Table 1.1 would be achieved if:

- there is no change in the business of VCEG;
- the scale of VCEG's business does not increase or decrease;
- no performance fee is payable;
- the level of the corporate debt liabilities of VCEG remains the same;
- the Executives receive base salaries as detailed in Annexure C; and
- there is no increase in general costs (e.g. salaries, rent, insurance premium and other costs).

**Table 1.1 Potential cost savings per year at various security price increments (based on adjusted estimated management costs for the financial year ended 30 June 2009)**

<b>Security price (\$)</b>	<b>0.20</b>	<b>0.30</b>	<b>0.40</b>	<b>0.50</b>	<b>0.60</b>	<b>0.70</b>	<b>0.80</b>	<b>0.90</b>	<b>1.00</b>
Number of Stapled Securities (in millions)	187	187	187	187	187	187	187	187	187
Market Capitalisation (\$m)	37.4	56.1	74.8	93.5	112.2	130.9	149.6	168.3	187.0
Corporate debt liabilities (\$m)	61.6	61.6	61.6	61.6	61.6	61.6	61.6	61.6	61.6
Net Investment Value (\$m)	99.0	117.7	136.4	155.1	173.8	192.5	211.2	229.9	248.6
Management fee (\$m)	1.0	1.2	1.4	1.6	1.7	1.9	2.1	2.3	2.5
Additional net costs incurred following internalisation (\$m)	(1.2)	(1.2)	(1.2)	(1.2)	(1.2)	(1.2)	(1.2)	(1.2)	(1.2)
Potential total cost savings (\$m)	(0.2)	0.0	0.2	0.4	0.5	0.7	0.9	1.1	1.3

Table 1.1 illustrates that the higher the price of Stapled Securities, the higher the management fee and, as a result, the higher the cost savings following internalisation.

The Independent Directors have formed the view that the current trading price for Stapled Securities does not reflect the underlying value of VCEG's assets.<sup>1</sup>

Based on the historical trading price of Stapled Securities and other factors as set out in Section 6.3, the Independent Directors consider that it is not unreasonable to assume that the price of Stapled Securities will recover to an amount within the range of \$0.55 to \$0.80 in the medium term (e.g. within three years).

On the basis of that assumption and the indirect advantages of the Proposal (as set out in Sections 1.5 and 6.3), the Independent Directors have formed the view that the estimated financial benefit of internalisation to VCEG would exceed \$3.22 million, being the amount payable to the Owners under the Proposal.

See Section 6.3 for further information on the value of the potential cost savings and assumptions made by the Independent Directors in calculating the potential cost savings.

**The Independent Directors cannot make any predictions as to the price of Stapled Securities, nor guarantee that any price recovery from the current trading price of Stapled Securities will be achieved.**

### 1.3. Independent Directors

In order to assess the Proposal appropriately, the Board of VIML has established the Committee of Independent Directors, which consists of the Independent Directors of VIML as at the date of this Explanatory Memorandum, being Andrew Berry and Robert Webster.

The Board of VIML considered that this was necessary because the remaining directors are associated with significant shareholders in VEC. Further details in relation to the interests of the remaining directors are set out in Section 6.12.

### 1.4. Independent Directors' recommendation

**IN THE ABSENCE OF A SUPERIOR PROPOSAL, THE INDEPENDENT DIRECTORS UNANIMOUSLY RECOMMEND THAT THE SECURITYHOLDERS VOTE IN FAVOUR OF THE PROPOSAL AND THE ANCILLARY RESOLUTION.**

In making this recommendation the Independent Directors of VIML have considered, among other things:

- the reasons why Securityholders may vote in favour of the Proposal set out in Section 1.5; and
- the reasons why Securityholders may vote against the Proposal set out in Section 1.6.

On the basis of the matters discussed in the Independent Expert's Report, the Independent Expert has concluded that the Proposal is fair and reasonable to, and in the best interests of, Securityholders.

The remaining directors have abstained from making a recommendation. Please see Section 6.12.

<sup>1</sup> The price per Stapled Security as at close of trading on 24 June 2009 is \$0.23 per Stapled Security.

## **1.5. Why you might vote in favour of the Proposal**

The following are the reasons why Securityholders may vote in favour of the Proposal:

- VCEG has the potential to achieve cost savings following internalisation, as discussed in Sections 1.2 and 6.3;
- interests of the management of VEC and Securityholders will be more closely aligned as a result of reduced leakage of external management fees (both base fee and performance fee), the management being employees of VCEG and the Owners being Securityholders;
- there will be a greater flexibility in relation to VCEG implementing its future strategies including the potential to execute a merger or other control transaction more easily - see further discussion in section 5.5 of the Independent Expert's Report;
- any potential conflicts of interests which may be associated with external management arrangements will be removed; and
- through reinvestment of the purchase price by the Owners to subscribe for Stapled Securities, there is no cash leakage from VCEG in connection with the payment to be made to the Owners under the Proposal.

## **1.6. Why you might vote against the Proposal**

A Securityholder may vote against the Proposal for the following reasons:

- the issue of 14 million Stapled Securities to the Owners may result in a dilution in the value of interests of Securityholders. The Independent Expert has also noted that the Proposal may result in a dilution in earnings per security (at least on a cash earnings basis). Please see section 5.6 of the Independent Expert's Report for further information;
- Securityholders may disagree with the amount to be paid to the Owners under the Proposal;
- Securityholders may not have confidence that the price of Stapled Securities will recover in the medium term to generate sufficient cost savings to warrant the Proposal proceeding;
- Securityholders may not agree that in the current uncertain climate, it is appropriate for VIML to proceed with a restructure proposal; and
- Securityholders may disagree with the Independent Expert's assessment of the Proposal.

## 2. Frequently asked questions

Question	Answer	Where to find more information
What is the Proposal?	The Proposal is for the internalisation of the management arrangements of VCEG through, among other things, the acquisition of VEC, the investment manager of VCEG.	Sections 1.1 and 6.1.1
What will VIML acquire?	VIML as responsible entity of VCET II will acquire all of the shares in VEC and, in turn, acquire subsidiaries of VEC including VIML, the responsible entity of VCEG.	Sections 1.1 and 6.1.1
What is the key driver of the value of VEC?	The only material tangible asset of VEC is the IMA under which VEC provides management services to VCEG. The IMA has a term of 25 years, with 21 years remaining. The key driver of the value of VEC is the price of Stapled Securities, as the base fee which VEC receives under the IMA is dependent on the price of Stapled Securities and the growth in the value of Stapled Securities.	Sections 1.2.1, 5.5.1 and 6.3.1
What is the purchase price?	VIML will pay the purchase price of \$3.22 million to the Owners, reflecting the value of the IMA as discussed above. The Owners will reinvest this purchase price to subscribe for 14 million Stapled Securities at an issue price of \$0.23 per Stapled Security.	Sections 1.1 and 6.1.2
What are the rights attaching to the Stapled Securities issued to the Owners?	The Stapled Securities to be issued to the Owners will be fully paid, and rank equally with all other Stapled Securities on issue. However, the Owners have agreed under the Internalisation Deed that: <ul style="list-style-type: none"> <li>they will not deal in those Stapled Securities for 18 months from the Completion Date, subject to certain exceptions described in Section 6.7;</li> <li>distributions on those Stapled Securities may be paid, at the election of VIML, as cash or as additional Stapled Securities; and</li> <li>the amount receivable by the Owners may be adjusted in the event of a VCEG Control Transaction – see below.</li> </ul>	Sections 6.7 and 6.8 and Annexure A
What happens if there is a VCEG Control Transaction after the Completion Date?	If there is a VCEG Control Transaction which is completed or recommended to Securityholders (with successful completion thereafter) within 6 months from the Completion Date and the consideration per Stapled Security offered under a VCEG Control Transaction is greater than \$0.40, the total consideration receivable by the Owners under the VCEG Control Transaction will be adjusted so that the Owners do not receive more than \$5.6 million in aggregate, representing \$0.40 per Stapled Security issued to the Owners under the Proposal.	Section 6.8
What fees are payable by VCEG to VEC after the implementation the Proposal?	Following implementation of the Proposal, the IMA will be modified to replace the performance fee and the base fee arrangements with a management fee equal to the estimated costs incurred by VEC in providing the services as investment manager, including costs associated with employees, premises, insurance and systems.	Sections 6.2.1 and 10.1.3
What will happen to the management team if the Proposal is approved?	The existing management team will remain employed by VEC. However, various amendments are being proposed to the executive employment arrangements, including the introduction of the Executive Option Plan. It is intended that the current Chief Executive Officer of VEC, Edward Northam, will become the Managing Director of VIML and the current Chief Financial Officer of VEC, Duncan Jewell, will become the Chief Financial Officer of VIML.	Section 9 and Annexure C
Can the Proposal be terminated?	The Proposal can be terminated in a number of circumstances, including where: <ul style="list-style-type: none"> <li>the Independent Directors withdraw or adversely modify their recommendation of the Proposal having regard to their duties to Securityholders;</li> <li>there is a material breach of the Internalisation Deed; or</li> <li>a condition precedent to the implementation of the Proposal has not been satisfied.</li> </ul>	Section 10.1.1 and Annexure A

<b>Question</b>	<b>Answer</b>	<b>Where to find more information</b>
What if an alternative proposal is received by VCEG?	If an alternative proposal is received by VCEG prior to the Meeting, the Independent Directors will consider the alternative proposal and take appropriate actions.	Annexure A
Who are the Independent Directors?	The Independent Directors of VIML comprise Andrew Berry and Robert Webster. Only the Independent Directors have evaluated the Proposal for the purpose of making a recommendation to Securityholders.	Sections 5.3.2 and 6.12
Who are the remaining directors of VIML and are they making recommendations in relation to the Proposal?	The remaining directors of VIML are Walter Pahor and Stephen Chipkin. Walter Pahor controls Oaktel Investments Pty Ltd, an Owner, and Stephen Chipkin is a director and executive of Investec Bank (Australia) Limited, an Owner.  Accordingly, the remaining directors do not make any recommendation in relation to the Proposal. For information on the interests of the remaining directors in VEC and VCEG, please see Section 10.2.	Sections 6.12, 10.2
Are any of the Owners a related party of VIML? What financial benefits will a related party receive?	As noted above, Oaktel Investments Pty Ltd, an Owner, is controlled by Walter Pahor, a director of VIML. Accordingly, Oaktel Investments Pty Ltd is a related party of VIML.  If the Proposal is implemented, Oaktel Investments Pty Ltd will receive 66.21% of the purchase price (i.e. approximately \$2.13 million) and, upon reinvestment of that amount in Stapled Securities, will be issued with 9,269,400 Stapled Securities. This means that Oaktel Investments Pty Ltd will hold approximately 6.19% of the fully diluted Stapled Securities on issue following the implementation of the Proposal.	Sections 4, 6.1.2 and 10.4
What is the conclusion of the Independent Expert?	On the basis of the matters discussed in the Independent Expert's Report, the Independent Expert has concluded that the Proposal is fair and reasonable to, and in the best interests of, Securityholders. You are encouraged to read the Independent Expert's Report in full.	Sections 1.4, 6.11 and 8
What will happen if the Independent Expert changes its conclusion?	If the Independent Expert changes its conclusion that the Proposal is fair and reasonable to, and in the best interests of, Securityholders, then the Independent Directors may change their recommendation or terminate the Internalisation Deed. If the Internalisation Deed is terminated, the Proposal will not be implemented.	Section 6.9 and Annexure A
Do the Independent Directors recommend the Proposal?	In the absence of a superior proposal, each of the Independent Directors recommends that Securityholders vote in favour of the Proposal and the Ancillary Resolution. The Independent Directors intend, in the absence of a superior proposal, to vote all Stapled Securities controlled by them in favour of the Proposal and the Ancillary Resolution.	Sections 1.4 and 6.12
Are there any other resolutions to be considered at the Meeting?	At the Meeting, Securityholders will also be asked to vote on the Ancillary Resolution and the Executive Option Plan for certain executives of VCEG. The Ancillary Resolution is the resolution to consider the amendments to the Constitutions in respect of the fee arrangements of VIML. This resolution is ancillary to the Proposal. The Ancillary Resolution and the Executive Option Plan are conditional on the Proposal being approved by the Securityholders, and will not come into effect unless the Proposal is approved.	Section 4 and Annexure D
Does the Board of VIML recommend the Executive Option Plan?	The Board of VIML is recommending that Securityholders approve the Executive Option Plan. Each director of VIML intends to vote all Stapled Securities controlled by them in favour of the Executive Option Plan.	Sections 1.4 and 9.6
Will my interest as a Securityholder change on the implementation of the Proposal?	Following implementation of the Proposal, you will continue to hold your Stapled Securities. However, as the Proposal involves the issue of 14 million Stapled Securities to the Owners, there will be more Stapled Securities on issue and as a result, there may be a dilution in the value of interests of Securityholders.	Section 1.6

Question	Answer	Where to find more information
What if I do not vote on the resolutions or vote against the resolutions?	<p>The majority required to approve the Proposal and the Executive Option Plan is at least 50% of votes cast at the Meeting by Securityholders entitled to vote on the relevant resolution. The amendments to the Constitutions described in Section 10.1.2 will require at least 75% of votes cast by Securityholders entitled to vote on the resolution.</p> <p>If the resolutions are approved by the requisite majorities, the resolutions will be implemented even if you did not vote on the resolutions or voted against the resolutions.</p>	Section 4 and Annexure D
What happens if the Proposal is not approved?	If the Proposal is not approved, VCEG, VIML and VEC will continue to operate as they currently do. VIML will remain as the responsible entity of VCEG and VEC will continue to provide management services to VCEG under the IMA. The Ancillary Resolution and the Executive Option Plan will not be implemented.	Section 6.5
What happens if the Proposal is approved, but the Ancillary Resolution or the Executive Option Plan is not approved?	<p>If the Proposal is approved but the Executive Option Plan is not approved, the Proposal will still be implemented but the Executive Option Plan will not be implemented.</p> <p>If the Proposal is approved but the Ancillary Resolution is not approved, the Proposal will still be implemented (provided that VIML waives this condition precedent under the Internalisation Deed) but the amendments to Constitutions will not be implemented.</p>	Section 4 and Annexure D
What costs are being incurred in connection with the Proposal?	Costs of approximately \$1.4 million will be borne by VIML in its capacity as responsible entity of VCEG in connection with the Proposal. Approximately \$1.3 million of the costs incurred will still be payable if the Proposal is not approved.	Section 6.4
When and where is the Meeting?	The Meeting of Securityholders to consider the Proposal and other related resolutions has been called for 7 August 2009 at Level 61, 1 Farrer Place, Sydney NSW 2000, commencing at 10.30 am.	Section 3 and Annexure D
Am I entitled to vote?	If you are registered as a Securityholder on the register as at 7.00 pm on 5 August 2009, you will be entitled to vote at the Meeting, unless you are otherwise excluded in the manner set out in the Notice of Meeting.	Section 3 and Annexure D
Where and when do I send my proxy form?	<p>If you cannot attend the Meeting in person, you should complete the enclosed proxy form and return it to Computershare Investor Services Pty Limited:</p> <ul style="list-style-type: none"> <li>• in person at: Yarra Falls, 452 Johnston Street, Abbotsford VIC 3067;</li> <li>• by mail to: GPO Box 242, Melbourne VIC 3001; or</li> <li>• by fax to: 1800 783 447 (within Australia) or +61 3 9473 2555 (outside Australia),</li> </ul> <p>as soon as possible and in any event by 10.30 am on 5 August 2009.</p>	Section 3 and Annexure D
Any other questions?	If you have any queries about the Proposal or the Meeting, please contact Computershare Investor Services Pty Limited on 1300 850 505 (within Australia) or +61 3 9415 4000 (outside Australia). If you are in doubt as to whether to vote in favour of or against the resolutions, you should consult your financial or other professional adviser.	Annexure D

### 3. Action required by Securityholders

#### 3.1. Action required by Securityholders

**Step 1 Read the entire document carefully**

This is an important document. You should read the Explanatory Memorandum and the accompanying Notice of Meeting (see Annexure D) in their entirety and consult your professional adviser if you have any queries.

**Step 2 Vote on the Resolutions**

You may vote in person or by proxy.

If you wish to **vote in person**, you should attend the Meeting at Level 61, 1 Farrer Place, Sydney NSW 2000 on Friday, 7 August 2009 at 10.30 am.

If you wish to **vote by proxy**, you must complete and return the enclosed proxy form so that it is received no later than 10.30 am on Wednesday, 5 August 2009.

Completed proxy forms may be lodged using the enclosed reply paid envelope or delivered to Computershare Investor Services Pty Limited:

- **In person at:** Yarra Falls, 452 Johnston Street, Abbotsford VIC 3067
- **By mail to:** GPO Box 242, Melbourne VIC 3001
- **By fax to:** 1800 783 447 (within Australia) or +61 3 9473 2555 (outside Australia)

Refer to the enclosed proxy form for more information about how to complete a proxy form.

#### 3.2. Meeting details

**Location:** Level 61, 1 Farrer Place, Sydney NSW 2000

**Date:** Friday, 7 August 2009

**Time:** 10.30 am

The Notice of Meeting is set out in Annexure D of this Explanatory Memorandum.

## 4. Explanation of the Resolutions

### Resolution 1: Approval of the Proposal

Resolution 1 approves the Proposal and authorises VIML to give effect to the Proposal. Resolution 1 also gives specific approval to certain key steps of the Proposal, including:

- the acquisition of the VEC Shares by VIML as responsible entity of VCET II, following which VCEG will acquire interests in its investment manager, VEC, and its responsible entity, VIML;
- the payment of the purchase price for the VEC Shares out of the funds of VCEG and related completion mechanics (including any necessary adjustments under the Internalisation Deed);
- the reinvestment by the Owners of the purchase price for the VEC Shares as Stapled Securities;
- the issue of 14 million Stapled Securities to the Owners; and
- the amendments to employee arrangements for Duncan Jewell and Edward Northam.

The approval of Resolution 1 is sought for all purposes including the following specific purposes:

- Chapter 2E (as modified by Part 5C.7) of the Corporations Act restricts VIML from providing financial benefits to itself and its related parties unless the benefit is provided on arm's length terms or the provision of the benefit is approved by Securityholders. Securityholder approval is therefore being sought to permit VIML to acquire the VEC Shares from, and issue Stapled Securities to, a related party of VIML. Oaktel Investments Pty Ltd, an Owner, is controlled by a director of VIML, Walter Pahor. Accordingly, Oaktel Investments Pty Ltd is a related party of VIML. If the Proposal is implemented, Oaktel Investments Pty Ltd will receive 66.21% of the purchase price (i.e. approximately \$2.13 million) and, upon reinvestment of that amount in Stapled Securities, will be issued with 9,269,400 Stapled Securities. This means that Oaktel Investments Pty Ltd will hold approximately 6.19% of the fully diluted Stapled Securities on issue following the implementation of the Proposal.
- Under ASX Listing Rule 7.1, VIML is not permitted to issue more than 15% of Stapled Securities in any 12 month period unless the issue is approved by Securityholders or an exception applies. Under the Proposal, VIML will issue 14 million Stapled Securities, which is equivalent to 7% of the fully diluted Stapled Securities on issue following the implementation of the Proposal. Without Securityholder approval, this would be included in calculating the 15% limit under ASX Listing Rule 7.1. Securityholder approval is therefore being sought to allow VCEG to retain greater flexibility to raise capital.
- Under ASX Listing Rule 10.1, VIML is not permitted to acquire a "substantial asset", such as the VEC Shares, from a related party of VIML unless that purchase is approved by Securityholders. Securityholder approval is therefore being sought to permit VIML to acquire the VEC Shares from the Owners, which include a related party of VIML (Oaktel Investments Pty Ltd).
- Under ASX Listing Rule 10.11, VIML is not permitted to issue Stapled Securities to a related party of VIML unless the issue is approved by Securityholders. Securityholder approval is therefore being sought to permit VIML to issue Stapled Securities to the Owners, which include a related party of VIML (Oaktel Investments Pty Ltd).

Resolution 1 will be decided by poll. Resolution 1 must be passed by at least 50% of votes cast at the Meeting by Securityholders entitled to vote on Resolution 1. The voting restrictions in respect of Resolution 1 are set out in the Notice of Meeting (see Annexure D). In summary, VIML and its associates are not permitted to vote on Resolution 1 if they have an interest in Resolution 1 other than as a member. In addition, the Owners, VIML and all of their associates (other than the Independent Directors) are not entitled to vote on Resolution 1.

The approval of Securityholders is not being sought for the purposes of ASIC class order 05/26 in relation to the issue of Stapled Securities in accordance with the Proposal, as Stapled Securities will be issued at a fixed price and not in reliance on the relief provided by that class order.

### Resolution 2: Approval of amendments to the Constitutions

Resolution 2 authorises the execution of the Supplemental Deed Polls to amend the Constitution of each of VCET I and VCET II in the same form, which is set out in Annexure B of this Explanatory Memorandum.

The Supplemental Deed Polls amend the Constitutions to allow VIML to be reimbursed out of the assets of VCEG in providing its services as responsible entity. These amendments are ancillary to the Proposal and, along with the proposed amendments to the IMA, are intended to take place following internalisation.

At present, VIML is not entitled to be paid any fees directly out of the assets of VCEG. Instead, VEC reimburses VIML for its costs incurred in properly providing its services as responsible entity of VCET I and VCET II.

The overall effect of the proposed amendments to the IMA and the Constitutions is that VIML and VEC will be entitled to reimbursement out of the assets of VCEG for their costs which are properly incurred in administering VCEG.

Please see Sections 10.1.2 and 10.1.3 for further details on the Supplemental Deed Polls and the proposed amendments to the IMA.

Resolution 2 is required under section 601GC(1)(a) of the Corporations Act which requires that certain amendments to the Constitutions be made by a special resolution of Securityholders.

Resolution 2 will be decided by poll. Resolution 2 must be passed by at least 75% of votes cast at the Meeting by Securityholders entitled to vote on Resolution 2. The voting restrictions in respect of Resolution 2 are set out in the Notice of Meeting (see Annexure D). In summary, VIML and its associates are not permitted to vote on Resolution 2 if they have an interest in Resolution 2 other than as a member.

Resolution 2 is conditional on Resolution 1 being passed.

### **Resolution 3: Executive Option Plan**

Resolution 3 approves the Executive Option Plan (“EOP”) and certain issues and acquisitions of options and Stapled Securities in connection with the EOP. The EOP is explained further in Section 9.

The approval of Resolution 3 is sought for all purposes including the following specific purposes:

- Under ASX Listing Rule 7.1, VIML is not permitted to issue more than 15% of Stapled Securities in any 12 month period unless the issue is approved by Securityholders or an exception applies. One such exception is where the issue is under an employee incentive scheme that was approved by Securityholders within the previous three years. Securityholder approval is therefore being sought for the purposes of ASX Listing Rule 7.2 Exception 9, to approve the EOP, the grant of options under the EOP and the issue of Stapled Securities on the exercise of options, on the terms outlined in Section 9.
- Under ASX Listing Rule 10.14, VIML must not permit its directors or their associates, and such other persons as ASX determines, to acquire options under the EOP unless the acquisition is approved by Securityholders. Securityholder approval is therefore being sought for the purposes of ASX Listing Rule 10.14, to approve the acquisition under the EOP of 3.6 million options by Edward Northam or his nominee, and 2.4 millions options by Duncan Jewell or his nominee, on the terms outlined in Section 9. If this approval is obtained, VIML will be able to rely on ASX Listing Rule 10.12 exception 4 which provides an exception from ASX Listing Rule 10.11, so that VIML is permitted to issue options and Stapled Securities on the exercise of those options to its related parties.

Resolution 3 will be decided by poll. Resolution 3 must be passed by at least 50% of votes cast at the Meeting by Securityholders entitled to vote on Resolution 3. The voting restrictions in respect of Resolution 3 are set out in the Notice of Meeting (see Annexure D). In summary, none of Edward Northam and Duncan Jewell, nor any of their associates are permitted to vote on Resolution 3.

Resolution 3 is conditional on Resolution 1 being passed.

The approval of the EOP is not being sought for the purposes of Chapter 2E (as modified by Part 5C.7) of the Corporations Act, as the Board of VIML believes that the proposed employment arrangements for the Executives following the implementation of the Proposal, including the grant of options under the EOP, would be reasonable given the circumstances of VIML and the Executives.

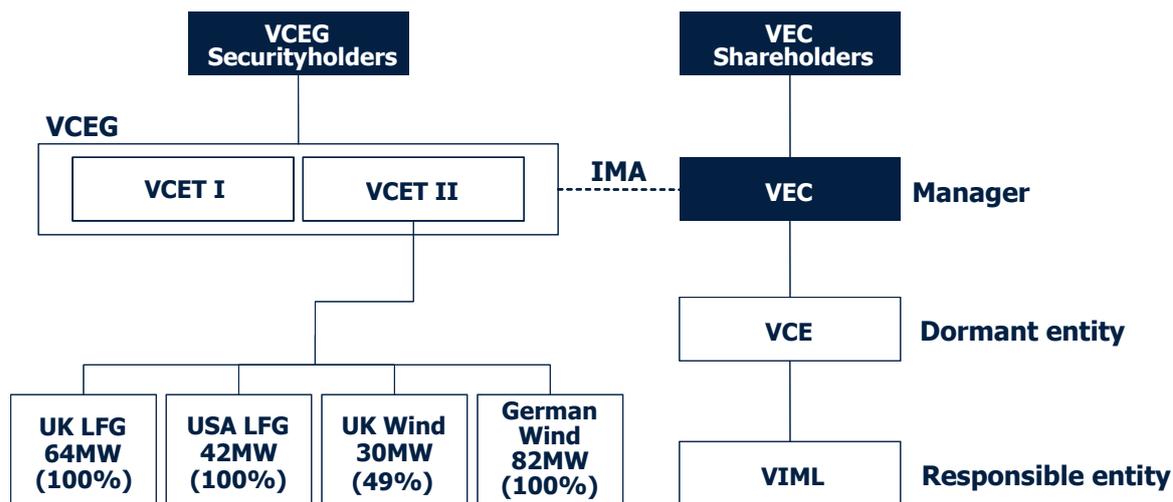
## 5. Description of Viridis Clean Energy Group

### 5.1. Overview of Viridis Clean Energy Group

VCEG is an energy infrastructure fund that invests in a diversified global portfolio of clean energy assets. Listed on the ASX in 2005, VCEG invests in operating assets utilising commercially proven technologies. The principal investment focus is on assets that generate electricity or other consumable energy produced from renewable, waste or inherently low emission energy sources, including wind, hydro, biomass, geothermal, solar, waste fuel, coal seam methane and natural gas.

### 5.2. Current structure and management

VCEG consists of two registered managed investment schemes, VCET I and VCET II. The responsible entity for each of VCET I and VCET II is VIML, which is ultimately a wholly owned subsidiary of VEC.



VIML and VEC have entered into the IMA under which VEC provides investment management services in respect of the clean energy assets of VCEG (refer to Section 5.5.1).

### 5.3. Operations of VIML

#### 5.3.1. Responsibility of VIML

VIML's function includes the overall responsibility for the management and operation of VCEG. This includes making decisions on appropriate acquisitions or divestments for VCEG, the determination of any expansions or improvements to be made to the existing VCEG assets and overseeing the ongoing operation of VCEG's assets. Even though the day-to-day operational management is managed by VEC, VIML is ultimately responsible for ensuring VCEG's assets are effectively managed.

Financial management activities undertaken by VIML include management of the capital requirements of VCEG, approval of the funding requirements of VCEG including borrowing facilities and approval of the distribution policy of VCEG. VIML also arranges for distributions to be made, approves the financial statements of VCEG and puts into place the appropriate insurance policies for the insurable assets of VCEG.

#### 5.3.2. Directors of VIML

VIML has an experienced Board currently consisting of four Directors, two of whom are independent of VEC. The remaining two Directors of VIML are also directors of VEC. The independent Chairman has a casting vote.

The directors of VIML are:

- Andrew J. Berry - Independent Chairman
- Robert Webster - Independent Director
- Stephen Chipkin - Director
- Walter Pahor - Director

Refer to Section 6.2.2 for details on the proposed Board of VIML following implementation of the Proposal.

## 5.4. Performance of VIML

Table 5.1 summarises the financial performance of VIML for FY08 and for the period of 10 months from 1 July 2008 to 30 April 2009. Expenses incurred by VIML in performing its duties as responsible entity of VCEG are recovered from VEC. VIML's income comprises this recovery of expenses, together with interest income on term deposits. Due to the recovery of its expenses, VIML's profit before tax is equal to the interest income.

**Table 5.1 – Financial performance of VIML**

<b>Summary Income Statement (\$)</b>	<b>12 months to 30 June 2008 (audited)</b>	<b>10 months to 30 April 2009</b>
Income	487,492	399,247
Profit Before Tax	8,297	4,894

Source: VEC

Table 5.2 summarises the balance sheet position of VIML as at 30 June 2008 and as at 30 April 2009. VIML's main assets are term deposits and VIML's main liability is a loan from VEC. Since 1 July 2008, VIML made a loan repayment of \$99,000 to VEC, which accounts for the majority of the variance between the two balance sheet positions set out below.

**Table 5.2 – Balance sheet of VIML**

<b>Summary Balance Sheet (\$)</b>	<b>As at 30 June 2008 (audited)</b>	<b>As at 30 April 2009</b>
Assets	121,908	27,683
Liabilities	107,732	8,613
Shareholders Equity	14,176	19,070

Source: VEC

## 5.5. Operations of VEC

### 5.5.1. Responsibility of VEC

VEC is a specialist investment management company that focuses exclusively on the clean energy infrastructure sector. VEC has been appointed by VIML to provide investment management services to VCEG under the IMA. This has been VEC's primary activity since its establishment. The IMA has an initial term of 25 years, which commenced on 1 July 2005.

The key roles undertaken by VEC under the IMA include:

- asset management services, including reviewing, managing and reporting on the assets of VCEG, keeping books of account for VCEG and instructing the custodian;
- risk management services, including in respect of exchange rates and interest rates, and
- capital and investment advice, including:
  - researching, identifying and advising on investment opportunities that meet the specified investment guidelines;
  - investment evaluation, structuring and documentation;
  - monitoring, identifying and advising on divestment opportunities; and
  - monitoring, managing, reporting and advising on VCEG's capital management and capital structure.

### 5.5.2. Management fees

Under the IMA, VEC is entitled to a management fee comprising a base fee and a performance fee. VEC is also entitled to reimbursement of certain expenses related to the provision of services to VCEG.

The base fee is the fee charged for the management and administration of VCEG. It is payable quarterly at the rate of 1% per annum of Net Investment Value.

The performance fee is charged in relation to the management of VCEG and is designed to align the interests of Securityholders and VEC. VEC may be entitled to a performance fee where VCEG's return over a half financial year exceeds the return of the S&P ASX 200 Utilities Accumulation Index over that period. Any underperformance needs to be made up before any future performance fees are payable. To date, VEC has not been paid any performance fee.

Refer to Section 6.2.1 for information on the IMA and the fees which are proposed to be charged if the Proposal is approved.

### 5.5.3. VEC management team

VEC management comprises an experienced team of professionals with a deep knowledge and understanding of the global clean energy industry and comprehensive experience and capability across the various aspects of project structuring and investment, financing and asset management.

The management team has an impressive track record in developing, financing and managing a range of clean energy project investments across more than six countries.

Based in Australia, the executive members of the management team are Edward Northam, Chief Executive Officer and Duncan Jewell, Chief Financial Officer. Edward Northam and Duncan Jewell each have more than 12 years energy industry experience. They are co-founders of VEC and were instrumental in creating and launching VCEG. Further information on Edward Northam and Duncan Jewell is set out in Section 6.2.3.

Refer to Section 6.2 for further details on management arrangements following implementation of the Proposal.

## 5.6. Performance of VEC

VEC's revenue is primarily derived from the activities and associated fees outlined in Section 5.5.

Table 5.3 summarises the financial performance of VEC for FY08 and for the period of 10 months from 1 July 2008 to 30 April 2009. Table 5.4 summarises the balance sheet position of VEC as at 30 June 2008 and as at 30 April 2009.

A number of adjustments have been made to VEC's audited FY08 financial information and VEC's 30 April 2009 financial information set out in Table 5.3 to reflect the current financial position of VEC, including:

- adjustment to salary expenses to reflect:
  - a reduction in VEC staff headcount; and
  - an increase in salaries for some of VEC's remaining employees;
- adjustments to remove non-recurring income and profit before tax in respect of VEC's joint venture with Lighthouse Viridis Clean Energy Management Pty Ltd, which was terminated on 27 February 2009; and
- adjustments to remove non-recurring expenses, such as redundancy costs, legal fees, long service leave and office rental.

**Table 5.3 – Financial performance of VEC**

<b>Summary Income Statement (\$)</b>	<b>12 months to 30 June 2008</b>	<b>10 months to 30 April 2009</b>
Income	2,885,615	2,092,133
Profit Before Tax	143,236	(173,938)

Source: VEC

**Table 5.4 – Balance sheet for VEC**

<b>Summary Balance Sheet (\$)</b>	<b>As at 30 June 2008 (audited)</b>	<b>At as 30 April 2009</b>
Assets	1,388,048	864,395
Liabilities	688,881	474,474
Shareholders Equity	699,167	389,921

Source: VEC

## 5.7. Current focus and strategy of VCEG

The overall strategy of VCEG has remained the same since the listing in 2005, which is to invest in a diversified global portfolio of clean energy assets with strong cash flow generation and the potential for long-term growth.

As announced to the ASX on 20 April 2009, following a detailed review to create and enhance Securityholder value in the current environment, the Board of VIML determined that VCEG's short term focus at this time is retiring the current corporate debt facility in advance of the facility's maturity date.

As at the date of this Explanatory Memorandum, VEC is pursuing a number of options to facilitate the planned corporate debt reduction, including evaluating the potential to raise additional equity capital, possibly involving a pro-rata entitlement offer, and the potential sale of some or all of VCEG's European wind assets. A process is currently underway through which VCEG will call for formal bids in relation to its European wind asset portfolio.

## 6. Detailed description of the Proposal

### 6.1. The Proposal

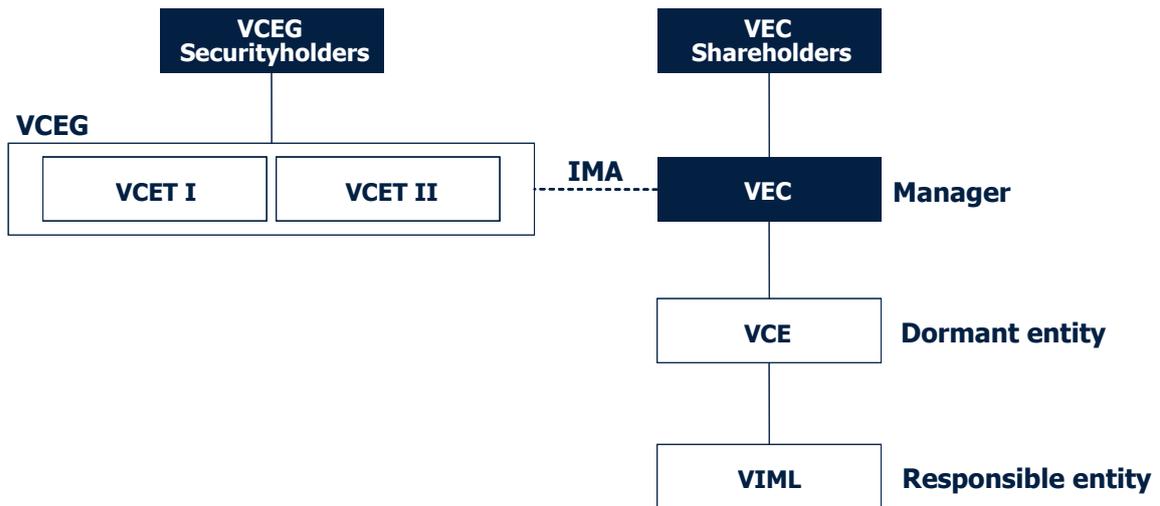
#### 6.1.1. Summary

The Proposal involves the acquisition of all of the shares in VEC by VIML as responsible entity of VCET II. The shares in VEC are being acquired, on a third party basis, under the Internalisation Deed. As VEC ultimately holds all of the issued shares in VIML, following internalisation, VCEG will own VEC, its investment manager, and VIML, its responsible entity.

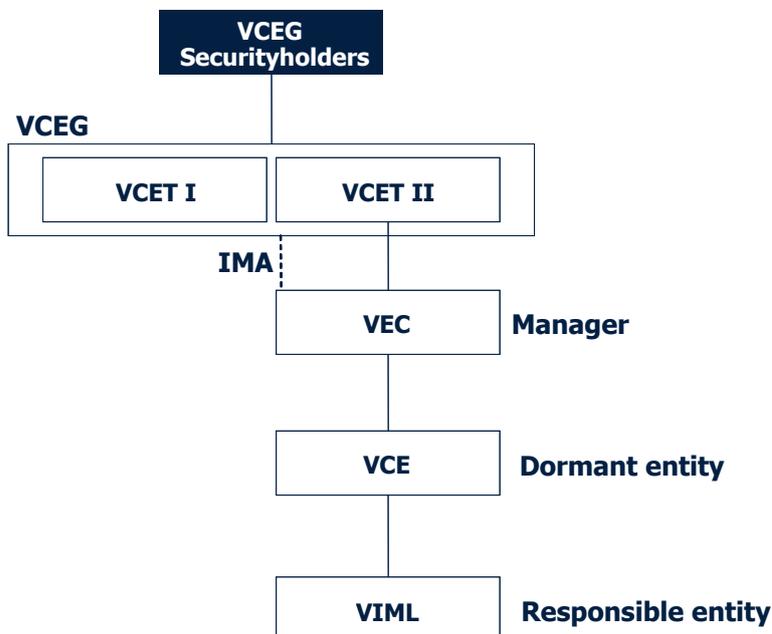
In addition, as part of the Proposal, two key executives of VEC, Edward Northam and Duncan Jewell, will become executives of VIML. These arrangements are set out in Section 6.2. VIML has agreed to provide new incentive packages to these executives, as set out in Section 9 and Annexure C. There will also be other minor amendments to the administration of VCEG, as set out in Section 6.2.1.

The diagrams showing the structure of VCEG, VIML and VEC before the Proposal and the proposed structure after the Proposal are shown below.

#### Before



#### After



If Securityholders approve all resolutions proposed at the Meeting, including the implementation of the Proposal, then:

- VCEG will pay to the Owners the amount of \$3.22 million, which will be reinvested by the Owners to subscribe for 14 million Stapled Securities, as described in Section 6.1.2;
- the IMA will be amended as described in Sections 6.2.1 and 10.1.3;
- the Constitutions will be amended as described in Sections 6.2.1 and 10.1.2 (subject to Securityholder approval);
- the employment arrangements for the Executives will be amended as summarised in Annexure C;
- Edward Northam will become Managing Director of VIML and Duncan Jewell will become the Chief Financial Officer of VIML as described in Section 6.2.3; and
- the Executive Option Plan will be implemented as described in Section 9 (subject to Securityholder approval).

### **6.1.2. Amount payable by VCEG to the Owners**

The purchase price payable by VCEG to the Owners is \$3.22 million. The Owners will reinvest this amount to subscribe for 14 million Stapled Securities, equivalent to 7% of the fully diluted Stapled Securities on issue following the implementation of the Proposal. The issue price of Stapled Securities offered to the Owners is \$0.23 per Stapled Security. This is an offer price calculated in accordance with the Constitutions, by reference to the volume weighted average price of Stapled Securities over the 15 trading days prior to the date of the Internalisation Deed.

As discussed in Section 4, Oaktel Investments Pty Ltd, an Owner, is a related party of VIML as it is controlled by a director of VIML, Walter Pahor. If the Proposal is implemented, Oaktel Investments Pty Ltd will receive 66.21% of the purchase price (i.e. approximately \$2.13 million) and, upon reinvestment of that amount in Stapled Securities, will be issued with 9,269,400 Stapled Securities. This means that Oaktel Investments Pty Ltd will hold approximately 6.19% of the fully diluted Stapled Securities on issue following the implementation of the Proposal.

In the event that there is a VCEG Control Transaction, the amount receivable by the Owners under the VCEG Control Transaction will be adjusted in accordance with the terms of the Internalisation Deed. See Section 6.8 for further details.

## **6.2. Management arrangements following internalisation**

### **6.2.1. Management arrangements**

If the Proposal is approved, VIML will remain as responsible entity of VCEG and the nature or content of the services it provides VCEG will not change. The IMA will remain in place and VEC will continue to provide services as investment manager under the IMA.

Following implementation of the Proposal, the IMA will be modified to replace the current performance fee and base fee arrangements, with a management fee payable on a cost recovery basis. Accordingly, VEC will receive reimbursement for the costs incurred by VEC in providing the services as investment manager, including costs associated with employees, premises, insurance and systems.

In addition, amendments to the Constitutions are proposed to allow VIML to recover its costs incurred in properly providing its services as responsible entity of VCET I and VCET II directly out of the assets of VCEG rather than from VEC. The proposed modifications are set out in the Supplemental Deed Polls.

For further details of proposed amendments to the management arrangements, including the Supplemental Deed Polls and the amendments to the IMA, see Sections 10.1.2 and 10.1.3.

### **6.2.2. Directors of VIML**

If the Proposal is approved, the directors of VIML will be:

- Andrew J. Berry – Independent Chairman
- Robert Webster – Independent Director
- Edward Northam – Managing Director
- Walter Pahor – Director

It is intended that Stephen Chipkin will retire as director of VIML on implementation of the Proposal.

### **6.2.3. Executive management team**

If the Proposal is approved, following completion of management internalisation, Edward Northam will become Managing Director of VIML and Duncan Jewell will become the Chief Financial Officer of VIML.

Edward Northam and Duncan Jewell are both co-founders of VEC and were instrumental in creating and launching VCEG. As industry specialists, they have developed a deep knowledge and understanding of the global clean energy industry and have comprehensive experience and capability across the various aspects of project structuring and investment, financing and asset management. They have worked together for more than 10 years and over that period have established a track record in successfully developing, financing and managing clean energy projects across a number of countries.

### **Edward Northam, Managing Director of VIML**

Edward has been Chief Executive Officer and a director of VEC since its inception. During this time the company has identified, evaluated and implemented the investments comprising VCEG's asset portfolio and put in place the infrastructure and personnel required to launch VCEG and manage its performance and growth.

Edward has more than 12 years experience in the energy industry, both as an adviser and as a management executive. He previously held various management positions with Energy Developments Limited in Australia and in the United States of America, following a career as a lawyer with a leading Australian law firm practising in the areas of corporate law and energy.

### **Duncan Jewell, Chief Financial Officer of VIML**

Duncan joined VEC as Chief Financial Officer and a director on its inception. Duncan has led VCEG's investment valuation and financing activities and has been responsible for the financial management and performance of its business.

Duncan has more than 12 years experience in the energy industry. He was previously head of corporate finance with Energy Developments Limited, before which he held a range of positions in National Australia Bank Limited, involved predominantly in project and structured finance and including appointments in wholesale banking and credit.

#### **6.2.4. Executive employment arrangements**

As a part of the Proposal, VEC has agreed to amend the employment arrangements for each of Edward Northam and Duncan Jewell. VIML has separately agreed to procure that VEC meets its obligations under the amended employee arrangements. Summarised in Annexure C are the key terms of the amended employee arrangements.

### **6.3. Financial impact of the Proposal**

#### **6.3.1. Overview**

Following internalisation, the management fee arrangements between VEC and VCEG will change as described in Section 6.2.1. Under the current arrangements, the management fee to which VEC is currently entitled from VCEG comprises a base fee and a performance fee.

The base fee is the fee charged for the management and administration of VCEG. It is payable quarterly at the rate of 1% per annum of Net Investment Value. The following base fees have been paid for each financial year since the listing of VCEG in September 2005:

- the period from the listing in September 2005 to 30 June 2006 - \$1,656,334;
- the financial year ended 30 June 2007 - \$2,539,542; and
- the financial year ended 30 June 2008 - \$2,356,670.

For the financial year ended 30 June 2009, VCEG expects to pay approximately \$1.5 million to VEC as base fee.

The key driver of Net Investment Value, and therefore the base fees paid, has been the security price for VCEG.

The performance fee is payable in the event that certain performance hurdles are met. To date, no performance fee has been paid.

The base fee and performance fee are payable over the life of the IMA, which has a term of 25 years commencing on 1 July 2005. Accordingly, if the current management arrangements were to remain in place, there is the potential for VCEG to make substantial outlays over the 21 years remaining on the IMA in base fee alone. These outlays would be greater if the performance fee were to become payable. No value has been attributed to the performance fee in determining the value of VEC.

#### **6.3.2. Potential cost savings from internalisation**

If the internalisation proposal is approved, the fee arrangements described in Section 6.3.1 above will cease to apply and, instead, VCEG will need to meet the day to day management costs incurred by VEC in providing services as investment manager. The costs incurred by VCEG on this basis will include costs associated with employees, premises, insurance and systems. Most of these costs are currently paid by VEC.

To illustrate the potential cost savings that may be achieved by VCEG following internalisation, Table 6.1 sets out potential cost savings per year at various Stapled Security price increments based on adjusted estimated costs for the financial year ended 30 June 2009. These are the potential cost savings assuming:

- there is no change in the business of VCEG;
- the scale of VCEG's business does not increase or decrease;
- no performance fee is payable;
- the level of the corporate debt liabilities of VCEG remains the same;
- the Executives receive base salaries as detailed in Annexure C; and
- there is no increase in general costs (e.g. rent, insurance premium and other costs).

**Table 6.1: Potential cost savings per annum at various security price increments (based on adjusted estimated management costs for the financial year ended 30 June 2009)**

<b>Security price (\$)</b>	<b>0.20</b>	<b>0.30</b>	<b>0.40</b>	<b>0.50</b>	<b>0.60</b>	<b>0.70</b>	<b>0.80</b>	<b>0.90</b>	<b>1.00</b>
Number of Stapled Securities (in millions)	187	187	187	187	187	187	187	187	187
Market Capitalisation (\$m)	37.4	56.1	74.8	93.5	112.2	130.9	149.6	168.3	187.0
Corporate debt liabilities (\$m)	61.6	61.6	61.6	61.6	61.6	61.6	61.6	61.6	61.6
Net Investment Value (\$m)	99.0	117.7	136.4	155.1	173.8	192.5	211.2	229.9	248.6
Management fee (\$m)	1.0	1.2	1.4	1.6	1.7	1.9	2.1	2.3	2.5
Additional net costs incurred following internalisation (\$m)	(1.2)	(1.2)	(1.2)	(1.2)	(1.2)	(1.2)	(1.2)	(1.2)	(1.2)
Potential total cost savings (\$m)	(0.2)	0.0	0.2	0.4	0.5	0.7	0.9	1.1	1.3

Table 6.1 illustrates that the higher the future Stapled Security price over the remaining 21 year term of the IMA, the higher the potential cost savings achieved as a result of internalisation.

### 6.3.3. Historical trading price of Stapled Securities

The Independent Directors believe the current trading price for Stapled Securities does not reflect the underlying value of VCEG's assets.

Further, the current trading price of Stapled Securities is significantly below historical trading price of Stapled Securities. An analysis of the trading price of Stapled Securities since VCEG first listed in September 2005 is outlined below.

**Table 6.2: Volume weighted average security price increments over various time periods since VCEG listing**

<b>Time period</b>	<b>Volume Weighted Average Security Price</b>
As at 24 June 2009	\$0.23
1 January to 28 May 2009 <sup>(1)</sup>	\$0.30
1 January to 31 December 2008	\$0.64
1 January to 31 December 2007	\$1.01
1 January to 31 December 2006	\$0.94
Since listing	\$0.85

Note (1): Date the Internalisation Deed was signed

### 6.3.4. Value of cost savings to VCEG

In determining the appropriate amount for VCEG to pay to the Owners under the Proposal, the Independent Directors evaluated an appropriate level of cost savings that could be achieved over the remaining 21 year term of the IMA having regard to:

- potential future Stapled Security price performance;
- costs to be incurred by VCEG on internalisation; and
- discount rates.

With regard to the price of Stapled Securities, the Independent Directors have formed the view that it is not unreasonable to assume a price recovery in the medium term (e.g. within three years) given:

- the historical trading price of Stapled Securities (see 6.3.3 above);
- the nature of the asset portfolio;
- the prospects for recovery in operational performance;
- the expected long-term trend in power prices;
- the expected near-term resolution of VCEG's debt funding position, following which, distributions may recommence; and
- future equity market recovery.

Taking these factors into consideration, the Independent Directors consider that an assumption that the price of Stapled Securities will recover to a range of \$0.55 to \$0.80 over a period of three years is not unreasonable, and based on that assumption, have evaluated the potential cost savings that could be achieved through the internalisation.

**The Independent Directors cannot make any predictions as to the future price of Stapled Securities, nor guarantee that any price recovery from the current trading price of Stapled Securities will be achieved.**

Using the Stapled Security price assumptions outlined above, the cost savings assumptions in Table 6.1 and other assumptions outlined below, the present value of the potential future cost savings to VCEG following internalisation has been calculated, which is set out in Table 6.3. The assumptions in calculating the potential future cost savings are as follows:

- three year linear recovery in Stapled Security price, from a starting price of \$0.23 being the volume weighted average price of Stapled Securities over the 15 trading days prior to the date of the Internalisation Deed. After 3 years, the Stapled Security price will increase in line with inflation (2.5%);
- annual increase of 2.5% in costs and 3.5% in executive remuneration;
- VCEG cost of equity of 13%; and
- one off costs of \$450,000 relating to employee entitlements and rental adjustments.

**Table 6.3: Present value of the potential future cost savings at various security price recovery levels over a three year period**

<b>Security price (\$)</b>	<b>0.55</b>	<b>0.60</b>	<b>0.65</b>	<b>0.70</b>	<b>0.75</b>	<b>0.80</b>
Potential value of cost savings to VCEG (\$m)	2.0	2.7	3.4	4.0	4.7	5.3

In determining the present value of the potential future cost savings, the Independent Directors also considered alternative scenarios, including reduction of the corporate debt facility at 30 June 2010 to \$25 million via:

- the issue of new equity; or
- selected asset sales,

which will facilitate potential future growth in the VCEG's assets over the remaining 21 years of the IMA, having regard to the history of growth in VCEG's assets since listing and potential future growth of the clean energy sector.

The Independent Directors believe that the potential future cost savings which may be achieved under these alternative scenarios are at least in line with the potential future cost savings which may be achieved under the base case assumptions set out above in this Section 6.3.4.

In addition to the values shown above, the Independent Directors believe there is substantial intangible value that can be ascribed to the internalisation, including:

- the interests of the management of VCEG and Securityholders will be more closely aligned as a result of reduced leakage of external management fees, the management being employees of VIML and the Owners being Securityholders;
- there will be a greater flexibility in relation to VCEG implementing its future strategy. For example, it is generally easier to execute a merger transaction with an internalised structure. Additionally, the market currently favours the internally managed structure to the externally managed structure - see further discussion in section 5.5 of the Independent Expert's Report; and
- any potential conflicts of interests which may be associated with external management arrangements will be removed.

Taking into account the present value of the potential future cost savings of \$2.0 - \$5.3 million shown in Table 6.3 and the intangible value of internalisation for Securityholders, the Independent Directors believe the financial benefit of the Proposal to Securityholders is greater than the amount to be paid to the Owners under the Proposal, being \$3.22 million.

Even if the price of Stapled Securities does not recover to the range of \$0.55 to \$0.80 and remains at its current level, the Independent Directors consider that the substantial intangible value of the Proposal outweighs the negative financial impact.

Further, the Independent Directors have capped the maximum value that the Owners can receive under a VCEG Control Transaction which is completed or recommended to Securityholders (with successful completion thereafter) within 6 months of the Completion Date to \$0.40 per Stapled (equivalent to \$5.6 million in total).

However, there may be some disadvantages or concerns in connection with the Proposal as discussed in Section 1.6, including that:

- the issue of 14 million Stapled Securities to the Owners may result in a dilution in the value of interests of Securityholders;
- Securityholders may not have confidence that the price of Stapled Securities will recover in the medium term to generate sufficient cost savings; and
- Securityholders may not agree it is appropriate for VIML to proceed with the internalisation in the current uncertain climate.

#### 6.4. Estimate of costs of the Proposal

Costs of approximately \$1.4 million will be borne by VIML in its capacity of responsible entity of VCEG. This includes legal, financial, accounting and tax advisers' costs in relation to the Proposal, the cost of commissioning the Independent Expert's Report as well as the costs of producing and circulating this Explanatory Memorandum (including printing, postage, shareholder registry services).

Approximately \$1.3 million of the costs incurred by VIML in connection with the Proposal will still be payable by VCEG if the Proposal is not approved.

VEC will bear its own costs and expenses in connection with the Proposal.

#### 6.5. Intentions if Proposal is not approved

If the Proposal is not approved, VCEG, VIML and VEC will continue to operate as they currently do. That is, VIML will remain as the responsible entity of VCEG and VEC will continue to provide management services to VCEG under the IMA and receive the base fee and performance fee as they become payable. For a description of the current fee structure, refer to Section 5.5.2.

#### 6.6. Implementation steps

The following are the implementation steps for the Proposal which will take place on the Completion Date (if approved by Securityholders):

- the Owners execute and submit to VIML transfer forms for the VEC Shares;
- VIML (or the custodian of VCEG at the direction of VIML) then executes the transfer forms and pays the Owners the purchase price for the VEC Shares;
- the Owners transfer the VEC Shares to VIML (or the custodian of VCEG);
- VIML (or the custodian of VCEG) is recorded on the shareholder register of VEC as the holder of the VEC Shares;
- each Owner subscribes for Stapled Securities at a price of \$0.23 per Stapled Security;
- VIML as agent for the Owners applies the purchase price of the VEC Shares in payment of the aggregate amount payable for the subscription of the Stapled Securities by the Owners;
- VIML issues 14 million Stapled Securities to the Owners in the proportions specified in the Internalisation Deed; and
- the Owners are recorded on the Securityholder register of VCEG as the holders of the Stapled Securities issued to them.

VEC is required under its AFSL to meet certain cash needs requirements. Under the Internalisation Deed, VEC must ensure that its Australian financial services licence conditions are met at all times until Completion. However, as VEC is being acquired net of cash, VIML has agreed that, to the extent that there is any Excess Cash Amount immediately after Completion, it will pay that Excess Cash Amount to the Owners in their Respective Proportions.

#### 6.7. Standstill

Under the Internalisation Deed, each of the Owners undertakes not to deal in Stapled Securities issued to them for a period of 18 months from the Completion Date ("**Standstill Period**").

After 6 months from the Completion Date and during the remainder of the Standstill Period, an Owner may approach VIML to request that the standstill restrictions be released in respect of a particular sale of Stapled Securities at the following times:

- in the case of PEP Energy Pty Limited, at any time;
- in the case of Investec Bank (Australia) Limited, after it ceases to be represented on the Board of VIML;
- in the case of Oaktel Investments Pty Ltd, after it ceases to be represented on the Board of VIML, other than as a result of fraud, dishonesty, bad faith, negligence, wilful misconduct or breach of duty; or
- in the case of Chetwyn Investment Pty Ltd or Hurstwood Road Pty Ltd, after Duncan Jewell or Edward Northam, respectively, ceases to be employed by VEC other than as a result of fraud, dishonesty, bad faith, negligence, wilful misconduct, bankruptcy or a material criminal offence.

VIML must agree to the request for the release of the standstill restrictions if the proposed sale process of the relevant Stapled Securities is satisfactory to VIML.

In addition, the restrictions may be released so that the relevant Owner can participate in an informal trust scheme in respect of VCEG or a takeover bid for VCEG that is made in accordance with Chapter 6 of the Corporations Act.

During the Standstill Period, distributions on the Stapled Securities acquired by the Owners may be paid, at the election of VIML, as cash or as additional Stapled Securities.

## 6.8. Adjustment to purchase price

Under the Internalisation Deed, if:

- a VCEG Control Transaction is completed or recommended to Securityholders (with successful completion thereafter) within 6 months from the Completion Date; and
- the consideration per Stapled Security offered under a VCEG Control Transaction is greater than \$0.40,

the total consideration receivable by the Owners under the VCEG Control Transaction will be adjusted so that the Owners do not, as a result of participating in a VCEG Control Transaction, receive greater than \$5.6 million (in aggregate) in respect of the Stapled Securities issued to them under the Proposal. VIML may take a number of actions including the following:

- if the VCEG Control Transaction arises before Completion, the Internalisation Deed will be amended such that the purchase price payable by VIML for the VEC Shares will equal \$5.6 million and will be paid in cash;
- if the VCEG Control Transaction arises after Completion, the Stapled Securities issued to the Owners will be either:
  - redeemed with a top-up payment to ensure that the Owners receive \$5.6 million;
  - transferred to VCEG or its nominee for \$5.6 million;
  - partially redeemed for no consideration, so that the remaining consideration to be received by the Owners is \$5.6 million;
  - sold by VIML, as agent for sale, for no less than \$5.6 million with \$5.6 million being provided to the Owners and the remainder being retained; or
  - partially sold by VIML, as agent for sale, with the proceeds of sale being retained by VIML, so that the Owners, if they participate in the relevant VCEG Control Transaction, will receive \$5.6 million; and
- the Owners will be allowed to participate in the VCEG Control Transaction, provided that in respect of each Stapled Security issued to the Owners, \$0.40 will be paid to the Owners, with the remainder being paid to VCEG.

## 6.9. Conditions of the Proposal

Completion of the Proposal is conditional on various things being satisfied or waived (where applicable), including the following:

- **Securityholder approval:** Securityholders approving the Proposal for all purposes by the requisite majority;
- **Independent Expert:** the Independent Expert not changing its conclusion or withdrawing its report prior to the Meeting;
- **due diligence:** VIML completing a due diligence investigation of VEC and its subsidiaries and considering the result of that investigation satisfactory;
- **regulatory approvals:** all necessary regulatory approvals having been obtained on terms which are unconditional or conditional only on matters which are reasonably acceptable to VIML;
- **no regulatory action:** as at 9.00 am on the Completion Date, there being no preliminary or final decision issued by a government agency or action or investigation being undertaken by a government agency in connection with the Proposal which restrains or materially adversely affects the implementation of the Proposal;
- **legal restraints:** as at 9.00 am on the Completion Date, there being no material legal restraint which prevents the implementation of the Proposal;
- **third party consents:** all other third party approvals which the parties agree are reasonably necessary to implement the Proposal being obtained;
- **Supplemental Deed Polls:** Securityholders approving the execution of the Supplemental Deed Polls by the requisite majority and the Supplemental Deed Polls being executed and lodged with ASIC;
- **charges:** the charges specified in the Internalisation Deed are assigned as set out in that schedule and all necessary forms and documents being executed and lodged with ASIC;
- **redeemable preference shares:** all of the redeemable preference shares of VEC being redeemed in accordance with their terms of issue and all applicable law; and
- **executive bonus plan and directors' remuneration:** all obligations of VEC and its subsidiaries in respect of remuneration of its directors and under the existing executive bonus pool or executive bonus plan being satisfied.

## 6.10. Tax implications

There should be no material adverse effect on the tax position of VCET I or VCET II as a result of the acquisition of the VEC Shares by VIML as responsible entity of VCET II.

VEC has carry forward losses of approximately \$1.4 million as at 30 June 2008 which are presently available to offset the future taxable income of VEC. Broadly, the ability of VEC to utilise these losses in the future will be subject to the ability

of VEC to demonstrate that it carried on the same business at the time immediately before its acquisition by VIML as responsible entity of VCET II, as it carries on in the income year in which it seeks to utilise the losses.

No value was attributable by the Independent Directors to the ability to utilise these losses to offset future taxable income of VEC in determining the amount payable to the Owners under the Proposal. The Independent Directors make no statement as to whether these losses will be available and consequently, investors should not take them into account in determining whether or not to vote in favour of the Proposal.

The ability to utilise these losses will likely be affected should VCET II elect to form a tax consolidated group, including VEC and its wholly owned subsidiaries, in the future. There is currently no intention that VCET II will form a tax consolidated group.

### 6.11. Summary and recommendation of Independent Expert

Grant Samuel was engaged by the Independent Directors of VIML as the Independent Expert for the purposes of providing an assessment of the Proposal for the benefit of Securityholders. The conclusions reached by the Independent Expert's Report include that:

*"In Grant Samuel's view holders of VCEG securities are likely to be better off if the Internalisation Proposal proceeds than if it does not. On this basis, in Grant Samuel's opinion the Internalisation Proposal is fair and reasonable to, and in the best interests of, the holders of VCEG securities."*

The Independent Expert's Report is set out in full in Section 8 of this Explanatory Memorandum.

### 6.12. Independent Directors' recommendation

**IN THE ABSENCE OF A SUPERIOR PROPOSAL, THE INDEPENDENT DIRECTORS UNANIMOUSLY RECOMMEND THAT THE SECURITYHOLDERS VOTE IN FAVOUR OF THE PROPOSAL AND THE ANCILLARY RESOLUTION.**

In making this recommendation the Independent Directors of VIML have considered:

- the reasons why Securityholders may vote in favour of or against the Proposal summarised in Sections 1.5 and 1.6;
- the findings of the Independent Expert, as contained in the Independent Expert's Report set out in Section 8 of this Explanatory Memorandum and summarised in Section 6.11; and
- the financial benefits that are given to related parties of VIML in respect of the Proposal, which the Independent Directors consider to be on arm's length terms.

The Independent Directors consider that the benefits of the Proposal outweigh the risks of the Proposal and they have formed this view after taking into account the financial benefits which are provided to related parties of VIML.

The remaining directors of VIML, Walter Pahor and Stephen Chipkin, do not make any recommendation in relation to the Proposal and intend to abstain from voting any Stapled Securities they hold or control in respect of the Proposal. Those directors consider that it is inappropriate for them to make a recommendation, or vote, on the Proposal because:

- Walter Pahor controls Oaktel Investments Pty Ltd, which has a significant shareholding in VEC;
- Stephen Chipkin is a director and executive at Investec Bank (Australia) Limited, which is a significant shareholder of VEC; and
- both Walter Pahor and Stephen Chipkin are directors of VEC.

## 7. Financial information

### 7.1. Financial position of VCEG following internalisation

As discussed in Section 6.1, if the Proposal is approved by Securityholders, VIML, as responsible entity of VCET II will acquire all of the shares in VEC and, in turn, acquire interests in subsidiaries of VEC.

The internalised management structure is expected to deliver a number of benefits to VCEG and Securityholders as discussed in Sections 1.5 and 6.3.4, including the potential for VCEG to achieve cost savings.

However, in simple financial terms, having regard to the size of the VEC Group which is described in Section 5.6, the internalisation will not have a material effect on the Income Statement of VCEG or the Balance Sheet of VCEG.

Accordingly, the pro-forma financial information of VCEG for the financial year ended 30 June 2009 has not been prepared.

To illustrate the immaterial impact of the internalisation on the financial position of VCEG, the pro-forma financial information of VCEG for FY07 and FY08 have been prepared, assuming that the internalisation had occurred during each of those periods. This information is set out in Section 7.2 below.

### 7.2. Illustrative pro-forma financial information

The information in this section is intended for illustrative purposes only to enable Securityholders to compare the audited financial information of VCEG for FY07 and FY08 with the pro-forma financial information of VCEG for that period assuming internalisation. The pro-forma financial information of VCEG for FY07 and FY08 has been prepared based on VCEG's audited financial statements for those periods.

#### 7.2.1. Pro-forma Income Statement

The audited VCEG Income Statement and the pro-forma VCEG Income Statement following the internalisation for FY07 and FY08 are set out in Tables 7.1 and 7.2, respectively.

In preparing the pro-forma VCEG Income Statement, a number of adjustments have been made to the audited FY07 and FY08 financial information to reflect the current financial position of VEC, as discussed in Section 5.6.

Further adjustments were made to reflect the position of the VEC Group and VCEG following the internalisation by:

- eliminating the base fee which has been charged by VEC to VCEG under the IMA;
- eliminating the asset operation fee which has been charged by VEC to VCEG for both FY07 and FY08; and
- reflecting an increase in salaries of Edward Northam and Duncan Jewell if the Proposal is approved, as described in Annexure C.

No cost savings have been assumed in these pro-forma adjustments.

As shown in Tables 7.1 and 7.2, the difference in net profit/loss before tax in the audited VCEG Income Statement and the pro-forma VCEG Income Statement for FY07 and FY08 is (0.4%) and 0.02% respectively, indicating that the difference in VCEG Income Statement following internalisation is immaterial.

**Table 7.1 Pro-forma VCEG Income Statement FY07**

<b>12 months to 30 June 2007 (\$000s)</b>	<b>VCEG (audited)</b>	<b>Adjustments</b>	<b>VCEG pro-forma</b>
Revenue	97,025	39	97,064
Expenses	(56,379)	(44)	(56,423)
<b>Earnings Before Interest, Tax, Depreciation and Amortisation</b>	<b>40,646</b>	(5)	<b>40,641</b>
Depreciation and amortisation	(33,669)	(71)	(33,740)
<b>Earnings Before Interest and Tax</b>	<b>6,977</b>	(76)	<b>6,901</b>
Share of net profit of associates	1,668	0	1,668
Finance costs	(26,042)	0	(26,042)
<b>Net profit / (Loss) Before Tax</b>	<b>(17,397)</b>	(76)	<b>(17,473)</b>

Source: VEC

**Table 7.2 Pro-forma VCEG Income Statement FY08**

<b>12 months to 30 June 2008 (\$000s)</b>	<b>VCEG (audited)</b>	<b>Adjustments</b>	<b>VCEG pro-forma</b>
Revenue	91,915	33	91,948
Expenses	(64,297)	22	(64,275)
<b>Earnings Before Interest, Tax, Depreciation and Amortisation</b>	<b>27,618</b>	55	<b>27,673</b>
Depreciation and amortisation	(32,845)	(50)	(32,895)
<b>Earnings Before Interest and Tax</b>	<b>(5,227)</b>	5	<b>(5,222)</b>
Share of net profit of associates	2,965	0	2,965
Finance costs	(22,947)	0	(22,947)
<b>Net profit / (Loss) Before Tax</b>	<b>(25,209)</b>	5	<b>(25,204)</b>

Source: VEC

### 7.2.2. Pro-forma VCEG Balance Sheet

The audited VCEG Balance Sheet and the pro-forma VCEG Balance Sheet following the internalisation as at 30 June 2007 and 30 June 2008 are set out in Tables 7.3 and 7.4, respectively. In preparing the pro-forma VCEG Balance Sheet, a number of adjustments have been made to the audited FY07 and FY08 financial information to reflect the position of the VEC Group and VCEG following the internalisation, including:

- the issue of 14 million Stapled Securities to the Owners under the Proposal (as discussed in Section 6.2);
- transaction costs associated with the Proposal, borne by VCEG (as discussed in Section 6.5);
- the elimination of intercompany balances between the VEC Group and VCEG; and
- the removal of the proposed investment in the VEC Group and a resulting write-off to retained profits.

As shown in Tables 7.3 and 7.4, the difference in net assets in the audited VCEG Balance Sheet and the pro-forma VCEG Balance Sheet as at 30 June 2007 and 30 June 2008 is (0.2%) and (0.7%), respectively, indicating that the difference in VCEG Balance Sheet following internalisation is immaterial.

**Table 7.3 Pro-forma VCEG Balance Sheet FY07**

<b>As at 30 June 2007 (\$000s)</b>	<b>VCEG (audited)</b>	<b>Adjustments</b>	<b>VCEG pro-forma</b>
Current Assets	72,827	695	73,522
Non-current Assets	488,270	108	488,378
<b>Total Assets</b>	<b>561,097</b>	803	<b>561,900</b>
Current Liabilities	53,376	1,106	54,482
Non-current Liabilities	373,504	1	373,505
<b>Total Liabilities</b>	<b>426,880</b>	1,107	<b>427,987</b>
<b>Net Assets/ Total equity</b>	<b>134,217</b>	(304)	<b>133,913</b>

Source: VEC

**Table 7.4 Pro-forma VCEG Balance Sheet FY08**

<b>As at 30 June 2008 (\$000s)</b>	<b>VCEG (audited)</b>	<b>Adjustments</b>	<b>VCEG pro-forma</b>
Current Assets	61,853	515	62,368
Non-current Assets	416,317	95	416,412
<b>Total Assets</b>	<b>478,170</b>	610	<b>478,780</b>
Current Liabilities	132,256	1,313	133,569
Non-current Liabilities	250,998	0	250,998
<b>Total Liabilities</b>	<b>383,254</b>	1,313	<b>384,567</b>
<b>Net Assets/ Total equity</b>	<b>94,916</b>	(703)	<b>94,213</b>

Source: VEC

## **8. Independent Expert's Report**

Grant Samuel has concluded that the Proposal is fair and reasonable to, and in the best interests of, Securityholders. A copy of the Independent Expert's Report is contained in this Section 8.

GRANT SAMUEL



10 July 2009

The Independent Directors  
Viridis Investment Management Limited  
(as Responsible Entity of Viridis Clean Energy Trust I and Viridis Clean Energy Trust II)  
Level One, 167 Flinders Lane  
Melbourne VIC 3000

Dear Directors

**Internalisation Proposal**

**1 Introduction**

Viridis Clean Energy Group (“VCEG”) is an Australian headquartered renewable energy group. It owns a number of renewable energy assets in Europe and North America:

- a portfolio of 35 landfill gas power projects in the United Kingdom, with a total generating capacity of 64 MW;
- a 49% interest in the 30 MW Ardrossan wind farm, located in Scotland;
- eight German wind farms, with total capacity of 82MW;
- a portfolio of 8 landfill gas projects in Texas and California, in the USA, with total installed capacity of 42MW.

VCEG consists of two trusts (units in which are stapled together), for which the Responsible Entity is Viridis Investment Management Limited (“VIML”). VCEG is managed under a 25 year management agreement by an external manager, Viridis Energy Capital Pty Limited (“VEC” or “Manager”). VEC also holds all the shares in VIML. VCEG is listed on the Australian Securities Exchange (“ASX”) and had a market capitalisation of around \$46 million at 25 June 2009.

On 20 April 2009, VCEG announced that it had reached in principle agreement to internalise management of VCEG. On 28 May 2009, VCEG announced that a binding agreement had been reached with the shareholders of VEC. Under the agreement, VCEG will acquire all the shares in VEC (the “Internalisation Proposal”). The consideration for the shares in VEC will be \$3.22 million, which will be settled through the issue by VCEG of 14 million stapled securities to the shareholders of VEC (“Consideration”), at an issue price of \$0.23 per security.

If a change of control transaction for VCEG occurs within six months of completion of the Internalisation Proposal (or is announced and recommended by the independent directors within six months of completion of the Internalisation Proposal and is subsequently completed), and the bid price under that change of control transaction is more than \$0.40, then there will be an adjustment between VCEG and the shareholders in VEC such that the aggregate value received by the shareholders in VEC does not exceed \$5.6 million.

VCEG is seeking security holder approval for the Internalisation Proposal pursuant to Listing Rule 10.1 of the Listing Rules of the ASX and Chapter 2E (as modified by Part 5C.7) of the Corporations Act. The independent directors of VIML have engaged Grant Samuel & Associates Pty Limited (“Grant Samuel”) to prepare an independent expert’s report setting out Grant Samuel’s opinion as to whether the Internalisation Proposal is fair and reasonable to, and in the best interests of, holders of securities in VCEG. The report is to be included in the Explanatory Memorandum in relation to the Internalisation Proposal to be sent to VCEG security holders.



## 2 Summary of Opinion

Externally managed investment vehicles were commonplace at the time that VCEG was listed on the ASX in 2005. However, investor sentiment has now moved strongly in favour of the internally managed investment model. It appears to be generally accepted that internalisation of management helps to align the interests of investors and management. In particular, internalisation of management reduces the risk that management arrangements will stand in the way of change of control transactions that could otherwise deliver value to investors.

In this context, management internalisation (at least in principle) is clearly desirable for VCEG. The question for VCEG security holders is whether the cost of the Internalisation Proposal is justified by the direct financial benefits and other advantages of internalisation.

The Consideration for the Internalisation Proposal will be the issue of 14 million securities to the shareholders of the Manager. Based on recent VCEG security prices in the range \$0.20-0.25, the Consideration has a value of around \$2.8-3.5 million. Accordingly, the cost to VCEG of the Internalisation Proposal will be around \$2.8-3.5 million (before transaction costs).

Following implementation of the Internalisation Proposal, VCEG will no longer pay management fees to the Manager, although VCEG will become responsible for some costs currently incurred by the Manager. The financial benefit to VCEG is effectively dependent on the future VCEG security price, because the management fees payable to the Manager increase for higher security prices. Given the range of unpredictable factors that could affect the future VCEG security price, assessment of the likely financial benefit of the Internalisation Proposal is subject to considerable uncertainty. However, in Grant Samuel's view it is reasonable to expect that the direct financial benefit should broadly approximate the cost to VCEG of the Internalisation Proposal. At worst, any net cost should not be significant.

Of far more significance, in Grant Samuel's view, is the potential for the structural benefits of the Internalisation Proposal to deliver meaningful incremental value to VCEG security holders over time. While VCEG's external management arrangements are not unreasonable, investors are likely to prefer an internalised management structure and internalisation should on balance increase investor interest in VCEG.

In particular, there is a real risk that the current external management model could act as an impediment to a takeover of VCEG. Having regard to the current position of VCEG, crystallisation of value through a change of control transaction could be an attractive outcome for security holders. The Internalisation Proposal could help to facilitate (or at least should remove structural impediments to) a future takeover proposal for VCEG. Given the modest cost of the Internalisation Proposal, this benefit of itself suggests that the Internalisation Proposal is in the best interests of security holders.

The securities to be issued to the Manager represent around 7.5% of the total securities currently on issue. At the current price of VCEG securities the Internalisation Proposal will be earnings dilutive, and is likely to continue to be earnings dilutive even if the VCEG security price recovers strongly. However, given the focus of VCEG on debt reduction it is prudent for the Consideration to be funded by the issue of securities rather than in cash.

Assessment of the Internalisation Proposal requires a balancing of its likely benefits, costs and disadvantages. The cost of the Internalisation Proposal is not material and in any event should be broadly matched by the direct financial benefits. The indirect advantages of the Internalisation Proposal in terms of aligning the interests of management and security holders, while not quantifiable, are in Grant Samuel's view significant. In particular, the Internalisation Proposal will remove a possible impediment to takeover proposals for VCEG. In Grant Samuel's view, holders of VCEG securities are likely to be better off if the Internalisation Proposal proceeds than if it does not. On this basis, in Grant Samuel's opinion the Internalisation Proposal is fair and reasonable to, and in the best interests of, the holders of VCEG securities.



### 3 Key Conclusions

- **The cost to VCEG of the Consideration for the Internalisation Proposal is around \$2.8-3.5 million.**

The Consideration under the Internalisation Proposal will be the issue of 14 million VCEG securities. The securities will be issued at an issue price of \$0.23 per security, representing the volume weighted average price of VCEG securities for the 15 trading days ending 27 May 2009. The closing price for VCEG securities on 27 May 2009 was \$0.225.

The value of the securities to be issued (and the cost to VCEG of the issue) is the current market price of the securities. The market price represents the value that could be realised by the Manager's shareholders if they were to seek to divest those securities in the short term. Conversely, the market price provides an approximation of the proceeds that VCEG could expect to realise from an issue of new securities for cash. The cost to VCEG of issuing the securities as Consideration is effectively the opportunity cost of not issuing those securities for cash: that is, the cost is equal to the proceeds that could otherwise be realised if the securities were issued for cash.

The VCEG security price is likely to fluctuate over time. However, that is not relevant to an assessment of the value of the Consideration. What is relevant is the current market value of the securities to be issued.

Having regard to recent trading, Grant Samuel has attributed value in the range \$0.20-\$0.25 per security to the securities to be issued as Consideration. On this basis, the value of the Consideration, and the cost to VCEG of the Consideration for the Internalisation Proposal, is \$2.8-3.5 million.

- **Following implementation of the Internalisation Proposal, VCEG will no longer pay external management fees.**

Under the management contract between VCEG and the Manager, VCEG pays base management fees equal to 1% per annum of the market value of VCEG, calculated and payable quarterly. For this purpose, market value represents the sum of VCEG's market capitalisation and net debt. Effectively, therefore, the amount of the management fee depends on the market price of VCEG securities.

Following implementation of the Internalisation Proposal, VCEG will no longer have to pay management fees to the Manager. On the other hand, it will be responsible for various costs currently incurred by the Manager, including the remuneration of senior executives of VCEG, who are currently employed and paid by the Manager.

- **The direct financial benefits of the Internalisation Proposal should broadly approximate the cost of acquiring the Manager.**

The direct financial benefit of the Internalisation Proposal for VCEG is the amount of management fees that will no longer be payable to the Manager, less the additional costs for which VCEG will become directly responsible. At security prices around the current security price, the management fee approximates the costs currently incurred by the Manager. Accordingly, if current security prices were to continue, the Internalisation Proposal would have a negligible impact on VCEG earnings, with the management fee savings approximately offset by increased direct costs (principally senior executive remuneration).

For the Internalisation Proposal to have a neutral impact in terms of direct costs and benefits, the present value of future net cost savings (i.e. management fee savings less incremental costs) would need to equal the cost to VCEG of the Consideration for the Internalisation Proposal (\$2.8-3.5 million). This would require a recovery in the VCEG security price from current levels. By way of

G R A N T S A M U E L



illustration, an increase in the security price to around \$0.60-0.70 over a three year period, followed by maintenance of the security price at or around this level, would generate future net cost savings with a present value of approximately \$2.8-3.5 million.

Given the range of unpredictable factors that could affect the future VCEG security price, judgements regarding the future security price and, therefore, the likely financial benefit of the Internalisation Proposal are subject to considerable uncertainty. In Grant Samuel's view, however, an expectation that the VCEG security price could recover to at least around \$0.60-0.70 over a three year period is not unreasonable:

- since the listing of VCEG, its securities have generally traded well above the \$0.60-0.70 range. For the nine months to 30 September 2008, the lowest price at which VCEG securities traded was \$0.62. VCEG securities traded above \$0.60 (albeit briefly) in January 2009;
- VCEG management believes that recent disappointing operational performance is to a large extent a result of one-off factors and that there are good prospects for a recovery in operational performance;
- VCEG has relatively high levels of corporate debt, which is due in 2010. In the current market, investors have aggressively sold down stocks with perceived debt exposure. Conversely, in recent months companies that have resolved perceived debt funding issues (whether by way of equity raisings or otherwise) have commonly enjoyed significant share price appreciation. Resolution of VCEG's debt funding position could result in a material positive re-rating of its security price;
- similarly, resolution of VCEG's debt funding position should allow the recommencement of income distributions, which should have a positive effect on the VCEG security price;
- financial modelling of VCEG, based on assumptions that in Grant Samuel's opinion are not unreasonable, suggests values for VCEG consistent with security prices in the range \$0.60-0.70 and potentially higher; and
- positive factors specific to VCEG would be reinforced by any broader improvement in market conditions over the next two to three years.

Having regard to these factors (while acknowledging the inherent uncertainty in relation to judgements regarding future security prices), Grant Samuel believes that it is reasonable to expect that the financial benefits of the Internalisation Proposal should broadly approximate the Consideration for the Internalisation Proposal. It is possible that the financial benefits of the Internalisation Proposal could exceed the Consideration. At worst, any net cost should not be material.

As set out above, there are various factors that suggest that the VCEG security price could appreciate over time (although there can be no assurance that this will occur). However, any expectation of future increases in the VCEG security price does not affect the value of the Consideration, which reflects the current market value of VCEG securities and the amount of cash that VCEG could realise through an issue of its securities in the short term given current market conditions.

- **The multiples implied by the value of the Consideration appear reasonable.**

Valuation cross-checks based on multiples of earnings and assets under management can provide some evidence as to whether the terms of internalisation transactions are in line with market precedents. In the case of the Internalisation Proposal earnings multiples are not meaningful, because the Manager will generate little or no earnings at security prices around the current VCEG

G R A N T S A M U E L



security price. For the assessed value of the Consideration of \$2.8-3.5 million, the Consideration represents approximately 2.8-3.5 times the revenue of the Manager and around 2.8-3.5% of assets under management<sup>1</sup>. While these benchmarks provide only general guidance, they do suggest that the Consideration for the Internalisation Proposal is reasonable.

- **The Internalisation Proposal will more closely align the interests of management and security holders and should improve investor sentiment towards VCEG.**

The terms of the management agreement between VCEG and the Manager are relatively simple and do not include any of the more egregious provisions found in other management agreements. Nevertheless, the Internalisation Proposal will result in a clearer alignment of management and investor interests. In particular, the directors of VCEG will be able to put in place arrangements to focus management purely on security holder value, with fund size (aggregate market capitalisation) as a determinant of external management fees no longer relevant.

Investor perceptions are arguably as important as the actual alignment of investor and management interests for VCEG. Although externally managed investment vehicles were commonplace at the time that VCEG was listed on the ASX in 2005, it has become apparent that the externally managed investment model can result in significant divergence between the interests of investors and the interests of management, sometimes with extremely adverse consequences for investor value. As a result, market sentiment appears to have moved sharply against external management and in favour of management internalisation. In this context, it is likely that the Internalisation Proposal will increase the investment appeal of VCEG. While this structural benefit of the Internalisation Proposal is not quantifiable, over time it should help to support security holder value.

- **The Internalisation Proposal should improve the prospects for security holders of realising value through a takeover of VCEG.**

A takeover of VCEG could be an attractive outcome for VCEG security holders. However, there is a real risk that the external management structure of VCEG could be an impediment to a takeover. A potential acquirer of VCEG would need to reach separate agreement with the Manager at the same time that it was negotiating an offer for VCEG to be put to security holders. In this context VCEG security holders and the Manager may have sharply divergent objectives and interests. The Internalisation Proposal will simplify any change of control transaction for VCEG, eliminate any potential conflicts of interest between investors and the Manager, reduce transaction risk and provide greater certainty to prospective acquirers.

Any restructure of VCEG that facilitates potential change of control transactions, or removes possible impediments to such transactions, is clearly in the best interests of security holders. The Internalisation Proposal should increase the prospects of a successful takeover of VCEG. In Grant Samuel's view this is a compelling argument in favour of the Internalisation Proposal.

Under the Internalisation Proposal, if any successful takeover offer for VCEG is initiated within six months of completion of the Internalisation Proposal, the value that can be realised by the shareholders of the Manager for their VCEG securities is limited to \$0.40 per security. Any residual value will accrue for the benefit of VCEG security holders.

- **The Internalisation Proposal will result in earnings dilution.**

The securities to be issued to the shareholders of the Manager will represent around 7.5% of the VCEG securities currently on issue. VCEG has not released any forecasts of the impact on earnings of the Internalisation Proposal. However, at current security prices the Internalisation Proposal will have little or no effect on earnings. Even in the medium term, in Grant Samuel's view, any increase

---

<sup>1</sup> For the purpose of this analysis both the revenue of the Manager and the value of assets under management have been estimated on the basis of the market value of the equity of VCEG plus net corporate debt, with the market value of VCEG equity based on recent VCEG security prices of around \$0.21.

## GRANT SAMUEL



in earnings resulting from the Internalisation Proposal is unlikely to compensate for the additional securities on issue. Accordingly, Grant Samuel expects that the Internalisation Proposal will result in a dilution in earnings per security (at least on a cash earnings basis).

One alternative would be for VCEG to pay cash as consideration for the Internalisation Proposal instead of issuing new securities. This would avoid the dilutionary effect of the Internalisation Proposal. However, VCEG has announced that it is focussing on accelerated debt reduction, with the aim of retiring or substantially reducing its corporate debt. Resolution of its debt position is likely to have a positive effect on VCEG's security price, and may allow the resumption of income distributions. In view of these factors, settlement of the consideration for the Internalisation Proposal by way of the proposed security issue instead of in cash appears reasonable.

- **Transaction costs will not be material.**

The total transaction costs of the Internalisation Proposal are expected to be around \$1.4 million. Of these, approximately \$1.3 million have already been incurred. The incremental cost of approximately \$100,000 if the Internalisation Proposal proceeds is not material in the context of the overall benefits and costs of the Internalisation Proposal.

- **Security holders will be better off if the Internalisation Proposal proceeds.**

Comparison of the direct financial benefits and costs of the Internalisation Proposal is not straightforward. At current security prices, the Consideration for the Internalisation Proposal is of the order of \$2.8-3.5 million. The direct financial benefit of the Internalisation Proposal depends on the future VCEG security price and is therefore difficult to quantify with any precision. Nevertheless, in Grant Samuels' view, it appears reasonable to expect that the direct financial benefit should approximate the Consideration and may in fact exceed it. On this basis, an assessment of the net financial benefit suggests that the Internalisation Proposal should be broadly value neutral. If there is any net cost, it is likely to be immaterial.

On the other hand, the structural benefits of the Internalisation Proposal in terms of aligning the interests of security holders and management are significant. In particular, the Internalisation Proposal could help to facilitate (or at least should remove any impediments to) a future takeover proposal for VCEG. In Grant Samuel's view this benefit of the Internalisation Proposal is compelling. While the earnings dilution that will result from the issue of additional securities is a disadvantage, it is acceptable in the context of VCEG's focus on debt reduction.

On balance, in Grant Samuel's view, security holders in VCEG will be better off if the Internalisation Proposal proceeds than if it does not. On this basis, Grant Samuel has concluded that the Internalisation Proposal is fair and reasonable to, and in the best interests of, holders of VCEG securities.

#### 4 Other Matters

This report is general financial product advice only and has been prepared without taking into account the objectives, financial situation or needs of individual holders of securities in VCEG. Because of that, before acting in relation to their investment, security holders should consider the appropriateness of the advice having regard to their own objectives, financial situation or needs. Security holders should read the Explanatory Memorandum issued by VCEG in relation to the Internalisation Proposal.

Voting for or against the Internalisation Proposal is a matter for individual security holders, based on their own views as to value and future market conditions and their particular circumstances including risk profile. Security holders who are in doubt as to the action they should take should consult their own professional adviser.

This report does not constitute, and should not be construed as, an opinion in relation to investment in, continued holding of or divestment of VCEG securities. Such investment decisions are independent of a decision to vote for or against the Internalisation Proposal. Grant Samuel offers no opinion as to the merits of an investment in VCEG securities. Security holders should consult their own professional adviser in this regard.

GRANT SAMUEL



Grant Samuel has prepared a Financial Services Guide as required by the Corporations Act, 2001. The Financial Services Guide is included at the beginning of this summary.

This letter is a summary of Grant Samuel's opinion. The full report from which this summary has been extracted is attached.

The opinion is made as at the date of this letter and reflects circumstances and conditions as at that date.

Yours faithfully  
Grant Samuel & Associates Pty Limited

*Grant Samuel & Associates*



**Financial Services Guide  
and  
Independent Expert's Report  
in relation to the Viridis Internalisation  
Proposal**

**Grant Samuel & Associates Pty Limited  
(ABN 28 050 036 372)**

**10 July 2009**

GRANT SAMUEL



## Financial Services Guide

Grant Samuel & Associates Pty Limited ("Grant Samuel") carries on business at Level 6, 1 Collins Street, Melbourne Vic 3000. Grant Samuel & Associates Pty Limited holds Australian Financial Services Licence No. 240985 authorising it to provide financial product advice on securities and interests in managed investments schemes to wholesale and retail clients.

The Corporations Act, 2001 requires Grant Samuel to provide this Financial Services Guide ("FSG") in connection with its provision of an independent expert's report ("Report") which is included in a document ("Explanatory Memorandum") provided to members by the company or other entity ("Entity") for which Grant Samuel prepares the Report.

Grant Samuel does not accept instructions from retail clients. Grant Samuel provides no financial services directly to retail clients and receives no remuneration from retail clients for financial services. Grant Samuel does not provide any personal retail financial product advice to retail investors nor does it provide market-related advice to retail investors.

When providing Reports, Grant Samuel's client is the Entity to which it provides the Report. Grant Samuel receives its remuneration from the Entity. In respect of the Report for Viridis Clean Energy Group ("VCEG") in relation to the proposed internalisation of the management of VCEG ("the VCEG Report"), Grant Samuel will receive a fixed fee of \$200,000 plus reimbursement of out-of-pocket expenses for the preparation of the Report (as stated in Section 6.3 of the VCEG Report).

No related body corporate of Grant Samuel, or any of the directors or employees of Grant Samuel or of any of those related bodies or any associate receives any remuneration or other benefit attributable to the preparation and provision of the Report.

Grant Samuel is required to be independent of the Entity in order to provide a Report. The guidelines for independence in the preparation of Reports are set out in Regulatory Guide 112 issued by the Australian Securities & Investments Commission on 30 October 2007. The following information in relation to the independence of Grant Samuel is stated in Section 6.3 of the VCEG Report:

"Grant Samuel and its related entities do not have at the date of this report, and have not had within the previous two years, any security holding in or other relationship with VCEG, VEC or VIML that could reasonably be regarded as capable of affecting its ability to provide an unbiased opinion in relation to the Internalisation Proposal.

In addition, no Grant Samuel group executives hold securities in VCEG, VEC or VIML.

Grant Samuel commenced analysis for the purposes of this report in April 2009 prior to the announcement of the Internalisation Proposal. This work did not involve Grant Samuel participating in the setting the terms of, or any negotiations leading to, the Internalisation Proposal.

Grant Samuel had no part in the formulation of the Internalisation Proposal. Its only role has been the preparation of this report.

Grant Samuel will receive a fixed fee of \$200,000 for the preparation of this report. This fee is not contingent on the outcome of the Internalisation Proposal. Grant Samuel's out of pocket expenses in relation to the preparation of the report will be reimbursed. Grant Samuel will receive no other benefit for the preparation of this report.

Grant Samuel considers itself to be independent in terms of Regulatory Guide 112 issued by the ASIC on 30 October 2007."

Grant Samuel has internal complaints-handling mechanisms and is a member of the Financial Industry Complaints Services' Complaints Handling Tribunal, No. F 4197.

Grant Samuel is only responsible for the Report and this FSG. Complaints or questions about the Explanatory Memorandum should not be directed to Grant Samuel which is not responsible for that document. Grant Samuel will not respond in any way that might involve any provision of financial product advice to any retail investor.

GRANT SAMUEL



Table of Contents

1	Details of the Terms of the Proposal .....	1
2	Scope of the Report.....	2
2.1	Purpose of the Report .....	2
2.2	Basis of Evaluation .....	2
2.3	Sources of the Information .....	3
2.4	Limitations and Reliance on Information .....	4
3	Landfill Gas and Wind Turbine Power Generation.....	6
3.1	Landfill Gas Technology.....	6
3.2	Wind Turbine Technology.....	6
3.3	Energy Frameworks and Regulation.....	6
4	Profile of VCEG.....	9
4.1	Group Structure .....	9
4.2	Management Agreement.....	10
4.3	Business Operations .....	11
4.4	Financial Performance.....	16
4.5	Financial Position .....	18
4.6	Cash Flow.....	20
4.7	Taxation Position.....	21
4.8	Capital Structure and Ownership.....	21
4.9	Security Price Performance.....	22
5	Evaluation of the Internalisation Proposal.....	24
5.1	Summary .....	24
5.2	Value of the Consideration .....	25
5.3	Financial Benefits of the Internalisation Proposal .....	25
5.4	Structural Benefits .....	28
5.5	Disadvantages and Costs.....	29
5.6	Security Holder Decision .....	30
6	Qualifications, Declarations and Consents.....	31
6.1	Qualifications.....	31
6.2	Disclaimers .....	31
6.3	Independence .....	31
6.4	Declarations .....	32
6.5	Consents .....	32
6.6	Other.....	32

GRANT SAMUEL



THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY



## 1 Details of the Terms of the Proposal

On 20 April 2009, the independent directors of Viridis Investment Management Limited (“VIML”), the responsible entity for Viridis Clean Energy Group (“VCEG”), announced that it had reached in principle agreement to internalise management of VCEG. Under the proposal, VCEG will acquire all the shares in Viridis Energy Capital Pty Limited (“VEC” or the “Manager”) (the “Internalisation Proposal”). VEC is the investment manager of VCEG and is the holding company of VIML.

On 28 May 2009, VCEG announced that a binding agreement had been reached with the shareholders of VEC. Under the agreement, VCEG will acquire all the shares in VEC. The consideration for the shares in VEC will be \$3.22 million, which will be settled through the issue by VCEG of 14 million VCEG stapled securities to the shareholders of VEC, at an issue price of \$0.23 per security.

The Internalisation Proposal also includes a provision that will apply if there is a change of control transaction for VCEG within six months of completion of the Internalisation Proposal, or such a transaction is recommended (and subsequently completed) within six months of completion of the Internalisation Proposal. In these circumstances, the total consideration received by the shareholders of VEC on divestment of the 14 million new securities issued under the Internalisation Proposal will be limited to \$5.6 million, or \$0.40 per security.

The Internalisation Proposal is conditional upon, among other things:

- VCEG security holder approval;
- satisfactory due diligence on VEC; and
- all necessary regulatory approvals and third party consents having been obtained.

VCEG is an Australian headquartered renewable energy group. It owns a number of renewable energy assets in Europe and North America:

- a portfolio of 35 landfill gas power projects in the United Kingdom (“UK”), with a total generating capacity of 64 MW;
- a 49% interest in the 30 MW Ardrossan wind farm, located in Scotland;
- eight German wind farms, with total capacity of 82MW;
- a portfolio of 8 landfill gas projects in Texas and California, in the United States of America (“US”), with total installed capacity of 42MW.

VCEG is listed on the Australian Securities Exchange (“ASX”) and comprises two stapled trusts, Viridis Clean Energy Trust I (“VCET I”) and Viridis Clean Energy Trust II (“VCET II”). As at 25 June 2009, the VCEG had a market capitalisation of approximately \$45 million.



## 2 Scope of the Report

### 2.1 Purpose of the Report

The Internalisation Proposal is subject to the approval of security holders in accordance with Listing Rule 10.1 of the ASX Listing Rules ("Listing Rule 10.1") and Chapter 2E (as modified by Part 5C.7) of the Corporations Act 2001.

Listing Rule 10.1 prohibits an entity from acquiring an asset worth more than 5% of its net assets from a related party without the approval of non associated security holders. Under the Internalisation Proposal, VCEG will acquire assets (the shares in VEC) at a cost exceeding 5% of VCEG's net assets. The shareholders of VEC include Oaktel Investments Pty Ltd, which is controlled by Walter Pahor, a director of VIML and VEC. Investec Bank (Australia) Limited is a shareholder of VEC, and has a nominee director on the board of VIML and VEC. Having regard to the position of the shareholders of VEC, approval of security holders not associated with the shareholders of VEC or VIML (the "non associated security holders") is required. Listing Rule 10.10 requires the notice of meeting at which such approval is sought to include an independent expert's report on whether the transaction is fair and reasonable to the non associated security holders. The independent expert's report will also be included in the Explanatory Memorandum for the purposes of Chapter 2E (as modified by Part 5C.7) of the Corporations Act 2001.

The directors of VIML who are not associated with VEC ("the independent directors") have engaged Grant Samuel & Associates Pty Limited ("Grant Samuel") to prepare an independent expert's report for the purposes of Listing Rule 10.1 stating whether, in Grant Samuel's opinion, the proposed transaction is fair and reasonable to, and in the best interests of, the non associated security holders. A copy of the report is to accompany the Notice of Meeting and Explanatory Memorandum ("the Explanatory Memorandum") to be sent to security holders by VCEG.

This report is general financial product advice only and has been prepared without taking into account the objectives, financial situation or needs of individual VCEG security holders. Accordingly, before acting in relation to their investment, security holders should consider the appropriateness of the advice having regard to their own objectives, financial situation or needs. Security holders should read the Explanatory Memorandum issued by VIML in relation to the Internalisation Proposal.

Voting for or against the Internalisation Proposal is a matter for individual security holders based on their views as to value, their expectations about future market conditions and their particular circumstances including risk profile, liquidity preference, investment strategy, portfolio structure and tax position. Security holders who are in doubt as to the action they should take in relation to the Internalisation Proposal should consult their own professional adviser.

Similarly, it is a matter for individual security holders as to whether to buy, hold or sell securities in VCEG. This is an investment decision independent of a decision to vote for or against the Internalisation Proposal and Grant Samuel does not offer an opinion in this regard. Security holders should consult their own professional adviser in this regard.

### 2.2 Basis of Evaluation

Neither the ASX nor the Australian Securities & Investments Commission ("ASIC") provide specific guidance as to the analysis required in assessing whether a proposed transaction is fair and reasonable to non associated security holders for the purposes of Listing Rule 10.1. However, ASIC has issued Regulatory Guide 111 which establishes guidelines in respect of independent expert's reports under the Corporations Act. ASIC Regulatory Guide 111 differentiates between the analysis required for control transactions and other transactions. In the context of control transactions (whether by takeover bid, by scheme of arrangement, by the issue of securities or by selective capital reduction or buyback), it comments on the meaning of "fair and reasonable" and continues earlier regulatory guidelines that created a distinction between "fair" and "reasonable".

G R A N T S A M U E L



For most other transactions the expert is to weigh up the advantages and disadvantages of the Internalisation Proposal for security holders.

Listing Rule 10.1 applies to transactions between an entity and persons in a position to influence the entity. In certain circumstances, an entity could also seek security holder approval under the Corporations Act for such transactions, although generally there would be no requirement for the preparation of an expert's report under the Corporations Act. Nevertheless, Grant Samuel considers it appropriate to apply the guidance set out in ASIC Regulatory Guide 111 to proposals requiring approval under Listing Rule 10.1.

The Internalisation Proposal involves the internalisation of the management of VCEG and, in Grant Samuel's opinion, is not a control transaction as contemplated by Regulatory Guide 111. Accordingly, Grant Samuel has assessed the Internalisation Proposal for the purposes of ASX Listing Rule 10.1 by reference to the overall impact on the security holders of VCEG, on the basis of a judgement as to whether the expected benefits of the Internalisation Proposal outweigh any disadvantages and risks that might result.

In forming its opinion as to whether the Internalisation Proposal is fair and reasonable to, and in the best interests of, VCEG security holders, Grant Samuel has considered the following:

- the terms of the investment management agreement between VCEG and VEC;
- the financial benefits to VCEG of the Internalisation Proposal;
- the value of the consideration to be provided to the shareholders of VEC (ie. the cost to VCEG of the acquisition of VEC);
- the dilutionary impact of the issue of 14 million securities on future earnings attributable to holders of existing securities;
- the likely impact of the Internalisation Proposal on the market price and liquidity of VCEG securities;
- the likely impact of the the Internalisation Proposal on the market for control of VCEG;
- any other advantages and benefits arising from the Internalisation Proposal; and
- other costs, disadvantages and risks of the Internalisation Proposal.

### 2.3 Sources of the Information

The following information was utilised and relied upon, without independent verification, in preparing this report:

***Publicly Available Information***

- the Explanatory Memorandum (including earlier drafts);
- annual reports of VCEG for the three years ended 30 June 2008;
- half year announcement of VCEG for the six months ended 31 December 2008;
- press releases, public announcements, media and analyst presentation material and other public filings by VCEG including information available on its website;
- brokers' reports and recent press articles on VCEG and the renewable energy industry;
- sharemarket data and related information on Australian and international listed companies engaged in the renewable energy industry and on acquisitions of companies and businesses in this industry; and

G R A N T   S A M U E L



- information relating to the Australian and international renewable energy sectors including supply/demand forecasts and regulatory decisions and pronouncements (as appropriate).

*Non Public Information provided by VCEG*

- monthly management accounts for VCEG for the period from June 2008 to March 2009;
- detailed cash flows models including projections for VCEG's business operations; and
- other confidential documents, board papers, presentations and working papers.

Grant Samuel has also held discussions with, and obtained information from, senior management of VCEG and its advisers.

**2.4 Limitations and Reliance on Information**

Grant Samuel believes that its opinion must be considered as a whole and that selecting portions of the analysis or factors considered by it, without considering all factors and analyses together, could create a misleading view of the process underlying the opinion. The preparation of an opinion is a complex process and is not necessarily susceptible to partial analysis or summary.

Grant Samuel's opinion is based on economic, sharemarket, business trading, financial and other conditions and expectations prevailing at the date of this report. These conditions can change significantly over relatively short periods of time. If they did change materially, subsequent to the date of this report, the opinion could be different in these changed circumstances.

This report is also based upon financial and other information provided by VCEG and its advisers. Grant Samuel has considered and relied upon this information. VCEG has represented in writing to Grant Samuel that to its knowledge the information provided by it was complete and not incorrect or misleading in any material aspect. Grant Samuel has no reason to believe that any material facts have been withheld.

The information provided to Grant Samuel has been evaluated through analysis, inquiry and review to the extent that it considers necessary or appropriate for the purposes of forming an opinion as to whether the Internalisation Proposal is fair and reasonable to, and in the best interests of security holders, having regard to the interests of the non associated security holders of VCEG. However, Grant Samuel does not warrant that its inquiries have identified or verified all of the matters that an audit, extensive examination or "due diligence" investigation might disclose. While Grant Samuel has made what it considers to be appropriate inquiries for the purposes of forming its opinion, "due diligence" of the type undertaken by companies and their advisers in relation to, for example, prospectuses or profit forecasts, is beyond the scope of an independent expert.

Accordingly, this report and the opinions expressed in it should be considered more in the nature of an overall review of the anticipated commercial and financial implications rather than a comprehensive audit or investigation of detailed matters.

An important part of the information used in forming an opinion of the kind expressed in this report is comprised of the opinions and judgement of management. This type of information was also evaluated through analysis, inquiry and review to the extent practical. However, such information is often not capable of external verification or validation.

Preparation of this report does not imply that Grant Samuel has audited in any way the management accounts or other records of VCEG, VEC or VIML. It is understood that the accounting information that was provided was prepared in accordance with generally accepted accounting principles and in a manner consistent with the method of accounting in previous years (except where noted).

GRANT SAMUEL



Grant Samuel was provided with a detailed financial model of VCEG. The model, which was prepared by the financial advisers of VCEG on the basis of information and assumptions provided by VCEG, models future earnings and cash flows for VCEG over a 25 year period, based on assumptions regarding future energy production volumes, energy pricing, operating costs and other relevant factors.

The model was utilised by Grant Samuel in its analysis but was not directly relied upon for the purposes of forming its opinion in relation to the Internalisation Proposal.

Grant Samuel has no reason to believe that the assumptions included in the model reflect any material bias, either positive or negative. However, the achievability of the assumptions and the future earnings and cash flows estimated on the basis of those assumptions are not warranted or guaranteed by Grant Samuel, VCEG or the financial advisers to VCEG. Future profits and cash flows are inherently uncertain. They reflect future events that cannot be assured and are necessarily based on assumptions, many of which are beyond the control of VCEG or its management. Actual results may be significantly more or less favourable.

In forming its opinion, Grant Samuel has also assumed that:

- matters such as title, compliance with laws and regulations and contracts in place are in good standing and will remain so and that there are no material legal proceedings, other than as publicly disclosed;
- the information set out in the Explanatory Memorandum sent by VIML to VCEG security holders is complete, accurate and fairly presented in all material respects;
- the publicly available information relied on by Grant Samuel in its analysis was accurate and not misleading;
- the Internalisation Proposal will be implemented in accordance with its terms; and
- the legal mechanisms to implement the Internalisation Proposal are correct and will be effective.

To the extent that there are legal issues relating to assets, properties, or business interests or issues relating to compliance with applicable laws, regulations, and policies, Grant Samuel assumes no responsibility and offers no legal opinion or interpretation on any issue.



### **3 Landfill Gas and Wind Turbine Power Generation**

#### **3.1 Landfill Gas Technology**

To allow efficient power generation, a landfill gas site needs to achieve consistent gas flow rates and gas quality. Vertical extraction wells are drilled into the landfill and are linked by pipes to a gas collection facility. The extraction process, which is maintained under a vacuum, reduces the gas moisture content and filters out fine particles. The processed gas is then used as a fuel in gas engines. The power generation facilities are interconnected with a power grid to allow the sale of electricity produced.

Landfills can produce gas for as long as 40 years, depending upon the composition of the waste. However, the typical economic life of a project is approximately 25 years, with production peaking around years 7 to 11, followed by a gradual decline.

#### **3.2 Wind Turbine Technology**

A wind turbine comprises a foundation, tower, nacelle and rotor consisting of three blades mounted to a hub. The rotation of the blades converts the kinetic energy of the wind into rotational shaft energy. This energy is harnessed in the nacelle using a generator to produce electricity. Electricity is then transmitted to the electrical power grid.

Wind variability dictates the amount of power generated by a wind turbine. Power generated from the wind is generally proportional to the speed of the wind cubed: for example, a doubling of wind speed generates eight times the energy. However, a wind turbine will only operate up to its rated capacity, beyond which it will reach a cut out speed and shut down to protect the turbine from damage.

Accurate forecasting of wind activity is critical to wind farm investment. Wind activity forecasts are based on long term wind data observed at or near the wind farm site, taking into account speed and variability, generally over 20 years. The data is analysed to determine the predicted annual long term (generally considered to be 10 years) mean energy production at the site. Expected annual energy production is commonly referred to as "P50" energy production. There is a 50% probability that actual energy production will exceed P50 energy production (and conversely a 50% probability that actual energy production will be less than P50 energy production). While actual wind activity and energy production will vary from year to year, over the long term actual energy production should approximate the P50 level.

The capacity factor (ie. expected actual energy production as a percentage of theoretical maximum production capacity) of a wind farm is generally much lower than a conventional fuelled power plant due to the variability of the wind resource. Wind farms typically have a capacity factor in the 25- 40% range.

#### **3.3 Energy Frameworks and Regulation**

Energy frameworks and regulations are discussed for the countries where VCEG conducts its operations: the UK, Germany and the US":

##### **3.3.1 United Kingdom**

In 2002, the British government enacted the Renewables Obligation Order whereby electricity suppliers are obliged to purchase a proportion of their electricity supplies from accredited renewable sources. Running until 2027, the legislation aims to increase renewable energy generation from approximately 2% in 2002 to at least 15% by 2015.

Under the Renewables Obligation Order regime, eligible renewable energy generators are issued with Renewable Obligation Certificates ("ROCs") that suppliers can acquire to meet their obligations. If an electricity supplier does not achieve the required proportion of



ROCs, then it must utilise a buy-out clause whereby it pays a penalty for any shortfall. The proceeds from the buy-out payments are returned to those suppliers that have met their ROC requirements, in proportion to the number of ROCs that they have presented. Suppliers holding ROCs in excess of their annual requirement may bank up to 25% of their required holdings for use in the following year.

Producers of renewable energy that supply energy under the Renewables Obligation Order regime accordingly sell energy at market related prices, reflecting the wholesale energy price and ROC prices.

In addition to the Renewables Obligation Order regime, there is a Climate Change Levy on energy delivered to non-domestic users in the UK. Renewable energy is exempt from this levy.

Prior to the enactment of the Renewables Obligation Order regime, the Non Fossil Fuel Obligation (“NFFO”) regime was in place. Under NFFO, public electricity suppliers bought electricity generated from renewable resources under NFFO contracts, at prices above the market price for electricity. Public electricity suppliers were then compensated for this by payments out of money collected through the Fossil Fuel Levy. NFFO contracts are long term contracts and most do not expire until 2018.

The Renewables Obligation Order regime is currently undergoing a period of reform. The main reform to the Renewables Obligation Order regime is the introduction of a technology-banded renewables obligation, which was implemented on 1 April 2009. Under this policy, eligible renewable technologies will be awarded with multiples of ROCs, one ROC or fractions of a ROC per MW of eligible generation, depending on the renewable technology used.

The main factors affecting wholesale electricity prices in the UK are gas prices (including the price of imported Russian gas), coal prices and carbon emission costs.

The severe recessionary conditions in most first world economies have resulted in a sharp decline in demand for fossil fuel commodities, significant falls in prices for coal, oil, gas and carbon, and therefore falls in UK wholesale electricity prices. In the longer term, UK electricity prices are projected to increase, both to provide adequate returns on the investments required to support expected long term demand growth, and to reflect the additional costs likely to be imposed through carbon emission abatement initiatives.

### **3.3.2 Germany**

The German government has put in place a renewable energy target of 12.5% by 2010 (which was met in 2007), 20% by 2020 and 50% by 2050. In order to meet these targets, the government established the Renewable Energy Sources Act (“RES Act”) in 2000 (which has been updated in 2004 and 2009).

The RES Act provides renewable energy generators a fixed price “feed in tariff” for a minimum of 20 years. Essentially, the government has put in place a scheme whereby any renewable generator built will be accepted into the grid for a minimum of 20 years at a fixed price. The price is set for an initial rate per KWh for at least the first five years, followed by a lower rate for the remaining term if certain conditions are met in relation to reference yield (the price is not subject to indexation).

### **3.3.3 United States of America**

The US has established renewable energy regimes at federal and state levels.

Federally, the electricity Production Tax Credit (“PTC”) scheme has been implemented. Under the PTC scheme, tax credits are offered to owners of renewable power projects for

GRANT SAMUEL



the first 10 years of operation. Also, renewable energy power projects can now opt instead to receive the Federal Business Energy Investment Credit or an equivalent cash grant from the US Department of Treasury equal to 30% of eligible costs.

The PTCs are passed through to project investors, who can use the tax credits to offset taxable income derived from US-based operating businesses. PTCs are not an outright payment for the production of renewable energy in that they can only be used to reduce tax. This scheme is in place until 31 December 2013.

At the state level, 29 states participate in Renewable Portfolio Standards (“RPS”). The RPSs require that all retail suppliers have a minimum proportion of their supply coming from accredited renewable energy sources.

The specific renewable energy regimes that apply to the US operations of VCEG are:

- **California** is one of the leading states in the US in relation to the promotion of renewable energy. The State of California is expected to mandate an increase in its RPS target from 20% of all electricity sources to 33% by 2020. The California Public Utilities Commission, the California Energy Commission and the California Air Resources Board have all identified the 33% target as a cornerstone to achieve the greenhouse gas reduction goals of the Global Warming Solutions Act; and
- **Texas** – the Renewable Energy Credit (“REC”) trading program was established to increase the State’s renewable energy capacity to 5,880MW by 2015 (500MW non-wind) and a target of 10,000MW by 2025. The tradable instrument is a REC, representing 1 MWh, which can be banked for up to 3 years. A market is created by generators that earn RECs and retailers that need to acquire RECs based on energy sales. Further, a compliance premium is awarded in addition to a REC for each MW from a non-wind renewable energy source installed after 1 September 2008.

In addition to these schemes, the federal Public Utilities Regulatory Policy Act places an obligation on utilities to purchase output from qualifying facilities (renewable generators) that are located within a utility’s designated service area.

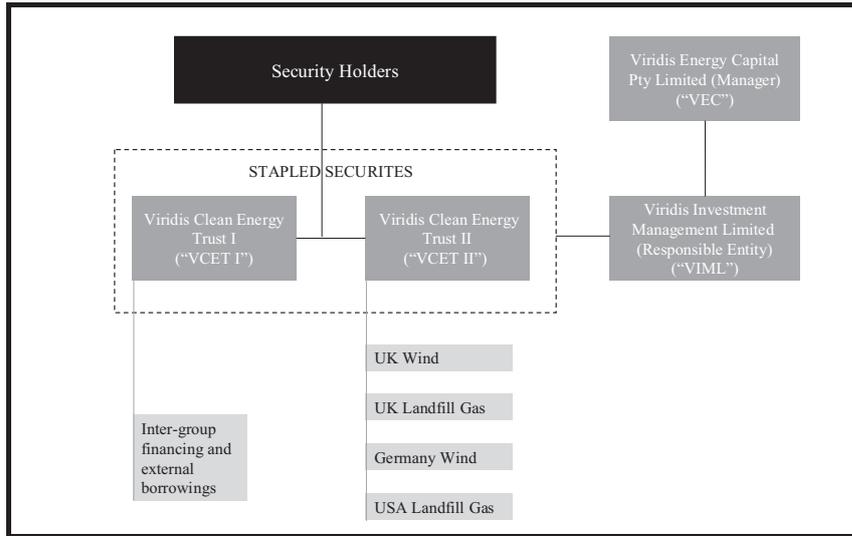
In the Texan market, while generators of renewable energy do receive REC premiums for their energy, their energy pricing is largely based on wholesale electricity prices, which in turn principally reflect gas prices. Gas prices, and consequently energy prices, have fallen sharply over the last twelve months, but are expected to recover over the medium term as economic conditions improve.



4 Profile of VCEG

4.1 Group Structure

The structure of VCEG is illustrated in the graph below:



Source: VCEG

VCEG is a listed infrastructure fund managed by VEC. Key features of the VCEG structure are as follows:

- VCEG is made up of two stapled managed investment trusts. Each security in VCEG consists of one unit in VCET I and one unit in VECT II, which are stapled together and quoted as one security;
- VCET I is a pass-through trust, which acts as the internal financing entity;
- VCET II is a public trading trust and holds VCEG’s offshore equity interests;
- VIML (the “Responsible Entity”) has overall responsibility for the management and operation of VCEG;
- VEC (the “Manager”) provides investment management services to the Responsible Entity under a 25 year management agreement; and
- the Responsible Entity is a wholly owned subsidiary of the Manager.



#### 4.2 Management Agreement

VCEG is externally managed by VEC under a 25 year management agreement. This management agreement is due to expire on 31 July 2030.

Under the management agreement, VEC provides the following services:

- asset management services, such as the review and management of the assets within VCEG, as well as accounting, risk management and reporting in relation to VCEG; and
- capital and investment advice, including research, identification, analysis and recommendations with regard to investment opportunities, expansion opportunities for existing investments and divestment opportunities, and monitoring and management of the capital structure and future capital requirements of VCEG.

The Manager employs the Chief Executive Officer, Chief Financial Officer and finance and operations support executives of VCEG. The costs incurred by the Manager are primarily employee costs and associated overhead costs such as office costs, compliance costs, IT costs and accounting costs.

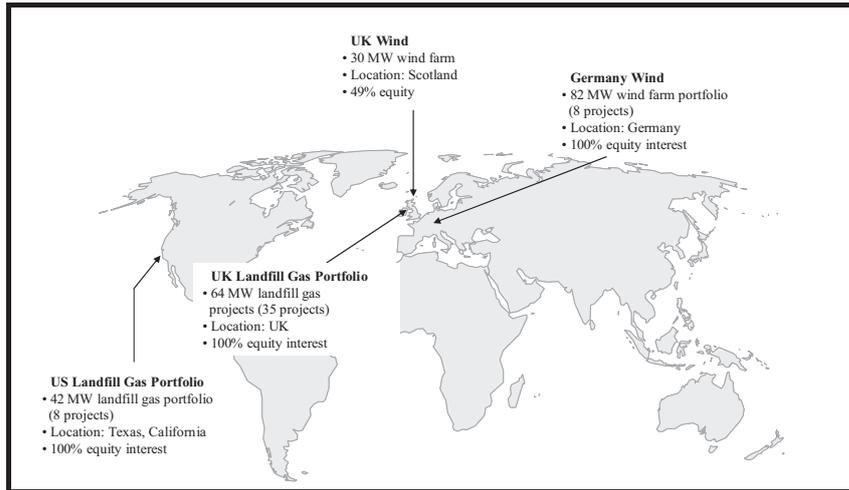
The fees paid to the Manager consist of:

- **Base Management Fees** – the base fee payable by VCEG to the Manager is based on the net investment value (“NIV”) of VCEG, where NIV is calculated as the market capitalisation of VCEG, plus corporate debt (excluding project debt), less uninvested cash. Market capitalisation is calculated by reference to the VWAP for VCEG securities for the 20 trading days prior to the date of calculation. The fee is 1.0% per annum, calculated and payable quarterly; and
- **Performance Fee** – this is only payable if VCEG’s return for the six-month performance fee period exceeds the performance of the benchmark S&P/ASX 200 Utilities Accumulations Index (“Index”). If VCEG exceeds this Index, the Manager is entitled to 20% of the return above the benchmark. The fee is calculated and paid half-yearly from the assets of VCEG. If the return is less than the benchmark index for any period, then the amount of the deficit is carried forward and deducted from the future periods until the deficit is fully recovered. This fee has never been paid to the Manager.



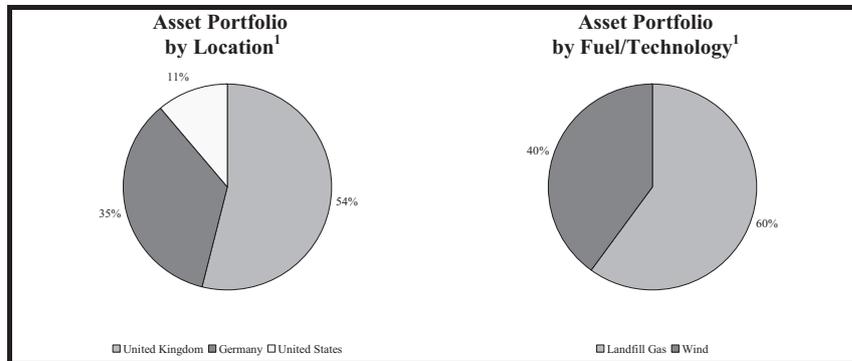
### 4.3 Business Operations

The map below summarises VCEG's portfolio of investments:



Source: VCEG

Landfill gas is the predominant clean energy fuel utilised by VCEG, whilst the United Kingdom represents the main source of VCEG's clean energy:



Source: VCEG

Note 1: Based on book value as at 31 December 2008

#### UK Wind

The Ardrossan wind farm is located approximately 40 kilometres south-west of Glasgow, Scotland. The wind farm was originally commissioned in 2004 with 12 wind turbines and a capacity of 24 MW. A recently completed expansion, involving the installation of a further three wind turbines, has increased the wind farm's generation capacity to its current 30MW.

VCEG holds a 49% equity stake in the project, whilst Airtricity, one of Europe's largest renewable energy companies and developer of the Ardrossan project, holds 51%.

Wind turbine generator maintenance services are provided by the Vestas group. Airtricity provides additional technical services to the project.

GRANT SAMUEL



Since commissioning, the Ardrossan wind farm has had a capacity factor of around 40%, which is at the upper end of global wind farm capacity factors. This performance has been generally in line with expected production (P50 production).

Electricity and ROCs are sold to E.ON (UK) under a 12 year Power Purchase Agreement. The Power Purchase Agreement provides for a combination of fixed prices and market prices, with ROC prices subject to an inflation linked floor price.

Energy production from the UK Wind portfolio was below expectation during the six months to 31 December 2008 and has continued to be below P50 production levels since 31 December 2008, due to poor wind conditions. The following table shows actual performance relative to predicted performance since the commencement of production in March 2004:

<b>Ardrossan Wind – Energy Production</b>			
Six month period ended	Average Predicted Capacity Factor (%)	Average Actual Capacity Factor – Adjusted <sup>1</sup> (%)	Difference (%)
30 June 2004 <sup>2</sup>	31.07%	29.95%	(3.60%)
31 December 2004	37.07%	39.29%	5.99%
30 June 2005	38.78%	40.20%	3.66%
31 December 2005	38.81%	37.94%	(2.24%)
30 June 2006	39.73%	35.51%	(10.62%)
31 December 2006	38.81%	35.00%	(9.82%)
30 June 2007	39.73%	40.45%	1.81%
31 December 2007	38.81%	35.16%	(9.40%)
30 June 2008	43.47%	42.79%	(1.56%)
31 December 2008	36.32%	35.74%	(1.60%)
30 April 2009 <sup>3</sup>	44.23%	39.20%	(11.37%)

Source: VCEG

Note 1: Adjusted actual capacity factor takes into account actual availability of generators to produce energy and therefore excludes times when generators were unavailable (with compensation subsequently available under warranty arrangements)

Note 2: 4 months to 30 June 2004

Note 3: 4 months to 30 April 2009

**UK Landfill Gas**

VCEG owns a 64MW portfolio of landfill gas power generation projects located in the United Kingdom as detailed in the table below:

<b>UK Landfill Gas</b>			
Location	Capacity (MW)	Number of Landfill Sites	Number of Engines
England	53	27	55
Scotland	10	7	13
Wales	1	1	1
<b>Total</b>	<b>64</b>	<b>35</b>	<b>69</b>

Source: VCEG

VCEG owns 100% of the portfolio, which was acquired in April 2006 from ENER-G plc. The portfolio is operated by ENER-G plc under a five year production based operation and maintenance agreement.

GRANT SAMUEL



The portfolio generates power at 35 landfill sites, using a total of 69 reciprocating engines that can be transferred between sites to match gas production profiles. Approximately half of the projects are located at active landfill sites, where ongoing waste deposition provides the opportunity to expand capacity and production levels. Operations are generally conducted under long term site lease agreements, commonly for terms of 6 -18 years with options to extend.

The portfolio's capacity is sold under a combination of NFFO contracts and market based sales agreements that provide for the sale of energy and ROCs. During the first half of the 2009 financial year, higher power prices were offset by lower production levels, compared to the prior corresponding period. Production was affected by lower than expected site productivity and interruptions from landfilling, capping and restoration activities at a number of sites.

VCEG's UK Landfill Gas portfolio is funded by a £52,049,799 senior debt facility (as at 31 December 2008), expiring in 2016, as well as a working capital facility of £3,800,000 (as at 31 December 2008), expiring in 2010.

**Germany Wind**

VCEG owns a portfolio of eight wind farms located in Lower Saxony and Saxony-Anhalt in Germany, with a total installed capacity of 82MW, as summarised below:

Germany Wind		
Project	Capacity (MW)	Number of Turbines
<i>Lower Saxony portfolio</i>		
Kugelberg	6	3
Blender II	14	7
Geeste	10	5
Rieda	4	2
Shnde-Lehrte	10	5
<i>Merinda portfolio</i>		
Helmstedt	10	5
Buddenstedt	8	4
Schnellin	20	10
<b>Total</b>	<b>82</b>	<b>41</b>

Source: VCEG

**Lower Saxony Portfolio**

The 44MW Lower Saxony portfolio comprises five wind farms in the Lower Saxony region of north-west Germany.

VCEG owns 100% of the equity in this portfolio, which was acquired progressively (upon project completion) during the period February 2005 to May 2006 from Gamesa SA. Gamesa SA is responsible for the operations and maintenance of the wind turbines, which are under warranty, under a five year agreement.

All energy from the portfolio is sold under a 20 year fixed price off-take agreement with local utilities, pursuant to the RES Act.

**Merinda Portfolio**

The Merinda portfolio is a 38MW portfolio, comprising three wind farms in the regions of Lower Saxony and Saxony-Anhalt in Germany.

GRANT SAMUEL



VCEG owns 100% of Merinda, which was acquired in January 2006 from E.ON Energy Projects, a subsidiary of E.ON AG and KG Allgemeirue Leasing GmbH & Co. E.ON Energy Projects provides operations and maintenance services to the portfolio under a long term service contract with a production based fee.

All energy from the portfolio is sold under a 20 year, fixed price off-take agreement with local utilities (E.ON and RWE), pursuant to German legislation.

The Germany Wind portfolio is funded by €54,676,080 of senior debt (as at 31 December 2008), with €24,637,913 expiring in 2019 and €30,038,167 expiring in 2020. The German Wind portfolio also has a working capital facility of €400,000 expiring in 2019.

Energy production from the German Wind portfolio was below expectation during the six months to 31 December 2008 and has continued to be below P50 production levels since 31 December 2008, due to poor wind conditions. The following table shows actual performance relative to predicted performance since the commencement of production in 2003:

<b>Germany Wind – Energy Production</b>			
Six month period ended	Average Predicted Capacity Factor (%)	Average Actual Capacity Factor – Adjusted <sup>1</sup> (%)	Difference (%)
31 December 2003	23.02%	21.13%	(8.21%)
30 June 2004	27.83%	21.19%	(23.86%)
31 December 2004	23.02%	21.84%	(5.13%)
30 June 2005	28.42%	28.87%	1.58%
31 December 2005	23.00%	18.48%	(19.65%)
30 June 2006	26.09%	17.42%	(33.23%)
31 December 2006	21.92%	24.03%	9.63%
30 June 2007	26.84%	32.42%	20.79%
31 December 2007	21.92%	20.03%	(8.62%)
30 June 2008	26.84%	26.93%	0.34%
31 December 2008	21.92%	19.18%	(12.50%)
30 June 2009	29.94%	18.62%	(37.81%)

Source: VCEG

Note 1: Adjusted actual capacity factor takes into account actual availability of generators to produce energy and therefore excludes times when generators were unavailable (with compensation subsequently available under warranty arrangements)

VCEG management has completed a review of the performance of the Germany Wind portfolio and found that its performance is consistent with regional performance. While regional performance is currently below long term averages, management has concluded that the P50 production expectations do not require amendment at this time.

**US Landfill Gas**

VCEG owns a portfolio of eight landfill gas power generation projects located in Texas and California, with a total installed capacity of 42MW as summarised below:

GRANT SAMUEL



US Landfill		
Project	Capacity (MW)	Number of Engines
<i>Texas portfolio</i>		
Atascocita	10	6
Baytown	5	5
Blue Bonnet	4	4
Coastal Plains	7	4
Conroe	2	2
Security	3	2
<i>California portfolio</i>		
Penrose	7	4
Toyon	4	2
<b>Total</b>	<b>42</b>	<b>29</b>

Source: VCEG

Energy production from the US Landfill portfolio was below expectation during the six months to 31 December 2008 due to Hurricane Ike and ongoing maintenance issues.

***Texas Portfolio***

The Texas portfolio consists of six landfill gas power projects located near Houston, with a total installed capacity of 31MW.

The projects were originally developed by Reliant Energy Inc using equipment supplied by GE Jenbacher. Operations management and maintenance services to the project are provided by RunEnergy LP.

Landfill gas is supplied to the projects under fuel supply agreements with Waste Management Inc, which owns and operates the landfill sites and associated gas collection systems.

Reliant Energy Power Supply LLC purchases the Texas Renewable Energy Credits from all six projects and the electricity from four of the projects. The remaining two projects sell their electricity output as “qualifying facilities” under the Public Utilities Regulatory Policy Act.

There is no project debt related to this portfolio of projects.

***California Project***

The Penrose and Toyon projects in California source landfill gas from the Penrose, Bradley and Toyon Canyon landfill sites. Electricity produced by the projects is sold under long term power purchase agreements to Southern California Edison and the City of Los Angeles.

There is no project debt related to these projects.

GRANT SAMUEL



#### 4.4 Financial Performance

The historical financial performance of VCEG for the 3 years ending 30 June 2008 and the half year ended 31 December 2008 is summarised below:

<b>VCEG - Financial Performance (\$'000)</b>				
	Year ended 30 June			Half Year ended 31 December
	2006 actual	2007 actual	2008 actual	2008 actual
Operating income	31,683	91,837	88,536	46,191
Interest income – project investments	3,629	3,892	1,945	972
Interest income – other	720	1,296	1,434	590
<b>Total revenue</b>	<b>36,032</b>	<b>97,025</b>	<b>91,915</b>	<b>47,753</b>
<b>EBITDA<sup>1</sup></b>	<b>22,629</b>	<b>40,646</b>	<b>27,618</b>	<b>35,006</b>
Depreciation and amortisation (excluding goodwill)	(12,097)	(33,669)	(32,845)	(17,162)
<b>EBIT<sup>2</sup></b>	<b>10,532</b>	<b>6,977</b>	<b>(5,227)</b>	<b>17,844</b>
Interest expense	(11,730)	(26,042)	(22,947)	(11,705)
Share of profit/(loss) of associates	957	1,668	2,965	1,245
<b>Operating profit before tax</b>	<b>(241)</b>	<b>(17,397)</b>	<b>(25,209)</b>	<b>7,384</b>
Income tax benefit/(expense)	(21)	14,655	5,056	(1,670)
<b>Operating profit after tax</b>	<b>(262)</b>	<b>(2,742)</b>	<b>(20,153)</b>	<b>5,714</b>
Outside equity interests	(3,816)	(3,796)	(6,721)	(3,181)
<b>Profit after tax attributable to VCET II security holders</b>	<b>(4,078)</b>	<b>(6,538)</b>	<b>(26,874)</b>	<b>2,533</b>
<i>Statistics</i>				
<i>Basic earnings/(loss) per security (cents)</i>	(4.09)	(4.21)	(14.53)	1.35
<i>Distributions per stapled security (cents)</i>	7.13	9.80	10.16	3.20
<i>Tax deferred distributions (%)</i>	76.0%	100.0%	91.0%	na
<i>Interest cover<sup>3</sup> (x)</i>	(1.9x)	(1.6x)	1.2x	na

Source: VCEG and Grant Samuel analysis

Reported EBITDA for VCEG is affected by currency exchange gains and losses, and does not include the share of earnings attributable to VCEG's 49% interest in the Ardrossan wind project. The following table details the reconciliation of VCEG's underlying EBITDA to adjusted EBITDA:

<sup>1</sup> EBITDA is earnings before interest, tax, depreciation and amortisation, investment income, and significant and non-recurring items.

<sup>2</sup> EBIT is earnings before interest, tax, investment income, and significant and non-recurring items.

<sup>3</sup> Interest cover is Adjusted EBITDA divided by net interest expense.

GRANT SAMUEL



<b>VCEG – Adjusted EBITDA (\$'000)</b>				
	Year ended 30 June			Half Year ended 31 December
	2006 actual	2007 actual	2008 actual	2008 actual
<b>EBITDA as reported</b>	<b>22,629</b>	<b>40,646</b>	<b>27,618</b>	<b>35,006</b>
Share of net profit from associate	957	1,668	2,965	1,245
Unrealised derivative & foreign exchange currency gains	(4,529)	4,348	10,763	(15,012)
Transaction costs written off	-	-	2,642	-
<b>Adjusted EBITDA</b>	<b>19,057</b>	<b>46,662</b>	<b>43,998</b>	<b>21,239</b>

Source: VCEG results presentations

Key items affecting VCEG's financial performance since the 2006 financial year are summarised below:

- the 2006 financial year was VCEG's first year as an ASX listed entity. During the year VCEG acquired the Helmstedt, Buddenstedt and Schnellin wind farms in Germany and the Norgen landfill gas portfolio in the UK;
- during the 2007 financial year, VCEG acquired additional landfill gas fuelled power generation assets in the UK and US. Additional capacity was also installed across the UK landfill gas portfolio;
- VCEG's results for the 2008 financial year were significantly impacted by a strengthening Australian dollar, which reduced reported earnings by comparison with the prior year. However, these currency fluctuations did not have a material impact on VCEG's underlying Australian dollar cash flows, which are used to fund distributions to security holders and service Australian dollar-denominated corporate debt, due to VCEG's foreign currency hedging program, which delivered \$2.56 million realised cash gains in the 2008 financial year. Foreign exchange and derivative positions are marked-to-market on a monthly basis, with the effect flowing through the income statement. During the 2008 financial year, underlying asset performance was broadly in line with expectations on a portfolio basis. The Ardrossan wind project's net production was 98.8% of net P50 forecast and ROC and energy prices were higher than for the previous year. As a result, Ardrossan almost doubled its revenue. By contrast, production from the Germany wind portfolio and US landfill gas business was lower than expected;
- for the six months to December 2008, overall price increases were offset by lower production from the UK and Germany wind projects, as well as from the UK and US landfill gas projects. Furthermore, operating expenses for the Germany wind portfolio increased, following the expiry of the warranty periods for the majority of the wind farms in the Lower Saxony portfolio. Texas power pricing softened considerably in the later part of the period as natural gas prices declined. Reported EBITDA was significantly boosted by a \$17.1 million foreign currency exchange gain; and
- in an operational update announcement released to the ASX in April 2009, VCEG noted that its operating performance and cash flow had been adversely affected by poor wind conditions in Germany as well as lower than expected production levels and declining power prices in the US. These factors had had an increasing impact through the March quarter, in particular as a result of continued poor wind conditions in Germany during what is historically a high production period. Management also downgraded its earnings guidance in this announcement, stating that VCEG's Adjusted EBITDA<sup>4</sup> for the year to 30 June 2009 will be approximately \$5.0 million lower than for the previous financial year.

<sup>4</sup> Earnings before interest, tax, depreciation and amortisation before net unrealised foreign currency gains/losses and derivative gains/losses (non-cash items), interest income on cash balances and non-recurring transactions.

GRANT SAMUEL



**4.5 Financial Position**

The financial position of VCEG as at 30 June 2008 and 31 December 2008 is summarised below:

<b>VCEG - Financial Position (\$ '000)</b>		
	<b>As at 30 June 2008 actual</b>	<b>As at 31 December 2008 actual</b>
Debtors and prepayments	14,706	20,103
Creditors and accruals	(28,942)	(27,727)
<b>Net working capital</b>	<b>(14,236)</b>	<b>(7,624)</b>
Property, plant and equipment (net)	194,655	227,861
Intangible assets (net)	188,976	188,138
Investments accounted for using the equity method	5,544	2,976
Derivative financial instruments (net)	15,859	(3,267)
Receivables and other assets	25,200	25,650
Deferred tax liabilities (net)	(57,031)	(57,390)
Provisions	(4,864)	(5,952)
Other liabilities	(168)	(111)
<b>Total funds employed</b>	<b>353,935</b>	<b>370,281</b>
Cash and deposits	33,230	26,055
Bank loans, other loans and finance leases	(292,249)	(310,535)
<b>Net borrowings</b>	<b>(259,019)</b>	<b>(284,480)</b>
<b>Net assets</b>	<b>94,916</b>	<b>85,801</b>
Outside equity interests	(108,860)	(104,473)
<b>Equity attributable to VCET II security holders</b>	<b>(13,944)</b>	<b>(18,672)</b>
<i>Statistics</i>		
<i>Securities on issue at period end (million)</i>	<i>187.0</i>	<i>187.0</i>
<i>Net assets per security</i>	<i>0.51</i>	<i>0.46</i>
<i>Gearing<sup>5</sup></i>	<i>73.2%</i>	<i>76.8%</i>

Source: VCEG and Grant Samuel analysis

<sup>5</sup> Gearing is net borrowings divided by net assets plus net borrowings.

GRANT SAMUEL



The debt position of VCEG as at 31 December 2008 is detailed as follows:

<b>VCEG – Corporate &amp; Project Debt (\$ '000)</b>	
	<b>As at 31 December 2008 actual</b>
<b>Corporate Debt</b>	
Corporate loan facility	83,600
<b>Total Corporate Debt</b>	<b>83,600</b>
<b>Project Debt</b>	
Germany Wind	111,584
UK Landfill Gas	109,073
Working capital facilities	8,780
<b>Total Project Debt</b>	<b>229,437</b>
<b>Total Debt</b>	<b>313,037</b>
<i>Less: Bank establishment fees and costs</i>	<i>(2,502)</i>
<b>Total Debt as per VCEG 31 December 2008 Half Year Report</b>	<b>310,535</b>

Source: VCEG 31 December 2008 Half Year Report

The refinancing of the corporate loan facility was completed on 16 February 2009. The facility has been extended to July 2010. Following the Ardrossan wind farm refinancing, \$23.7 million in cash was released to VCEG in March 2009. This was applied in partial repayment of the corporate loan facility, leaving a balance outstanding of \$61.6 million (including bank establishment fee of \$1.7 million).

GRANT SAMUEL



**4.6 Cash Flow**

The cashflows of VCEG for the 3 years ending 30 June 2008 are summarised below:

<b>VCEG - Cash Flow (\$ '000)</b>			
	Year ended		
	30 June		
	2006 actual	2007 actual	2008 actual
EBITDA	22,629	40,646	27,618
Changes in working capital and other adjustments	(17,264)	150	10,998
Capital expenditure (net)	-	(5,964)	(4,120)
<b>Operating cash flow</b>	<b>5,365</b>	<b>34,832</b>	<b>34,496</b>
Tax (paid)/ received	(3,803)	(1,214)	726
Net interest paid	(12,988)	(16,741)	(18,885)
Distributions paid	(3,150)	(11,781)	(13,820)
Dividends received from equity accounted investment	1,295	1,467	2,093
Acquisitions (net of cash)	(315,392)	(31,400)	-
Effects of exchange rate changes	3,302	(2,069)	(2,372)
Proceeds from issue of units	126,000	50,400	-
Payment for capital raising costs	(6,624)	(2,905)	-
Proceeds from borrowings	355,049	98,996	-
Repayment of borrowings	(87,009)	(138,592)	(13,168)
Other	(23,900)	24,648	(12)
<b>Net cash generated (used)</b>	<b>34,843</b>	<b>7,710</b>	<b>(8,570)</b>
<i>Net cash (borrowings) – opening</i>	<i>386</i>	<i>38,531</i>	<i>44,172</i>
<i>Net cash (borrowings) – closing</i>	<i>38,531</i>	<i>44,172</i>	<i>33,230</i>

Source: VCEG and Grant Samuel analysis

The major items affecting the cash flows of VCEG since the 2006 financial year are:

- the 2006 financial year saw VCEG complete its Initial Public Offering (“IPO”), raising \$126 million. The proceeds of the IPO were used to repay bridging loans arranged to fund initial investments, fund the Elettra investment, repay amounts owing to the Manager and provide for working capital. At the time of the IPO, VCEG drew down net debt of \$126 million from its Acquisition Facility with the Investec Group to provide bridging finance for the acquisition of its original asset portfolio and subsequent acquisitions. In addition to the assets acquired at the time of the IPO, VCEG completed two significant acquisitions during the 2006 financial year utilising project related senior debt facilities of approximately \$230 million:
  - the January 2006 purchase of the Helmstedt, Buddenstedt and Schnellin wind farms (“Merinda”) in Germany; and
  - the April 2006 purchase of the Norgen landfill gas portfolio in the UK;
- following the acquisitions made during the 2006 financial year, VCEG completed a 4 for 9 renounceable rights issue to raise \$50.4 million in the 2007 financial year. In addition, VCEG acquired the Lord St Helens and Himley landfill gas projects in the UK and the Penrose and Toyon landfill gas projects in the US. VCEG’s €15 million investment in the Elettra portfolio subordinated debt facility was repaid in full during the 2007 financial year; and
- whilst the strengthening Australian dollar impacted reported results in the 2008 financial year, VCEG’s foreign exchange hedging program ensured that this did not adversely affect

GRANT SAMUEL



VCEG's distributable cash levels. The benefit of the foreign exchange hedging program is reflected in the "Changes in Working Capital and Other Adjustments" line.

**4.7 Taxation Position**

At 30 June 2008, VCET II had carried forward income tax losses of approximately \$6.4 million, of which \$3.7 million were recognised in the balance sheet. VCET II does not have any carried forward Australian capital losses.

Viridis Europe and Viridis Europe II are not consolidated within VCET II for Australian taxation purposes.

**4.8 Capital Structure and Ownership**

**4.8.1 Capital Structure**

As at 31 March 2009, VCEG had 187,020,586 stapled securities on issue. VCEG has not issued any options over issued or unissued stapled securities.

**4.8.2 Ownership**

At 31 March 2009 there were 3,816 registered security holders in VCEG. The top ten security holders accounted for approximately 46.26% of the stapled securities on issue:

<b>VCEG - Major Security Holders as at 31 March 2009</b>		
	<b>Number of Securities</b>	<b>Percentage</b>
RBC Dexia Investor Services Australia Nominees Pty Limited	21,909,279	11.7%
National Nominees Limited	14,401,403	7.7%
Netwealth Investments Limited	10,407,213	5.6%
Citicorp Nominees Limited	8,620,418	4.6%
Australian Executor Trustees Limited	8,602,501	4.6%
ANZ Nominees Limited	6,519,971	3.5%
HSBC Custody Nominees (Australia) Limited	5,859,143	3.1%
Djerriwarrah Investments Limited	3,565,467	1.9%
Mirrabooka Investments Limited	3,446,771	1.9%
Oaktel Investments Pty Ltd	3,177,777	1.7%
<b>Subtotal - Top 10 security holders</b>	<b>86,509,943</b>	<b>46.3%</b>
Other security holders (3,806 security holders)	100,510,643	53.7%
<b>Total</b>	<b>187,020,586</b>	<b>100.0%</b>

Source: VCEG

The top ten registered security holders are principally institutional nominee or custodian companies. VCEG has a significant retail investor base with the majority of registered security holders classified as retail. VCEG security holders are predominantly Australian based investors (over 99% of registered security holders and 99% of securities on issue). VCEG has received notices from the following substantial security holders:

<b>VCEG – Substantial Security Holders as at 31 March 2009</b>		
<b>Security Holder</b>	<b>Number of Securities</b>	<b>Percentage</b>
Investors Mutual Limited	22,607,459	12.09%

Source: VCEG

GRANT SAMUEL



**4.9 Security Price Performance**

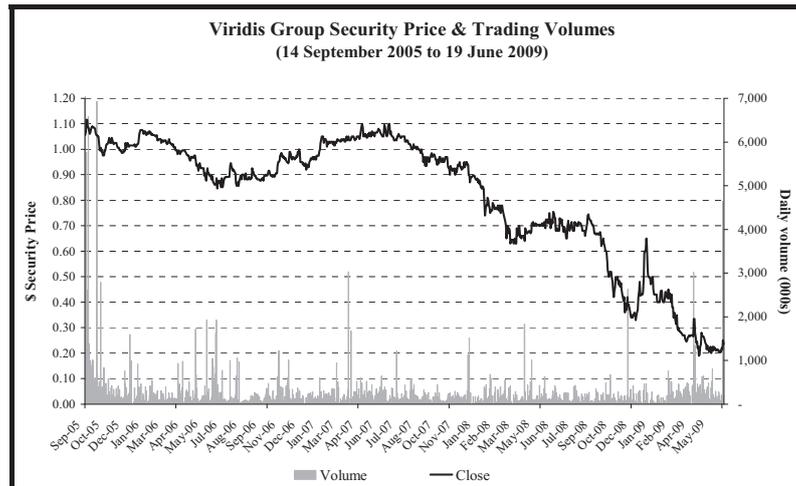
**4.9.1 Security Price History**

A summary of the security price and security trading history of VCEG since 2005 is set out below:

<b>VCEG - Security Price History</b>					
	Security Price (\$)			Average Weekly Volume (000's)	Average Weekly Transactions
	High	Low	Close		
<b>Year ended 31 December</b>					
2005	1.12	0.98	1.01	2,993	146
2006	1.08	0.85	0.94	1,148	90
2007	1.10	0.87	0.90	1,061	114
2008	0.90	0.33	0.60	863	123
<b>Quarter ended</b>					
31 March 2008	0.90	0.63	0.63	852	128
30 June 2008	0.76	0.64	0.69	988	121
30 September 2008	0.75	0.62	0.62	691	148
31 December 2008	0.65	0.33	0.60	920	95
<b>Month ended</b>					
31 January 2009	0.65	0.40	0.40	532	42
28 February 2009	0.45	0.40	0.43	799	69
31 March 2009	0.38	0.25	0.25	990	105
30 April 2009	0.34	0.19	0.23	2,501	168
31 May 2009	0.29	0.20	0.23	1,640	112

Source: IRESS

The following graph illustrates movements in the VCEG security price and trading volumes since listing on 14 September 2005:



Source: IRESS

GRANT SAMUEL



VCEG securities traded in the broad range of \$0.85 to \$1.12 from listing through to November 2007. VCEG's security price fell during late 2007 and early 2008 to levels around \$0.70 in March 2008, in line with the broader market decline. From March 2008 through to October 2008, VCEG securities traded in the range \$0.62 to \$0.72. Following announcements regarding VCEG's debt refinancing and a reduced half yearly distribution, the VCEG security price fell sharply to \$0.33 during December 2008. January 2009 saw the VCEG security price recover to \$0.65 due in part to the execution of the refinanced debt facility. Following announcements released in February 2009 and April 2009 regarding poorer trading and the suspension of distributions, the security price fell to as low as \$0.19.

The closing price of VCEG securities on 27 May 2009, the last trading day prior to the announcement of the Internalisation Proposal, was \$0.225.

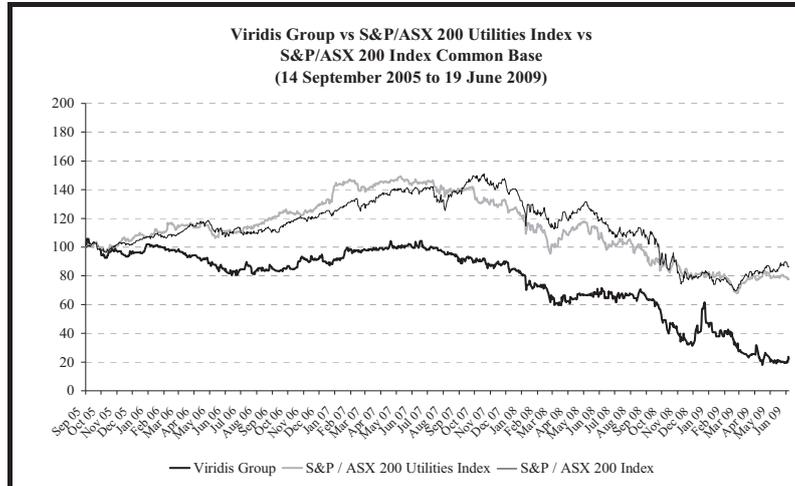
Following the announcement of the Internalisation Proposal, average trading volumes have decreased and the security price has decreased.

**4.9.2 Liquidity**

VCEG has been a reasonably illiquid stock. Since listing on the ASX in September 2005, average weekly volume has represented approximately 0.8% of average securities on issue.

**4.9.3 Relative Performance**

The following graph illustrates the performance of VCEG securities since 14 September 2005 relative to the S&P/ASX 200 Utilities Accumulations Index and the S&P/ASX 200 Index:



Source: IRESS

VCEG has consistently underperformed both the S&P/ASX 200 Index and the S&P/ASX Utilities Index.



## 5 Evaluation of the Internalisation Proposal

### 5.1 Summary

Externally managed investment vehicles were commonplace at the time that VCEG was listed on the ASX in 2005. However, investor sentiment has now moved strongly in favour of the internally managed investment model. It appears to be generally accepted that internalisation of management helps to align the interests of investors and management. In particular, internalisation of management reduces the risk that management arrangements will stand in the way of change of control transactions that could otherwise deliver value to investors.

In this context, management internalisation (at least in principle) is clearly desirable for VCEG. The question for VCEG security holders is whether the cost of the Internalisation Proposal is justified by the direct financial benefits and other advantages of internalisation.

The Consideration for the Internalisation Proposal will be the issue of 14 million securities to the shareholders of the Manager. Based on recent VCEG security prices in the range \$0.20-0.25, the Consideration has a value of around \$2.8-3.5 million. Accordingly, the cost to VCEG of the Internalisation Proposal will be around \$2.8-3.5 million (before transaction costs).

Following implementation of the Internalisation Proposal, VCEG will no longer pay management fees to the Manager, although VCEG will become responsible for some costs currently incurred by the Manager. The financial benefit to VCEG is effectively dependent on the future VCEG security price, because the management fees payable to the Manager increase for higher security prices. Given the range of unpredictable factors that could affect the future VCEG security price, assessment of the likely financial benefit of the Internalisation Proposal is subject to considerable uncertainty. However, in Grant Samuel's view it is reasonable to expect that the direct financial benefit should broadly approximate the cost to VCEG of the Internalisation Proposal. At worst, any net cost should not be significant.

Of far more significance, in Grant Samuel's view, is the potential for the structural benefits of the Internalisation Proposal to deliver meaningful incremental value to VCEG security holders over time. While the VCEG external management arrangements are not unreasonable, investors are likely to prefer an internalised management structure and internalisation should on balance increase investor interest in VCEG.

In particular, there is a real risk that the current external management model could act as an impediment to a takeover of VCEG. Having regard to the current position of VCEG, crystallisation of value through a change of control transaction could be an attractive outcome for security holders. The Internalisation Proposal should enhance the prospects of a fully priced change of control transaction for VCEG. Given the modest cost of the Internalisation Proposal, this benefit of itself suggests that the Internalisation Proposal is in the best interests of security holders.

The securities to be issued to the Manager represent around 7.5% of the total securities currently on issue. The Internalisation Proposal will be earnings dilutive at the current price of VCEG securities, and is likely to continue to be earnings dilutive even if the VCEG security price recovers strongly. However, given the focus of VCEG on debt reduction it is prudent for the Consideration to be funded by the issue of securities rather than in cash.

Assessment of the Internalisation Proposal requires a balancing of its likely benefits, costs and disadvantages. The cost of the Internalisation Proposal is not material and in any event should be broadly matched by the direct financial benefits. The indirect advantages of the Internalisation Proposal in terms of aligning the interests of management and security holders, while not quantifiable, are in Grant Samuel's view significant. In particular, the Internalisation Proposal will remove a possible impediment to takeover proposals for VCEG. In Grant Samuel's view holders of VCEG securities are likely to be better off if the Internalisation Proposal proceeds than if it does

GRANT SAMUEL



not. On this basis, in Grant Samuel's opinion the Internalisation Proposal is fair and reasonable to, and in the best interests of, the holders of VCEG securities.

**5.2 Value of the Consideration**

The Consideration under the Internalisation Proposal will be the issue of 14 million VCEG securities. The securities will be issued at an issue price of \$0.23 per security, representing the volume weighted average price of VCEG securities for the 15 trading days ending 27 May 2009. The closing price for VCEG securities on 27 May 2009 was \$0.225.

The value of the securities to be issued (and the cost to VCEG of the issue) is the current market price of the securities. The market price represents the value that could be realised by the shareholders of the Manager if they were to seek to divest those securities in the short term. Conversely, it approximates the proceeds that VCEG could expect to realise from an issue of new securities for cash. The cost to VCEG of issuing the securities as Consideration is effectively the opportunity cost of not issuing those securities for cash: that is, the cost is equal to the proceeds that could otherwise be realised if the securities were issued for cash.

The VCEG security price is likely to fluctuate over time. However, that is not relevant to an assessment of the value of the Consideration. What is relevant is the current market value of the securities to be issued.

Having regard to recent trading, Grant Samuel has attributed value in the range \$0.20-\$0.25 per security to the securities to be issued as Consideration. On this basis, the aggregate value of the Consideration, and the cost to VCEG of the Internalisation Proposal, is \$2.8-3.5 million.

**5.3 Financial Benefits of the Internalisation Proposal**

Under the management contract between VCEG and the Manager, VCEG pays base management fees equal to 1% per annum of the market value of VCEG, calculated and payable quarterly. For this purpose, market value represents the sum of VCEG's market capitalisation and net debt. Effectively, therefore, the amount of the management fee depends on the market price of VCEG securities.

Following implementation of the Internalisation Proposal, VCEG will no longer have to pay management fees to the Manager. On the other hand, it will be responsible for various costs currently incurred by the Manager, including the remuneration of senior executives of VCEG, who are currently employed and paid by the Manager.

The direct financial benefit of the Internalisation Proposal for VCEG is the amount of management fees that will no longer be payable to the Manager, less the additional costs for which VCEG will become directly responsible. At security prices around the current security price, the management fee approximates the costs currently incurred by the Manager.

The following table shows estimated management fees payable for a range of assumed VCEG security prices, as well as the estimated annual net cost savings if the Internalisation Proposal proceeds (i.e. management fees avoided less the costs for which VCEG would become directly responsible):

GRANT SAMUEL



Financial Impact of Initialisation Proposal (\$ millions)		
Security Price	Annual Management Fee <sup>6</sup>	Annual Net Cost Saving
\$0.20	0.99	(0.20)
\$0.30	1.18	(0.01)
\$0.40	1.36	0.18
\$0.50	1.55	0.36
\$0.60	1.74	0.55
\$0.70	1.93	0.74
\$0.80	2.11	0.92
\$0.90	2.30	1.11
\$1.00	2.49	1.30

Source: Grant Samuel analysis

If current security prices were to continue, the Internalisation Proposal would have a negligible impact on VCEG earnings, with the management fee savings approximately offset by increased direct costs (principally senior executive remuneration).

For the Internalisation Proposal to have a neutral impact in terms of direct costs and benefits, the present value of future net cost savings (ie management fee savings less incremental costs), less any one-off costs, would need to equal the cost to VCEG of the Consideration for the Internalisation Proposal (\$2.8-3.5 million). The following table presents an indicative analysis of the possible financial impact of the Internalisation Proposal, on the simplifying assumption that the VCEG security price recovers on a linear basis over a three year period to the prices nominated below, and thereafter appreciates modestly (at around the rate of inflation). The actual future trajectory of VCEG's security price will almost certainly be different, and could be expected to include a variety of unpredictable fluctuations. However, in Grant Samuel's view, the indicative analysis is useful in terms of identifying the quantum of security price recovery required to justify the Internalisation Proposal purely on the basis of the potential direct financial benefits. The analysis estimates the present value of future net cost savings for a range of assumed future VCEG security prices<sup>7</sup>, as set out below:

Estimated Value of Net Cost Savings (\$ millions)			
Security Price	Discount Rate		
	12%	13%	14%
\$0.50	1.49	1.37	1.27
\$0.55	2.20	2.03	1.88
\$0.60	2.91	2.69	2.50
\$0.65	3.62	3.35	3.11
\$0.70	4.33	4.01	3.73
\$0.75	5.04	4.67	4.34
\$0.80	5.76	5.33	4.96
\$0.85	6.47	6.00	5.57
\$0.90	7.18	6.66	6.19

Source: Grant Samuel analysis

<sup>6</sup> Assumes that VCEG has 187 million securities on issue and corporate net debt of \$62 million.

<sup>7</sup> The range of assumed future VCEG security prices does not represent Grant Samuel's estimate or forecast of the future VCEG security price and Grant Samuel gives no undertaking in this regard. The range of assumed future VCEG security prices has been nominated purely for the purpose of estimating the possible financial benefit of the Internalisation Proposal under a range of assumptions. The actual future VCEG security price could be lower or higher than the range used in the analysis.

G R A N T S A M U E L



A recovery in the VCEG security price from current levels to around \$0.60-0.70 over a three year period, followed by maintenance of the security price at or around that level, would generate future net cost savings with a present value of approximately \$2.8-3.5 million.

Given the range of unpredictable factors that could affect the future VCEG security price, judgements regarding the future security price and, therefore, the likely financial benefit of the Internalisation Proposal are subject to considerable uncertainty. In Grant Samuel's view, however, an expectation that the VCEG security price could recover to at least around \$0.60-0.70 over a three year period is not unreasonable:

- since the listing of VCEG, its securities have generally traded well above the \$0.60-0.70 range. The lowest price at which its securities traded up to the end of 2007 was \$0.85. For the nine months to 30 September 2008, the lowest price at which VCEG securities traded was \$0.62. VCEG securities traded above \$0.60 (albeit briefly) in January 2009;
- VCEG management believes that recent disappointing operational performance is to a large extent a result of one-off factors and that there are good prospects for a recovery in operational performance;
- VCEG has relatively high levels of corporate debt, which is due in 2010. In the current market, investors have aggressively sold down stocks with perceived debt exposure. Conversely, in recent months companies that have resolved perceived debt funding issues (whether by way of equity raisings or otherwise) have frequently enjoyed significant share price appreciation. Resolution of VCEG's debt funding position could result in a material positive re-rating of its security price;
- similarly, resolution of VCEG's debt funding position should allow the recommencement of income distributions, which should have a positive effect on the VCEG security price;
- financial modelling of VCEG, based on assumptions that in Grant Samuel's opinion are not unreasonable, suggests values for VCEG consistent with security prices in the range \$0.60-0.70 and potentially higher; and
- positive factors specific to VCEG would be reinforced by any broader improvement in market conditions over the next two to three years. The performance of VCEG is partially leveraged to energy prices generally, with US sales and a significant proportion of UK sales effectively priced off gas prices. Any recovery in energy prices should benefit VCEG's financial performance and support its security price.

Having regard to these factors (while acknowledging the inherent uncertainty in relation to judgements regarding future security prices), Grant Samuel believes that it is reasonable to expect that the financial benefits of the Internalisation Proposal should broadly approximate the Consideration for the Internalisation Proposal. It is possible that the financial benefits of the Internalisation Proposal could exceed the Consideration. At worst, any net cost should not be material.

As set out above, there are various factors that suggest that the VCEG security price could appreciate over time (although there can be no assurance that this will occur). However, any expectation of future increases in the VCEG security price does not affect the value of the Consideration, which reflects the current market value of VCEG securities and the amount of cash that VCEG could realise through an issue of its securities in the short term given current market conditions.



#### 5.4 Valuation Evidence

Valuation cross-checks based on multiples of earnings and assets under management can provide some evidence as to whether the terms of internalisation transactions are in line with market precedents. The following table sets out valuation evidence for a number of internalisation transactions:

Precedent Internalisation Transactions					
Date	Listed Fund	Consideration (m)	Revenue multiple <sup>8</sup>	Pre-tax earnings multiple	% of AUM <sup>9</sup>
Dec-08	B&B Communities	A\$17.5	2.2x F	na <sup>10</sup>	1.2%
Dec-08	B&B Wind	A\$40.0	1.4x A	2.0x A	0.7%
Nov-08	B&B Capital	\$5.0	0.3x A	na	0.5%
Jul-07	Macquarie ProLogis Trust	US\$22.0	5.5x F	11.0x F	2.5%
Oct-04	DB Real Estate	A\$65.0	2.6x F	7.7x F	1.4%
Nov-03	Challenger Financial Services Group	A\$96.0	5.8x F	6.6x F	1.1%
Jan-03	Grand Hotel Group	A\$1.4	0.5x A	3.1x A	0.3%
Oct-00	Homemaker Retail Property Trust	A\$10.5	2.7x A	4.5x F	4.4%

In the case of the Internalisation Proposal earnings multiples are not meaningful, because the Manager will generate little or no earnings at security prices around the current VCEG security price. For an assessed value of the Consideration of \$2.8-3.5 million, the Consideration represents approximately 2.8-3.5 times the revenue of the Manager and around 2.8-3.5% of assets under management<sup>11</sup>. Considerable caution must be applied in comparing these multiples with those set out in the table above, given the wide variety of management arrangements and the varying circumstances in which the precedent internalisation transactions took place. Nonetheless, while this multiple analysis provides only general guidance, it does suggest that the Consideration for the Internalisation Proposal is reasonable.

#### 5.5 Structural Benefits

At the time that VCEG was listed on the ASX in 2005, externally managed investment vehicles were commonplace and well accepted by the Australian investment community. However, high profile corporate collapses and widespread poor stock market performance amongst externally managed vehicles have seen a significant change in investor attitudes. It has become apparent that externally managed structures can create inappropriate incentives for external managers, sometimes with highly adverse consequences for investor value (although arguably this is just an extreme manifestation of the agency costs to which all listed companies are exposed, whether internally or externally managed). In particular, management fee arrangements appear in some circumstances to have focussed external managers on increasing funds under management, commonly through debt-funded acquisition, rather than on the maximisation of investor value. The uneven incidence of risk and reward for investors and external managers appears in some cases (at least with the benefit of hindsight) to have resulted in external managers' pursuit of high risk strategies that had little regard for investor interests.

The terms of the management agreement between VCEG and the Manager do not include some of the more egregious provisions found in other management agreements, which can result in material divergences between the interests of investors and managers. For example, the Manager does not have exclusive rights to act as financial adviser to VCEG, and is not entitled to advisory

<sup>8</sup> F means current year forecast; A means last actual results

<sup>9</sup> AUM means assets under management

<sup>10</sup> na means not available

<sup>11</sup> For the purpose of this analysis both the revenue of the Manager and the value of assets under management have been estimated on the basis of recent security VCEG prices of around \$0.22.s

## GRANT SAMUEL



or other fees for acquisitions and divestments, which can create incentives to engage in transactions that add no value for investors. Nevertheless, the Internalisation Proposal will result in a clearer alignment of management and investor interests. The directors of VCEG will be able to put in place arrangements to focus management purely on security holder value, with fund size (aggregate market capitalisation) as a determinant of management fees no longer relevant.

Investor perceptions are arguably as important as the actual alignment of investor and management interests for VCEG. Market sentiment appears to have moved sharply against external management and in favour of management internalisation. In this context, it is likely that the Internalisation Proposal will increase the investment appeal of VCEG. While this structural benefit of the Internalisation Proposal is not quantifiable, over time it should help to support security holder value.

Divergences of interest between investors and an external manager can be most acute in the context of a proposed takeover of a listed vehicle. Investors commonly welcome the opportunity to at least consider a proposal that offers a premium to prevailing security prices. By contrast, a takeover will generally require the termination of external management arrangements and of the income stream enjoyed by the manager. Investors and an external manager could potentially have very different views on the benefits of a takeover proposal.

VCEG relies for its growth on the availability of inexpensive debt and, given its capital structure and current debt capital market conditions, may have limited options for funding future growth initiatives. As a relatively small capitalisation stock in a market that has become increasingly risk averse, VCEG may have difficulty attracting investor interest and ensuring that its security price reflects the underlying value of its assets. Given these factors, a takeover of VCEG could be an attractive outcome for VCEG security holders, allowing the crystallisation of value that could not otherwise easily be realised. However, there is a real risk that the external management structure of VCEG would be an impediment to a takeover. A potential acquirer of VCEG would need to reach separate agreement with the Manager at the same time that it was negotiating an offer for VCEG to be put to security holders. In this context VCEG security holders and the Manager may have sharply divergent objectives and interests. The Internalisation Proposal will simplify any change of control transaction for VCEG, eliminate any potential conflicts of interest between investors and the Manager, reduce transaction risk and provide greater certainty to prospective acquirers.

Any restructure of VCEG that facilitates potential change of control transactions, or removes possible impediments to such transactions, is clearly in the best interests of security holders. The Internalisation Proposal should increase the prospects of a successful takeover of VCEG. In Grant Samuel's view this is a compelling argument in favour of the Internalisation Proposal.

Under the Internalisation Proposal, if any successful takeover offer for VCEG is initiated within six months of completion of the Internalisation Proposal, the value that can be realised by the shareholders of the Manager for their VCEG securities is limited to \$0.40 per security. Any residual value will accrue for the benefit of VCEG security holders.

### **5.6 Disadvantages and Costs**

The securities to be issued to the shareholders of the Manager will represent around 7.5% of the VCEG securities currently on issue. VCEG has not released any forecasts of the impact on earnings of the Internalisation Proposal. However, in the short term the Internalisation Proposal should have no significant impact on earnings. Even in the medium term, in Grant Samuel's view, any increase in earnings resulting directly from the Internalisation Proposal is unlikely to compensate for the additional securities on issue. Accordingly, Grant Samuel expects that the Internalisation Proposal will result in a dilution in earnings per security (at least on a cash earnings basis).

VCEG could pay cash as consideration for the Internalisation Proposal instead of issuing new securities. This would avoid the dilutionary effect of the Internalisation Proposal. On the other

GRANT SAMUEL



hand, VCEG has announced that it is focussing on accelerated debt reduction, with the aim of retiring or substantially reducing its corporate debt. Resolution of its debt position is likely to have a positive effect on VCEG's security price, and may allow the resumption of income distributions. In view of these factors, settlement of the consideration for the Internalisation Proposal by way of the proposed security issue instead of in cash appears reasonable.

An alternative could be to defer the management internalisation until some future time when VCEG securities are trading at a higher price. However, this may not result in any reduction in the dilutionary effect of internalisation. In its announcement of 20 April 2009, VCEG made it clear that its in principle agreement with the shareholders of the Manager was to issue 14 million new securities for any security price up to \$0.40, paying a price of a maximum of \$5.6 million. Moreover, at significantly higher VCEG security prices, the management rights would become more valuable and internalisation of management could ultimately be more costly to VCEG. In any event, deferral of management internalisation would mean that VCEG would continue to be subject to the structural disadvantages of the external management model and, in particular, the risk that external management might in some way act as an impediment to a takeover offer for VCEG.

The transaction costs related to the Internalisation Proposal are estimated by VCEG at approximately \$1.4 million. Of these, around \$1.3 million have already been incurred or will be incurred regardless of whether the Internalisation Proposal proceeds. The incremental costs of \$100,000 that VCEG will only incur if the Internalisation Proposal is approved by security holders are not material in the context of the overall benefits of the transaction.

**5.7 Security Holder Decision**

The decision whether to vote for or against the Internalisation Proposal is a matter for individual security holders based on each security holder's views as to value, their expectations about future market conditions and their particular circumstances including risk profile, liquidity preference, investment strategy, and portfolio structure. If in any doubt as to the action they should take in relation to the Internalisation Proposal, security holders should consult their own professional adviser.

Similarly, it is a matter for individual security holders as to whether to buy, hold or sell securities in VCEG. This is an investment decision independent of a decision on whether to vote for or against the Internalisation Proposal and Grant Samuel does not offer any opinion in this regard. Security holders should consult their own professional adviser in this regard.



## **6 Qualifications, Declarations and Consents**

### **6.1 Qualifications**

The Grant Samuel group of companies provide corporate advisory services (in relation to mergers and acquisitions, capital raisings, debt raisings, corporate restructurings and financial matters generally), property advisory services, manages specialist funds and provides marketing and distribution services to fund managers. The primary activity of Grant Samuel & Associates Pty Limited is the preparation of corporate and business valuations and the provision of independent advice and expert's reports in connection with mergers and acquisitions, takeovers and capital reconstructions. Since inception in 1988, Grant Samuel and its related companies have prepared more than 415 (to September 2008) public independent expert and appraisal reports.

The persons responsible for preparing this report on behalf of Grant Samuel are Stephen Cooper BCom (Hons) ACA CA (SA) ACMA and Marisa Leone BBus ASIA. Each has a significant number of years of experience in relevant corporate advisory matters. Bo Briedis BCom CA assisted in the preparation of the report. Each of the above persons is an authorised representative of Grant Samuel pursuant to its Australian Financial Services Licence under Part 7.6 of the Corporations Act.

### **6.2 Disclaimers**

It is not intended that this report should be used or relied upon for any purpose other than as an expression of Grant Samuel's opinion as to whether the Internalisation Proposal is fair and reasonable to, and in the best interests of, the non associated security holders. Grant Samuel expressly disclaims any liability to any VCEG security holder who relies or purports to rely on the report for any other purpose and to any other party who relies or purports to rely on the report for any purpose whatsoever.

This report has been prepared by Grant Samuel with care and diligence and the statements and opinions given by Grant Samuel in this report are given in good faith and in the belief on reasonable grounds that such statements and opinions are correct and not misleading. However, no responsibility is accepted by Grant Samuel or any of its officers or employees for errors or omissions however arising in the preparation of this report, provided that this shall not absolve Grant Samuel from liability arising from an opinion expressed recklessly or in bad faith.

Grant Samuel has had no involvement in the preparation of the Explanatory Memorandum issued by VCEG and has not verified or approved any of the contents of the Explanatory Memorandum. Grant Samuel does not accept any responsibility for the contents of the Explanatory Memorandum (except for this report).

### **6.3 Independence**

Grant Samuel and its related entities do not have at the date of this report, and have not had within the previous two years, any security holding in or other relationship with VCEG, VEC or VIML that could reasonably be regarded as capable of affecting its ability to provide an unbiased opinion in relation to the Internalisation Proposal.

In addition, no Grant Samuel group executives hold securities in VCEG, VEC or VIML.

Grant Samuel had no part in the formulation of the Internalisation Proposal. Its only role has been the preparation of this report.

Grant Samuel will receive a fixed fee of \$200,000 for the preparation of this report. This fee is not contingent on the outcome of the Internalisation Proposal. Grant Samuel's out of pocket expenses in relation to the preparation of the report will be reimbursed. Grant Samuel will receive no other benefit for the preparation of this report.

GRANT SAMUEL



Grant Samuel considers itself to be independent in terms of Regulatory Guide 112 issued by ASIC on 30 October 2007.

**6.4 Declarations**

VCEG has agreed that it will indemnify Grant Samuel and its employees and officers in respect of any liability suffered or incurred as a result of or in connection with the preparation of the report. This indemnity will not apply in respect of the proportion of any liability found by a court to be primarily caused by any conduct involving negligence, misconduct or material breach by Grant Samuel. VCEG has also agreed to indemnify Grant Samuel and its employees and officers for time spent and reasonable legal costs and expenses incurred in relation to any inquiry or proceeding initiated by any person. Any claims by VCEG are limited to an amount equal to the fees paid to Grant Samuel. Where Grant Samuel or its employees and officers are found to have been negligent, engaged in wilful misconduct or were in material breach Grant Samuel shall bear the proportion of such costs caused by its action.

Advance drafts of this report were provided to VCEG and its advisers. Certain changes were made to the drafting of the report as a result of the circulation of the draft report. There was no alteration to the methodology, evaluation or conclusions as a result of issuing the drafts.

**6.5 Consents**

Grant Samuel consents to the issuing of this report in the form and context in which it is, and all references to this report in the form and context in which they appear, to be included in the Explanatory Memorandum to be sent to security holders of VCEG. Neither the whole nor any part of this report nor any reference thereto may be included in any other document without the prior written consent of Grant Samuel as to the form and context in which it appears.

**6.6 Other**

The accompanying letter dated 10 July 2009 forms part of this report.

Grant Samuel has prepared a Financial Services Guide as required by the Corporations Act. The Financial Services Guide is set out at the beginning of this report.

GRANT SAMUEL & ASSOCIATES PTY LIMITED  
10 July 2009

*Grant Samuel & Associates*

## 9. Executive Option Plan

### 9.1. Executive employment arrangements

The proposed employment arrangements for the Executives following implementation of the Proposal are summarised in Annexure C. One component of the changes to the employment arrangements for the Executives is the establishment of an EOP and grants of options under the EOP to the Executives, subject to obtaining all necessary approvals.

### 9.2. Securityholder approvals

The approval of Securityholders is being sought for the acquisition of options by the Executives or their nominees for the purposes of ASX Listing Rule 10.14, in accordance with ASX Listing Rule 10.15.

The approval of Securityholders is also being sought for the issue of options under the EOP, and the issue of Stapled Securities on exercise of options issued under the EOP, for the purposes of ASX Listing Rule 7.2 Exception 9.

### 9.3. Summary of the options to be granted to the Executives

<b>Number of options</b>	Edward Northam - 3.6 million options in five equal tranches of 720,000 options. Duncan Jewell - 2.4 million options in five equal tranches of 480,000 options.
<b>Price to acquire options</b>	Nil
<b>Strike prices</b>	The strike prices for the five tranches of options will be equal to 110%, 115%, 120%, 125% and 130% of the subscription price under the Internalisation Deed (being \$0.23) per option. This is the amount payable by the Executive before a Stapled Security will be registered in their name. These amounts are subject to adjustment as set out in the rules of the EOP (see the summary in Section 9.4).
<b>Vesting dates</b>	The tranches of options will vest respectively on the Completion Date, then 12 months, 18 months, 24 months and 30 months after that date subject to early vesting as set out in the rules of the EOP (see the summary in Section 9.4).
<b>Exercise period</b>	Options will be able to be exercised at any time during the period from their vesting date to the date they lapse being 5 years after their vesting date subject to early lapsing as set out in the rules of the EOP (see the summary in Section 9.4).

Under the rules of the EOP, the Executives may direct that their options are to be issued to their nominee. The options will be granted to the Executives, or their nominees, as soon as possible after the approval of the EOP but in any event will not be granted later than 12 months after that date.

### 9.4. Summary of the rules of the EOP

<b>Conditional on approval and Completion</b>	The EOP is conditional on the approval of Securityholders and Completion occurring.
<b>Eligible participants</b>	VCEG, with the agreement of the Board of VIML, may invite any full-time or part-time VCEG employee to participate in the EOP.
<b>Early vesting</b>	Options granted under the EOP will automatically vest if: <ul style="list-style-type: none"> <li>• there is a VCEG Control Transaction;</li> <li>• all or substantially all of VCEG's assets are sold and subsequently all or substantially all of VCEG's capital is to be returned to Securityholders; or</li> <li>• VCEG terminates the relevant employee's employment other than for cause.</li> </ul> <p>With the agreement of the Board of VIML, options may automatically vest in other circumstances including where the employee dies or where VCEG is delisted or wound up.</p>

<b>Early lapse</b>	<p>Unvested options will automatically lapse if:</p> <ul style="list-style-type: none"> <li>• the employee terminates their employment or has their employment terminated for cause; or</li> <li>• the participant becomes bankrupt.</li> </ul> <p>Vested options will automatically lapse on the earliest of:</p> <ul style="list-style-type: none"> <li>• 180 days after any options vest early; or</li> <li>• 180 days after the relevant employee terminates their employment or has their employment terminated for cause.</li> </ul>
<b>Adjustment of options</b>	<p>The terms of the options, including the strike prices and the number of Stapled Securities to which each option relates, may be adjusted in certain circumstances including where VCEG undertakes a bonus issue or a rights issue or there is a sub-division, consolidation or other reconstruction of Stapled Securities.</p>
<b>Restrictions on dealing</b>	<p>Employees must not sell, assign, transfer or otherwise deal with or grant a security interest over any options granted under the EOP.</p>
<b>Amendment of rules of EOP</b>	<p>The rules of the EOP may be amended at any time provided that the amendments cannot materially reduce the rights of any participating employee except in certain cases.</p>

## 9.5. Tax implications

As a result of the issue of options under the EOP, the employer of the relevant employees will be subject to Fringe Benefits Tax and Victorian Payroll Tax on the value of the options. The amount of Fringe Benefits Tax and Payroll Tax payable by the employer will be dependent on the value of the options as at the date of issue.

## 9.6. Directors' recommendation

The Board of VIML believes that the proposed employment arrangements for the Executives following the implementation of the Proposal, including the grant of the options to the Executives on the terms set out in Section 9.3:

- will further align the interests of the Executives with the interests of Securityholders;
- are appropriate to assist VCEG in retaining the services of the Executives and reward them for any future performance of VCEG; and
- are in line with market practice.

Accordingly, the Board of VIML recommends that Securityholders approve the Executive Option Plan. Each director of VIML intends to vote all Stapled Securities controlled by them in favour of the Executive Option Plan.

## 10. Additional information

### 10.1. Summaries of key documents

#### 10.1.1. Internalisation Deed

VIML, VEC and the Owners have entered into the Internalisation Deed dated 28 May 2009 to provide a framework for proposing and implementing the Proposal. In particular, the Internalisation Deed:

- requires the parties to take all necessary steps and to use their best endeavours to implement the Proposal (subject in the case of VIML to its obligations, functions and powers under the Internalisation Deed, the Constitutions, the Corporations Act, ASX Listing Rules and at law);
- sets out mechanics for the payment of the purchase price to the Owners, reinvestment of that amount by the Owners and any necessary adjustments, as described in Section 6.6;
- describes the conditions required to be met for the Proposal to proceed. A summary of the conditions precedent is set out in Section 6.9;
- sets out the rights of each party to terminate the Internalisation Deed, including in the event of a material breach of the Internalisation Deed, failure to satisfy conditions precedent, and withdrawal or adverse modification of recommendation of the Independent Directors;
- requires that the Owners must not, without VIML's written consent, solicit or encourage a competing proposal or take any action which could interfere with the Proposal;
- sets out the representations, warranties and indemnities given by the Owners and VEC to VIML and the representations and warranties given by VIML to the Owners and VEC;
- sets out the circumstances under which certain Owners would be required to provide a guarantee in favour of VIML;
- limits VIML's liability under the deed to the extent VIML can be indemnified from the assets of VCEG in accordance with the Constitutions, subject to certain exceptions;
- contains a general prohibition on the Owners selling the Stapled Securities they acquire in accordance with the Internalisation Deed for a period of 18 months, subject to certain exceptions. This prohibition is described in Section 6.7; and
- provides that if VIML terminates the agreement because of certain breaches by the Owners (e.g. a breach of no solicitation obligations or a material breach of representations and warranties), VEC must pay or reimburse VIML on demand for its costs and expenses in connection with the Proposal up to an amount not exceeding \$500,000.

The Internalisation Deed (without schedules) is included in Annexure A of this Explanatory Memorandum.

#### 10.1.2. Supplemental Deeds to amend the Constitutions

If the proposed amendments to the Constitutions are approved by Securityholders at the Meeting by the requisite majority, VIML will execute the Supplemental Deed Polls to amend each of the Constitutions in the same form, which is set out in Annexure B of this Explanatory Memorandum.

The Supplemental Deed Polls amend the Constitutions to allow VIML to be reimbursed out of the assets of VCEG in providing its services as responsible entity. These amendments are ancillary to the Proposal and are intended to take place following internalisation.

Each Constitution (as amended by the relevant Supplemental Deed Poll) provides that:

- VEC undertakes under the IMA to reimburse VIML for the reasonable costs (including overheads) incurred by VIML in properly performing its services as responsible entity for which it is not otherwise reimbursed pursuant to VIML's right to be paid or reimbursed from the assets of VCET I or VCET II ("**Reasonable Costs**"). This undertaking from VEC applies for as long as the IMA is in force; and
- subject to the Corporations Act, if the above undertaking does not apply, VIML is entitled to be paid from the assets of the relevant trust a management fee equal to VIML's reasonable estimate of its Reasonable Costs. This management fee is payable on demand by VIML.

#### 10.1.3. Proposed amendments to the IMA

Following implementation, the IMA will be amended to:

- replace the existing base fee and performance fee arrangements with a management fee equal to VEC's reasonable estimate of its costs in providing services as investment manager under the IMA which are not otherwise currently reimbursed under the IMA, including overhead expenses and the amounts payable to VIML; and
- other consequential changes relating to VEC's role as investment manager to reflect that VEC will be owned by VIML as responsible entity of VCET II, rather than third parties.

## 10.2. Interests of Directors of VIML in VEC and VCEG

As at the date of this Explanatory Memorandum, a description of securities held by each director of VIML or its associates in VEC and VCEG are as follows:

Director	Ordinary shares in VEC	Percentage of ordinary shares in VEC	Stapled Securities in VCEG	Percentage of Stapled Securities in VCEG
Andrew Berry	Nil	Nil	186,689	0.099%
Stephen Chipkin <sup>2</sup>	2,678	42.58%	95,939	0.051%
Walter Pahor	2,897 <sup>3</sup>	46.06%	3,177,777	1.699%
Robert Webster	Nil	Nil	22,388	0.012%

## 10.3. Interests of Directors of VEC in VEC and VCEG

As at the date of this Explanatory Memorandum, a description of securities held by each director of VEC or its associates in VEC and VCEG are as follows:

Director	Ordinary shares in VEC	Percentage of ordinary shares in VEC	Stapled Securities in VCEG	Percentage of Stapled Securities in VCEG
Stephen Chipkin <sup>4</sup>	2,678	42.58%	95,939	0.051%
Duncan Jewell	32	0.51%	34,289	0.018%
Edward Northam	58	0.92%	24,252	0.013%
Walter Pahor	2,897 <sup>5</sup>	46.06%	3,177,777	1.699%
Mark Schneider <sup>6</sup>	2,678	42.58%	127,572	0.068%

## 10.4. Interests of Owners in VEC and VCEG

The Respective Proportion of each Owner in VEC, and a description of securities held by or on behalf of each Owner in VEC and VCEG as at the date of this Explanatory Memorandum and following implementation of the Proposal are as follows:

Owner	Respective Proportions	Stapled Securities before Completion	Percentage of Stapled Securities before Completion	Stapled Securities after Completion	Percentage of Stapled Securities after Completion
Investec Bank (Australia) Limited	17.253% <sup>7</sup>	-	-	2,415,420	1.20%
PEP Energy Pty Ltd	15.106% <sup>8</sup>	-	-	2,114,840	1.05%
Chetwyn Investments Pty Ltd	0.509% <sup>9</sup>	34,289	0.018%	105,549	0.053%
Hurstwood Road Pty Ltd	0.922% <sup>10</sup>	24,252	0.013%	153,332	0.076%
Oaktel Investments Pty Ltd	66.210% <sup>11</sup>	3,177,777	1.699%	12,447,177	6.19%

The Owners will receive the purchase price for the VEC Shares in their Respective Proportions (based on the amount of capital invested in VEC). Accordingly, the proportions in which the Stapled Securities will be issued to the Owners, upon reinvestment of the purchase price by the Owners, will differ from the proportions of ordinary shares they hold in VEC.

<sup>2</sup> While Investec Bank (Australia) Limited is not technically an associate of Stephen Chipkin, Stephen Chipkin is a director of Investec Bank (Australia) Limited, and is a nominee director appointed by Investec Bank (Australia) Limited on the Board of VIML.

<sup>3</sup> In addition to 2,897 ordinary shares, Oaktel Investments Pty Ltd, an associate of Walter Pahor, holds 2,645,678 redeemable preference shares in VEC, which will be redeemed prior to Completion.

<sup>4</sup> While Investec Bank (Australia) Limited is not technically an associate of Stephen Chipkin, Stephen Chipkin is a director of Investec Bank (Australia) Limited, and is a nominee director appointed by Investec Bank (Australia) Limited on the Board of VEC.

<sup>5</sup> In addition to 2,897 ordinary shares, Oaktel Investments Pty Ltd, an associate of Walter Pahor, holds 2,645,678 redeemable preference shares in VEC, which will be redeemed prior to Completion.

<sup>6</sup> While Investec Bank (Australia) Limited is not technically an associate of Mark Schneider, Mark Schneider is a nominee director appointed by Investec Bank (Australia) Limited on the Board of VEC.

<sup>7</sup> Investec Bank (Australia) Limited holds 2,678 ordinary shares in VEC.

<sup>8</sup> PEP Energy Pty Ltd holds 624 ordinary shares in VEC and 680,740 redeemable preference shares in VEC, which will be redeemed prior to Completion.

<sup>9</sup> Chetwyn Investments Pty Ltd holds 32 ordinary shares in VEC.

<sup>10</sup> Hurstwood Road Pty Ltd holds 58 ordinary shares in VEC.

<sup>11</sup> Oaktel Investments Pty Ltd holds 2,897 ordinary shares in VEC and 2,645,678 redeemable preference shares in VEC, which will be redeemed prior to Completion.

## **10.5. Regulatory relief**

ASIC has granted relief in connection with the Executive Option Plan in a customary form.

## **10.6. Consents**

### **10.6.1. Consents to be named**

The following persons have given and have not, before the date of this Explanatory Memorandum, withdrawn their written consent to be named in this Explanatory Memorandum in the form and context in which they are named:

- Viridis Energy Capital Pty Limited as investment manager to VCEG;
- Rothschild Australia Limited as financial adviser to VIML;
- Grant Samuel as Independent Expert engaged by VIML;
- Mallesons Stephen Jaques as legal adviser to VIML;
- KPMG as tax adviser to VIML; and
- PricewaterhouseCoopers, as auditor of VCEG for the financial years ended 30 June 2007 and 30 June 2008. PricewaterhouseCoopers makes no other statement in this Explanatory Memorandum.

### **10.6.2. Consent to the inclusion of statements**

Grant Samuel has also given and has not, before the date of this Explanatory Memorandum, withdrawn its written consent to the inclusion of the Independent Expert's Report in this Explanatory Memorandum in the form and context in which it is included and to all references in this Explanatory Memorandum to that report in the form and context in which they appear.

### **10.6.3. Disclaimer**

Each person referred to in Sections 10.6.1 and 10.6.2:

- does not make, or purport to make, any statement in this Explanatory Memorandum other than those statements made in the capacity and to the extent the person has provided its consent, as referred to above; and
- to the maximum extent permitted by law, expressly disclaims all liability in respect of, and takes no responsibility for, any part of this Explanatory Memorandum other than a reference to its name and statement made by it and included in this Explanatory Memorandum, with that person's consent.

## **10.7. Availability of documents**

VCEG is a disclosing entity for the purposes of the Corporations Act and as such is subject to periodic reporting and continuous disclosure obligations. Publicly disclosed information about VCEG is available on the ASX website at [www.asx.com.au](http://www.asx.com.au).

VCEG is also required to lodge various documents with ASIC. Copies of documents lodged with ASIC by VCEG may be obtained from, or inspected at, ASIC offices.

VCEG will provide free of charge to any Securityholder who requests it before the Meeting a copy of:

- the audited financial report of VCEG for the year ended 30 June 2008 (being the annual financial report most recently lodged with ASIC before this Explanatory Memorandum was lodged with ASIC);
- the IMA (both the current IMA and the IMA showing all amendments proposed to be made if the Proposal is implemented);
- the Constitutions (both the current Constitutions and the Constitutions showing all amendments proposed to be made if the amendments to the Constitutions are approved by Securityholders at the Meeting); and

- each announcement to the ASX made by VCEG after lodgment with ASIC of the annual report referred to above and before the Meeting. The following is a list of announcements made between the date of lodgment with ASIC of the annual report for the year ended 30 June 2008 and the date of lodgment of this Explanatory Memorandum with ASIC.

<b>Date</b>	<b>Headline</b>
17-Jun-2009	Becoming a substantial holder
28-May-2009	Internalisation of VCEG Management Arrangements
25-May-2009	Market Update
20-Apr-2009	Response to an ASX Price Query
20-Apr-2009	Outcome of Review Process and Operational Update
16-Apr-2009	Trading Halt
06-Mar-2009	Standard & Poor's Announces March Quarterly Rebalance to the S&P/ASX Indices
05-Mar-2009	Ceasing to be a substantial holder
27-Feb-2009	VCEG half year results presentation February 2009
27-Feb-2009	Interim results for period ended 31 December 2008
27-Feb-2009	Interim Financial Results 31 December 2008 including 4D
26-Feb-2009	Change in substantial holding
17-Feb-2009	Viridis executes corporate debt facility
16-Feb-2009	Notice for the Purpose of Sections 12-415 Tax Administration
02-Jan-2009	Response to ASX Price Query
17-Dec-2008	Distribution for six month period ending 31 December 2008
17-Dec-2008	Update - Ardrossan expansion and Corporate debt refinancing
03-Dec-2008	Appendix 3Y
01-Oct-2008	2008 Annual Report

### **10.8. No further information**

All material information known to the Independent Directors about the Proposal is set out in this Explanatory Memorandum, or has previously been disclosed to the market by VCEG.

## 11. Glossary

**AFSL** means Australian financial services licence.

**Ancillary Resolution** means the resolution to approve the amendments to the Constitutions in the manner set out in the Supplemental Deed Polls.

**ASIC** means Australian Securities and Investments Commission.

**ASX** means ASX Limited (ACN 008 624 691) or the market operated by it, as the context requires.

**ASX Listing Rules** means the Listing Rules of ASX.

**Completion** has the meaning given in the Internalisation Deed.

**Completion Date** means Monday, 10 August 2009 or on any other date agreed by the parties in accordance with clause 5.1 of the Internalisation Deed.

**Constitution** means the constitution of, as relevant, VCET I or VCET II and **Constitutions** means both of them.

**Corporations Act** means the Corporations Act 2001 (Cwlth) as amended from time to time.

**Excess Cash Amount** means the amount of cash of VEC at Completion, excluding:

- (a) any amount which is required to meet conditions 5(a) and 5(b) of VEC's Australian financial services licence; and
- (b) any amount required to meet any liability of VEC or the Owners which is not otherwise permitted under the Internalisation Deed.

**Executive Option Plan** or **EOP** means the executive option plan proposed in respect of the Executives and described in Section 9 of this Explanatory Memorandum.

**Executives** means Edward Northam and Duncan Jewell (or their respective successor) and **Executive** means either of them.

**Explanatory Memorandum** means this Explanatory Memorandum and the Annexures, including the Notice of Meeting.

**FY07** means the financial year ended 30 June 2007.

**FY08** means the financial year ended 30 June 2008.

**Grant Samuel** or **Independent Expert** means Grant Samuel & Associates Pty Limited (ACN 050 036 372).

**IMA** or **Investment Management Agreement** means the investment management agreement dated 1 August 2005 between VIML and VEC.

**Independent Directors** means the independent directors of VIML, being Andrew Berry and Robert Webster.

**Independent Expert's Report** means the report prepared by Grant Samuel, a copy of which is contained in Section 8 of this Explanatory Memorandum.

**Internalisation Deed** means the internalisation deed dated 28 May 2009 between VIML, VEC and the Owners, a copy of which is contained in Annexure A of this Explanatory Memorandum.

**LFG** means landfill gas.

**Market Capitalisation** means the value of VCEG calculated by multiplying the average number of Stapled Securities on issue by the volume weighted average trading price of all Stapled Securities traded on the ASX on 20 trading days prior to the date of calculation.

**Meeting** means the meeting of Securityholders in connection with the Proposal and any adjournment of the meeting.

**Net Investment Value** has the meaning given in the IMA, and in substance means the Market Capitalisation plus all corporate debt liabilities of VCEG, less uninvested cash.

**Notice of Meeting** means the notice of meeting issued by VIML for the purposes of convening the Meeting, a copy of which is contained in Annexure D to this Explanatory Memorandum.

**Owners** means those persons or entities holding VEC Shares, all of whom have agreed to sell their shares to VIML, being the following:

- (a) Investec Bank (Australia) Limited (ACN 071 292 594);
- (b) PEP Energy Pty Ltd (ACN 095 764 088);
- (c) Chetwyn Investments Pty Ltd (ACN 098 552 704);
- (d) Oaktel Investments Pty Ltd (ACN 050 400 390); and
- (e) Hurstwood Road Pty Ltd (ACN 098 552 759).

**Proposal** means the proposed internalisation of the management arrangement of VCEG as described in this Explanatory Memorandum.

**Respective Proportions** means, in respect of an Owner, the "Respective Proportion" specified next to each Owner's name in Table 10.4.

**Resolutions** means those resolutions to be proposed to Securityholders at the Meeting, set out in the Notice of Meeting contained in this Explanatory Memorandum.

**Stapled Security** means an interest in VCEG, comprising a unit in VCET I stapled to a unit in VCET II in accordance with the Constitutions.

**Securityholders** means persons holding Stapled Securities.

**Supplemental Deed Polls** means the proposed supplemental deed polls to amend the Constitutions, a form of which is set out in Annexure B to this Explanatory Memorandum.

**VCEG** means Viridis Clean Energy Group comprising VCET I and VCET II.

**VCET I** means the Viridis Clean Energy Trust I (ARSN 115 340 442).

**VCET II** means the Viridis Clean Energy Trust II (ARSN 115 340 639).

**VCE** means Viridis Clean Energy Pty Limited (ABN 35 101 690 546).

**VCEG Control Transaction** means a transaction under which a third party will acquire 50% or greater of the Stapled Securities on issue.

**VEC** means Viridis Energy Capital Pty Limited (ABN 94 098 467 988) (AFSL 222 548).

**VEC Group** means VEC, VCE and VIML.

**VEC Share** means all of the fully paid ordinary shares on issue in the capital of VEC.

**VIML** means Viridis Investment Management Limited (ABN 51 099 788 431) (AFSL 222 547) as responsible entity of VCEG.

**Annexures**

# Annexure A – Internalisation Deed

## Details

<b>Parties</b>		
<b>VIML, IBAL, PEP, Chetwyn, Oaktel, Hurstwood and VEC</b>		
<b>VIML</b>	Name ABN Capacity  Address Fax Email Attention	Viridis Investment Management Limited 51 099 788 431 As responsible entity of Viridis Clean Energy Trust I (ARSN 115 340 442) and Viridis Clean Energy Trust II (ARSN 115 340 639) Level 1, 167 Flinders Lane, Melbourne VIC 3000 +61 3 9677 8080 companysecretary@viridisenergy.com Company Secretary
<b>IBAL</b>	Name ACN Address Fax Email Attention	Investec Bank (Australia) Limited 071 292 594 Level 31, 2 Chifley Square, Sydney NSW 2000 +61 2 9293 2322 mark.schneider@investec.com.au Mr Mark Schneider
<b>PEP</b>	Name ACN Address Email Attention	PEP Energy Pty Ltd 095 764 088 PO Box 5979, Gold Coast QLD 9726 david@gaiancapital.com David Scaysbrook
<b>Chetwyn</b>	Name ACN Capacity Address Fax Email Attention	Chetwyn Investments Pty Ltd 098 552 704 As trustee of the Jewell Family Trust 23 Chetwyn Court, Mount Eliza VIC 3930 +61 3 9677 8080 duncan.jewell@viridisenergy.com Duncan Jewell
<b>Oaktel</b>	Name ACN Capacity Address Email Attention	Oaktel Investments Pty Ltd 050 400 390 As trustee of Pahor Family Trust PO Box 181, Port Melbourne, VIC 3207 walter.pahor@gmail.com Walter Pahor
<b>Hurstwood</b>	Name ACN Capacity Address Fax Email Attention	Hurstwood Road Pty Ltd 098 552 759 As trustee of Hurstwood Road Trust No. 1 Level 16, 607 Bourke Street, Melbourne VIC 3000 +61 3 9677 8080 edward.northam@viridisenergy.com Edward Northam
<b>VEC</b>	Name ABN Address Fax Email Attention	Viridis Energy Capital Pty Limited 94 098 467 988 Level 1, 167 Flinders Lane, Melbourne VIC 3000 +61 3 9677 8080 companysecretary@viridisenergy.com Company Secretary
<b>Recitals</b>	<b>A</b> <b>B</b> <b>C</b> <b>D</b>	VIML is the responsible entity of VCET I and VCET II. VEC is the investment manager of VCET I and VCET II and is the holding company of VIML. The Owners are, together, the beneficial owners of all the shares in the capital of VEC (“Shares”). The details of the ownership of the Shares and the Relevant Proportions are set out in Schedule 1. The parties have agreed, on the terms and subject to the conditions of this deed, to implement an internalisation proposal under which VIML (in its capacity as the responsible entity of VCET II) will acquire the Shares from the Owners, thus acquiring for internalisation purposes VEC, the investment manager, and VIML, the responsible entity of VCET I and VCET II. The purpose of this deed is to set out how the parties propose to implement the internalisation proposal and the terms and conditions that apply to it.
<b>Governing law</b>	Victoria	
<b>Date of deed</b>	See Signing page	

## General terms

---

### 1 Definitions and interpretation

#### 1.1 Definitions

The following words have these meanings in this deed unless the contrary intention appears:

**2008 Financial Statements** means each of the:

- (a) Audited balance sheet of VEC as at the Last Balance Date;
- (b) audited profit and loss statement of VEC for the year ended on the Last Balance Date; and
- (c) audited statement of cash flows of VEC for the year ended on the Last Balance Date, prepared on a consolidated basis.

**2009 Accounts** means the audited accounts (including the financial statements, directors reports, auditors reports and notes attached to or intended to be read with the accounts) of VEC on a consolidated basis for the financial year ending on 30 June 2009.

**Accounting Standards** means:

- (a) accounting standards as that term is defined in the Corporations Act; and
- (b) to the extent not inconsistent with paragraph (a), generally accepted Australian accounting principles which are consistently applied.

**Acquisition Steps** means the steps set out in clause 5.3.

**Adjusted EBITDA** means earnings before interest, tax, depreciation and amortisation and before net unrealised foreign currency exchange gains/losses and derivative gains/losses (non-cash items), interest income on cash balances and non-recurring transactions, excluding abnormal items.

**Adjustment Mechanism** means each of the following:

- (a) prior to Completion, this deed will be amended such that the Purchase Price will be equal to the Cap and paid to the Owners in cash on completion of the relevant VCEG Control Transaction;
- (b) the Stapled Securities which were issued to that Owner under clause 5.7(g) are redeemed for the Subscription Price paid by that Owner and the amount by which that Owner's Respective Proportion of the Cap exceeds the Purchase Price received by that Owner is paid to that Owner in cash;
- (c) the Stapled Securities which were issued to that Owner under clause 5.7(g) are transferred to VCEG or a nominee in consideration for a cash payment of that Owner's Respective Proportion of the Cap to that Owner;
- (d) the redemption for no consideration of that number of Stapled Securities issued that Owner under clause 5.7(g) that exceeds the number that is calculated by dividing that Owner's Respective Proportion of the Cap by the Bid Price;
- (e) the appointment of VIML as each Owner's agent for the sale of the Stapled Securities issued to that Owner under clause 5.7(g) for a total price of no less than that Owner's Respective Proportion of the Cap on the basis that an amount of the sale proceeds equal to that Owner's Respective Proportion of the Cap be paid to that Owner in cash with the remainder of the sale proceeds being retained by VCEG;
- (f) the appointment of VIML as each Owner's agent for the sale of that number of Stapled Securities issued to that Owner under clause 5.7(g) that exceeds the number that is calculated by dividing that Owner's Respective Proportion of the Cap by the Bid Price on the basis that the sale proceeds will be retained by VCEG; and
- (g) on completion of the relevant VCEG Control Transaction, in respect of each Stapled Security that was issued to that Owner under clause 5.7(g), the purchaser pays to:
  - (i) that Owner \$0.40; and
  - (ii) VCEG the remainder of the Bid Price,in discharge of the purchaser's obligations under the VCEG Control Transaction to that Owner in respect of the Stapled Securities issued that Owner under clause 5.7(g).

**AFSL** means the Australian Financial Services Licence.

**Amended Employment Agreement** means the amendments to the senior executive employment agreement between VEC and each of the Executives as set out in a letter of variation from VEC to each of the Executives dated on or about the date of this deed.

**Amount of the Consideration** means:

- (a) the amount of any payment in connection with a supply; and
- (b) in relation to non-monetary consideration in connection with a supply, the GST exclusive market value of that consideration as reasonably determined by the supplier.

**Ancillary Resolutions** means the resolutions to approve the Constitution Amendments and any other resolutions to be considered by Securityholders at the Securityholder Meeting which are ancillary to the implementation of the Proposal.

**ASIC** means the Australian Securities and Investments Commission.

**ASTC** means ASX Settlement and Transfer Corporation Pty Ltd (ACN 008 504 532).

**ASTC Settlement Rules** means the settlement rules of ASTC.

**ASX** means ASX Limited or the Australian Securities Exchange as appropriate.

**Bid Price** means, in respect of a VCEG Control Transaction, the amount per Stapled Security to be paid by the purchaser under that VCEG Control Transaction.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Melbourne or Sydney.

**Buyer's Head Company** means the Head Company of the Consolidated Group.

**Cap** means \$5.6 million.

**Competing Proposal** means:

- (a) a transaction which, if completed, would result in a person (other than VIML in its capacity as responsible entity of VCEG):
  - (i) acquiring a relevant interest in, or becoming the holder of, 20% or more of VEC or any of its Subsidiaries; or
  - (ii) acquiring control of VEC or any of its Subsidiaries (within the meaning of section 50AA of the Corporations Act); or
- (b) any merger or amalgamation (whether by way of takeover or other arrangement), acquisition or sale of substantial business or assets, issue of securities, reorganisation of capital or similar transaction involving VEC or any of its Subsidiaries, or any combination of them.

**Completion** means completion of the Completion Steps and **Complete** has a corresponding meaning.

**Completion Date** means the date specified in the Explanatory Memorandum as the date on which Completion is to take place, or such later date agreed by the parties.

**Completion Steps** means the Acquisition Steps and the Subscription Steps.

**Conditions Precedent** means the conditions precedent set out in clause 3.1.

**Confidentiality Agreement** means the confidentiality agreement between VIML and VEC dated 22 December 2008 in relation to the Proposal.

**Consolidated Group** means the "consolidated group" or "MEC group" (as those terms are defined in the Tax Act) of which a Group Member is a Subsidiary Member at or after Completion.

**Constitution Amendments** means the proposed amendments to each of the VCET I Constitution and the VCET II Constitution set out in the draft supplemental deeds to be entered into by VIML, which are attached to this deed as Schedule 3.

**Controller** has the meaning it has in the Corporations Act.

**Corporations Act** means the Corporations Act 2001 (Cwlth).

**Court** has the meaning it has in the Corporations Act.

**Custodian** means Trust Company Limited (ACN 004 027 749) as custodian of VCET I and/or VCET II.

**Custody Deed** means the custody deed dated on or about 25 May 2009 between the Custodian and VIML.

**Deal** means:

- (a) sell, assign, transfer or otherwise dispose of;
- (b) agree or offer to sell, assign, transfer or otherwise dispose of;
- (c) enter into any option which, if exercised (whether such exercise is subject to conditions or otherwise), enables or requires the Relevant Owner to sell, assign, transfer or otherwise dispose of; or
- (d) decrease or agree to decrease an economic interest.

**Details** means the section of this deed headed "Details".

**Disclosure Letter** means the letter from the Owners addressed to VIML and dated and delivered to it before the date of this deed in the form agreed between the Owners and VIML.

**Due Diligence End Date** means a date to be agreed by the parties for the purpose of clause 3.1(c), which must be no later than seven days prior to the Meeting Date.

**Duty** means any stamp, transaction or registration duty or similar charge which is imposed by any Governmental Agency and includes any interest, fine, penalty, charge or other amount which is imposed in that regard.

**Employee** means any employee of VEC or its Subsidiaries at Completion.

**Encumbrance** means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power, title retention or flawed deposit arrangement; or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgment, or any agreement to create any of them or allow them to exist.

**Excess Cash Amount** means the amount of cash of VEC at Completion, but excluding:

- (a) any amount which is required to meet VEC's requirements under conditions 5(a) and 5(b) of the VEC Licence; and
- (b) any amount which is required to meet any liability of VEC or the Owners due at Completion, which has not been included in the amount referred to in paragraph (a) above and is not otherwise permitted under this deed.

**Executive Bonus Plan** means the executive bonus plan described in Schedule II of the senior executive employment agreement between VEC and each of the Executives.

**Executive Bonus Pool** means the bonus pool created by VEC for the purpose of satisfying its obligations under the Executive Bonus Plan.

**Executives** means each of Edward Northam and Duncan Jewell as executives of VEC.

**Executive Option Proposal** means the proposal to establish an executive option plan in respect of the Executives, and the grant of the options under that plan to the Executives, following Completion on the terms approved by the Board of Directors of VIML and agreed with the Executives prior to the date of the Explanatory Memorandum.

**Expert** means an audit partner of PricewaterhouseCoopers or, if they decline or are unable to act, a person nominated by the President for the time being of the Australian Institute of Chartered Accountants.

**Explanatory Memorandum** means the explanatory statement accompanying the Notice of Meeting.

**Governmental Agency** means any government, governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or other governmental entity.

**Group Member** means VEC, VIML (in its personal capacity) and VCE.

**GST** means a goods and services or similar tax imposed in Australia.

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cwlth).

**GST exclusive market value** has the meaning it has in the GST Act.

**Guarantee** means the deed to be entered into by:

- (a) in the case of Oaktel, Walter Pahor; and
- (b) in the case of PEP, David Scaysbrook,

in accordance with clause 14.5 and substantially in the form set out in Schedule 6.

**Head Company** has the meaning given to that expression in section 703-15 or section 719-25 of the Tax Act, as appropriate.

**Independent Expert** means Grant Samuel & Associates Pty Limited appointed by VIML to prepare the Independent Expert's report.

**Input Tax Credit** has the meaning it has in the GST Act.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this deed); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or

- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this deed reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

**Investment Management Agreement** means the Investment Management Agreement between VIML and VEC dated 1 August 2005 in connection with the provision of investment management services to VCEG by VEC.

**Insurance Policies** means the insurance policies maintained by VEC immediately prior the date of this deed, and as set out in Schedule 7.

**ITS** means Integrated Trading System.

**Key Personnel** means:

- (a) in respect of IBAL – Stephen Chipkin, Mark Schneider, Richard Winter, Belinda Dorfan and Anthony Rubin;
- (b) in respect of PEP – David Scaysbrook;
- (c) in respect of Chetwyn – Duncan Jewell;
- (d) in respect of Oaktel – Walter Pahor; and
- (e) in respect of Hurstwood – Edward Northam.

**Last Accounts** means:

- (a) each of the 2008 Financial Statements;
- (b) applicable notes to each of the 2008 Financial Statements required by the Accounting Standards;
- (c) any other information necessary to give a true and fair view of the financial position and performance of VEC and its Subsidiaries as set out in the 2008 Financial Statements; and
- (d) a directors' declaration regarding the 2008 Financial Statements (taken together) containing the information and opinions required by the Corporations Act.

**Last Balance Date** means 30 June 2008.

**Law** includes:

- (a) any law, regulation, authorisation, ruling, judgment, order or decree of any Governmental Agency; and
- (b) any statute, regulation, proclamation, ordinance or by-law in:
  - (i) Australia; or
  - (ii) any other jurisdiction.

**Liability** means any liability or obligation (whether actual, contingent or prospective), including for any Loss irrespective of when the acts, events or things giving rise to the liability occurred, but excluding liability for any consequential or indirect losses, economic losses or loss of profits.

**Listing Rules** means the Listing Rules of ASX.

**Loss** means all damage, loss, cost and expense (including legal costs and expenses of whatsoever nature or description) but excluding any liability for consequential or indirect losses, economic losses or loss of profits.

**Management Accounts** means the management accounts of VEC and its controlled entities prepared by VEC for the month ended 30 April 2009.

**Material Adverse Change** means:

- (a) in respect of VEC and its Subsidiaries, any change, effect, event, occurrence, state of facts or development that could reasonably be expected to be materially adverse to the business, financial condition or results of operations of VEC and/or its Subsidiaries, but does not include any change occurring directly or indirectly as a result of:
  - (i) any matter, event or circumstance required by this deed, the Proposal or the transactions contemplated by them;
  - (ii) any action taken by VIML which is not in accordance with a recommendation or consent of VEC; or
  - (iii) any action taken by VEC in accordance with the Investment Management Agreement; and
- (b) in respect of VCEG, any change, effect, event, occurrence, state of facts or development that could reasonably be expected to adversely affect VCEG's Adjusted EBITDA by more than 20%, but does not include any change occurring directly or indirectly as a result of:
  - (i) sale of its interest in the German wind farms;
  - (ii) sale of its interest in the Ardrossan wind farm;
  - (iii) any action taken by VIML which is in accordance with a recommendation or consent of VEC; or
  - (iv) any matter, event or circumstance required by this deed, the Proposal or the transactions contemplated by them.

**Material Contract** means a contract:

- (a) requiring payments over the term of the contract in excess of \$50,000;
- (b) for a term of more than five years; or
- (c) affecting the Adjusted EBITDA of VEC or its Subsidiary by more than 5%.

**Meeting Date** means the date on which the Securityholder Meeting occurs (and if the Securityholder Meeting is adjourned to another day, means the first date on which the Securityholder Meeting is conducted).

**Notice of Meeting** means the notice of meeting to be sent to Securityholders in relation to the Securityholder Meeting.

**Official Quotation** means quotation on the Official List of ASX.

**Owners** means IBAL, PEP, Chetwyn, Oaktel and Hurstwood.

**Owners' Indemnities** means the indemnities and undertakings given by the Owners under clause 10.6 and the Tax Indemnity.

**Owners' Warranties** means the representations and warranties given by the Owners under clauses 10 and 18.2 and Schedule 2.

**Permitted Encumbrances** means the charges specified in Schedule 8.

**Prescribed Event** means, except to the extent contemplated by this deed, any of the following occurs in respect of VEC or any of its Subsidiaries (as the case may be):

- (a) **(conversion)** it converts all or any of its shares into a larger or smaller number of shares;
- (b) **(reduction of capital)** it resolves to reduce its capital in any way or reclassifies, combines, splits or redeems or repurchases directly or indirectly any of its securities;
- (c) **(buyback)** it enters into a buyback agreement or resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) **(distribution)** it makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie);
- (e) **(issuing shares, options or other instruments)** it issues shares or other instruments convertible into shares, grants an option over its shares, or agrees to make such an issue or grant such an option;
- (f) **(constitution)** it adopts a new constitution or modifies or repeals its constitution or a provision of it;
- (g) **(disposals)** it disposes, or agrees to dispose of the whole or a substantial part of their business or property;
- (h) **(acquisitions, disposals or tenders)** it acquires or disposes of, agrees to acquire or dispose of, or offers, proposes, announces a bid or tenders for, any material business, assets, entity or undertaking, including, any acquisition of or agreement to acquire any Stapled Securities (or any legal or beneficial interest, including voting rights in them);
- (i) **(Encumbrances)** it creates, or agrees to create, any Encumbrance over the whole or a substantial part of its business or property;
- (j) **(Material Contract)** it enters into, amends or terminates (or agrees to enter into, amend or terminate) a Material Contract;
- (k) **(Insolvency)** it becomes Insolvent;
- (l) **(employment contracts)** it enters into any employment contract, or renews or amends any existing employment contract (including with regard to superannuation benefits);
- (m) **(change of control)** a person exercises or purports to exercise, or states an intention to exercise, any rights under any Material Contract which results, or could result in:
  - (i) the interest of VEC or its Subsidiaries in any entity (or any arrangements relating to such interests) being transferred, terminated or modified; or
  - (ii) the business of VEC or its Subsidiaries being adversely affected;
- (n) **(amendments)** it takes any step to amend, vary, assign, novate or terminate any of the following:
  - (i) the VCET I Constitution;
  - (ii) the VCET II Constitution;
  - (iii) the Investment Management Agreement; and
  - (iv) the Custody Deed;
- (o) **(AFSL)** it fails to comply with the conditions of its AFSL or makes any application, or take any steps, to vary or cancel its AFSL; or
- (p) **(responsible entity)** it takes any steps to retire VIML as responsible entity of VCET I and/or VCET II, provided that a Prescribed Event will not occur where VEC has first consulted with VIML in relation to the event and VIML has approved the proposed event, or where VEC has acted in accordance with the Investment Management Agreement.

**Proper ASTC Transfer** has the meaning given in regulation 1.0.02(1) of the Corporations Regulations.

**Proposal** means the transactions contemplated by this deed, but for the avoidance of doubt, excludes the Executive Option Proposal.

**Purchase Price** means the aggregate consideration to be paid to the Owners for the Shares, being \$3,220,000.

**Redeemable Preference Shares** means redeemable preference shares issued by VEC and held by Oaktel and PEP, as set out in Part 2 of Schedule 1.

**Related Body Corporate** has the meaning it has in the Corporations Act.

**Respective Proportion** means, in relation to each Owner, the proportions described opposite that Owner's name in Part 3 of Schedule 1.

**Restricted Stapled Securities** means, in respect of the relevant Owner:

- (a) any Stapled Securities issued to that Owner under clause 5.7(g);
- (b) any Stapled Securities issued to that Owner as distributions under clause 5.8(b); and
- (c) any Stapled Securities issued in respect of Stapled Securities referred to in paragraph (a) or (b) above (whether under a bonus issue, division of securities or otherwise).

**Securityholder** means each person who is registered in the register of securityholders of VCEG as the holder of Stapled Securities from time to time.

**Securityholder Meeting** means the meeting of Securityholders convened under the VCET I Constitution and the VCET II Constitution in connection with the Proposal.

**Share** means a fully paid ordinary share in the capital of VEC.

**Shareholders Agreement** means the shareholders agreement dated 1 April 2004 between the Owners, Robert McClenachan, Kakanui Investments Pty Ltd and VEC.

**Share Purchase and Subscription Agreement** means the share purchase and subscription agreement dated 1 April 2004 between the Owners, Robert McClenachan, Kakanui Investments Pty Ltd and VEC.

**Standstill Deed Poll** means the standstill deed poll given by the Owners in favour of VIML dated 8 April 2009 in connection with the Proposal.

**Stapled Security** means a fully paid stapled security in VCEG comprising one unit in VCET I and one unit in VCET II.

**Subscription Letter** means a letter to be executed by each of the Owners (or its nominee, as applicable) in connection with the acceptance of the offer in accordance with clause 2.2(b) and the subscription for Stapled Securities in accordance with clause 5.7, and substantially in the form set out in Schedule 5.

**Subscription Price** means \$0.23 per Stapled Security, being the VWAP (as calculated on the Business Day prior to the date of this deed, being the date on which an offer of Stapled Securities is made to the Owners as constituted by this deed) over the 15 Trading Days immediately prior to the date of calculation, being the date of this deed.

**Subscription Steps** means the steps set out in clause 5.7.

**Subsidiary** has the meaning given in the Corporations Act, but an entity will also be taken to be a Subsidiary of another entity if it is controlled by that entity (where 'control' is as defined in section 50AA of the Corporations Act) and, without limitation:

- (a) a trust may be a Subsidiary, and for that purpose a unit or other beneficial interest will be regarded as a share; and
- (b) an entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation.

**Subsidiary Member** has the meaning given to that expression in section 995-1 of the Tax Act.

**Tax** means any tax, levy, charge, impost, fee, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any Taxation Authority and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of, any of the above.

**Tax Act** means the Income Tax Assessment Act 1936 (Cwlth), the Income Tax Assessment Act 1997 (Cwlth) or the Taxation Administration Act 1953 (Cwlth), as the context requires.

**Taxation Authority** means the Australian Taxation Office or any other federal, state or municipal body or authority responsible for the collection of Tax or Duty, wherever situated.

**Tax Claim** means an assessment notice or amended assessment, demand or other document issued or action taken by or on behalf of a Taxation Authority, whether before or after the date of this deed, to the extent to which it relates to a period prior to Completion or to an act or omission of, or occurrence affecting, a Group Member on or before Completion, as a result of which the Group Member is liable to make a payment of Tax or Duty or is deprived of any credit, rebate, refund, relief, allowance, deduction or loss carried forward.

**Tax Claim Amount** means:

- (a) the amount the Group Member or Buyer's Head Company is required to pay in Tax to an Authority as a result of the Tax Claim;
- (b) the amount of any credit, rebate or refund of Tax lost by the Group Member or Buyer's Head Company as a result of a Tax Claim;
- (c) an amount equal to the amount of any relief, allowance, deduction or loss carried forward of which the Group Member or Buyer's Head Company was deprived of a result of the Tax Claim calculated at the rate of Tax applicable to companies in the year in which the Tax Claim is made.

**Tax Indemnity** means the indemnities and undertakings given by the Owners under clause 11.

**Tax Invoice** has the meaning it has in the GST Act.

**Tax Law** means a Law with respect to or imposing any Tax or Duty.

**Tax Warranty** means the warranties given by the Owners in paragraph 14 of Schedule 2.

**Third Party Claim** means any claim, demand, legal proceedings or cause of action (whether actual or threatened) against VEC or its Subsidiary by any person other than VIML which may lead to a breach of an Owners' Warranty.

**Trading Day** means a Business Day on which buying and selling occurs through the ASX automated trading system.

**Transaction Costs** means costs and expenses in connection with the Proposal including:

- (a) investment banking advisory costs, legal costs, independent expert's costs, accounting and auditing costs, tax and other advisory costs and costs of management and directors' time; and
- (b) costs of convening and holding the Securityholder Meeting.

**VCE** means Viridis Clean Energy Pty Limited (ABN 35 101 690 546).

**VCEG** means the Viridis Clean Energy Group, comprising VCET I and VCET II.

**VCEG Control Transaction** means an acquisition of more than 50% of the interests in VCEG.

**VCET I** means the Viridis Clean Energy Trust I (ARSN 115 340 442) constituted by the VCET I Constitution.

**VCET I Constitution** means the constitution of VCET I, as amended from time to time.

**VCET II** means the Viridis Clean Energy Trust II (ARSN 115 340 639) constituted by the VCET II Constitution.

**VCET II Constitution** means the constitution of VCET II, as amended from time to time.

**VEC Constitution** means the constitution of VEC, as amended from time to time.

**VEC Information** means the information about VEC that VEC prepares and gives VIML for inclusion in the Explanatory Memorandum.

**VEC Licence** means AFSL number 222548 held by VEC.

**VEC Prepared Information** means the information about VCEG that VEC, acting in its capacity as the investment manager of VCEG, prepares and gives to VIML for inclusion in the Explanatory Memorandum.

**VIML Independent Directors** means independent directors of VIML, being Andrew Berry and Robert Webster (or their replacements from time to time).

**VWAP** means, for a Trading Day, the volume weighted average market price (rounded to the nearest cent) for all Stapled Securities sold through ASX on that day, but excluding sales that occur otherwise than in the ordinary course of trading on ASX, such as special crossings, crossings prior to the commencement of normal trading, crossings during the closing phase and the after hours adjust phase, and any overseas sales or sales pursuant to the exercise of options over Stapled Securities, any overnight crossings and any other sales which VIML reasonably considers may not be fairly reflective of natural supply and demand.

## 1.2 References to certain general terms

Unless the contrary intention appears, a reference in this deed to:

- (a) **(variations or replacement)** a document (including this deed) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this deed;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;

- (f) **(person)** the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Governmental Agency;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) **(two or more persons)** an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (i) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (j) **(dollars)** Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (k) **(calculation of time)** a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (l) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (m) **(accounting terms)** an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (n) **(meaning not limited)** the words “including”, “for example” or “such as” when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (o) **(time of day)** time is a reference to Melbourne time.

### 1.3 Next day

If an act which is required under this deed to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day.

### 1.4 Next Business Day

If an event under this deed must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.

### 1.5 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this deed.

### 1.6 Schedules

Schedules 3, 4 and 7 are attached to this deed for reference only and do not form a part of this deed.

### 1.7 VIML’s capacity

- (a) VIML enters this deed only in its capacity as responsible entity of VCET I and VCET II and in no other capacity. References in this deed to VIML are to be construed accordingly, except:
  - (i) that where references are made to VIML as a Subsidiary of VEC or as a Group Member, those references are to be construed as being references to VIML in its personal capacity; and
  - (ii) to the extent otherwise expressly provided.
- (b) Unless otherwise expressly provided, where VIML performs, or is required to perform, any obligations under this deed, it performs those obligations only in its capacity as responsible entity of VCET I and VCET II, except that where VIML performs, or is required to perform, any obligations under this deed:
  - (i) as a Subsidiary of VEC or as a Group Member; or
  - (ii) at the direction of, or procurement by, VEC,

VIML performs, or is required to perform, those obligations in its personal capacity.

---

## 2 Purpose and general obligation

### 2.1 Proposal

The Proposal comprises the following key steps:

- (a) the Acquisition Steps, under which VIML (in its capacity as responsible entity of VCET II) acquires all the Shares from the Owners;
- (b) the Subscription Steps, under which the Owners apply the consideration received by them as a result of the Acquisition Steps to subscribe for Stapled Securities; and
- (c) certain other steps, including giving effect to the Constitution Amendments and amendments to the Investment Management Agreement.

### 2.2 Purpose of this deed

- (a) The purpose of this deed is to set out how the parties propose to implement the steps of the Proposal and the terms and conditions that apply to those steps.
- (b) This deed represents an offer to issue Stapled Securities (on the terms and subject to the conditions of this deed) at an issue price calculated in accordance with article 7.3 of the VCET I Constitution and the VCET II Constitution. The Owners accept that offer of Stapled Securities, and agree to complete the Subscription Steps, on the terms and subject to the conditions of this deed.

### 2.3 General obligation

Each party agrees to take all necessary steps within its respective power and use its respective best endeavours to implement the Proposal on the terms and subject to the conditions of this deed.

### 2.4 VIML's obligations

VIML's obligations under this deed are subject to compliance with its obligations, functions and powers under this deed, the VCET I Constitution, the VCET II Constitution, the Corporations Act, the Listing Rules and at law. The provisions of this clause 2.4 apply notwithstanding any other provision of this deed.

### 2.5 Owners

- (a) References to "Owner" mean each of the persons listed in Part 1 of Schedule 1.
- (b) VIML is not obliged to Complete unless each Owner Completes simultaneously.
- (c) The liability of each Owner under this deed is individual, in the proportion to that Owner's Respective Proportion.
- (d) Each Owner is entitled to receive its Respective Proportion of each payment, unless otherwise agreed between them.

### 2.6 VIML's consent

VIML confirms that for the purposes of the Investment Management Agreement it consents to the transfer of the Shares by the Owners as contemplated by this deed.

### 2.7 Owners' consent, waiver and acknowledgment

Each Owner and VEC:

- (a) consents to the transfer of the Shares by each other Owner as contemplated by this deed and the implementation of the Proposal for all purposes;
- (b) waives in favour of the other parties any pre-emption or other similar rights which it has now or might otherwise have in respect of any of the Shares held by each other Owner;
- (c) waives in favour of the other parties any rights which it now or might otherwise have under the VEC Constitution, the Shareholders Agreement or the Share Purchase and Subscription Agreement, including but not limited to:
  - (i) any rights under clause 4 of the Shareholders Agreement; and
  - (ii) in the case of IBAL, any right under clause 4.2 of the Share Purchase and Subscription Agreement; and
- (d) acknowledges that, following the Subscription Steps, VIML (in its capacity as responsible entity of VCET II) or the Custodian at the direction of VIML will be registered as the holder of all of the Shares, and the Shareholders Agreement and the Share Purchase and Subscription Agreement will be terminated in respect of each Owner.

---

## 3 Conditions precedent

### 3.1 Conditions precedent

Completion is conditional on:

- (a) **(Securityholder approval)** the Securityholders approving the Proposal for all purposes including the Corporations Act and the Listing Rules by requisite majorities at a duly convened meeting of Securityholders;
- (b) **(Independent Expert)** the Independent Expert issuing a report to VIML which concludes that the Proposal is fair and reasonable to, and in the best interests of, Securityholders, and the Independent Expert not changing its conclusion or withdrawing its report prior to the Securityholder Meeting;
- (c) **(due diligence)** VIML completing a due diligence investigation of VEC and its Subsidiaries by the Due Diligence End Date and considering that (acting reasonably):
  - (i) the result of that investigation is satisfactory; and
  - (ii) the investigation does not reveal any information regarding VEC or any of its Subsidiaries which, had it been known by VIML previously, would have led to VIML not entering into this deed materially on the terms of this deed;
- (d) **(regulatory approval)** all regulatory approvals, waivers, exemptions, judicial review and no action letters which are necessary to implement the Proposal (and which may include any regulatory approvals the Owners consider are necessary to implement the Proposal) having been obtained on terms which are unconditional or conditional only on matters which are reasonably acceptable to VIML;
- (e) **(no regulatory action)** as at 9.00 am on the Completion Date:
  - (i) there being no preliminary or final decision, order or decree issued by a Governmental Agency; and
  - (ii) no application being made to any Governmental Agency, or action or investigation being announced, threatened or commenced by a Governmental Agency,

in consequence of or in connection with the Proposal which restrains or prohibits (or if granted or completed could reasonably be expected to restrain or prohibit or establish grounds for restraining or prohibiting), or otherwise materially adversely affects (or could reasonably be expected to materially adversely affect) the implementation of the Proposal;

- (f) **(legal restraints)** as at 9.00 am on the Completion Date, no court issuing a final and non-appealable order, decree or ruling or taking other action which permanently restrains or prohibits (or could reasonably be expected to restrain or prohibit) the Proposal, or any other material legal restraint or prohibition preventing the implementation of the Proposal;
- (g) **(third party consents)** all other approvals of a third party which the parties agree are reasonably necessary to implement the Proposal being obtained (including the consent from the financiers of VCEG and the consent from the lessor of VEC's office premises);
- (h) **(Constitution Amendments)** the Securityholders approving the Constitution Amendments by requisite majorities at a duly convened meeting of Securityholders, and the Constitution Amendments having been lodged with ASIC and lodged with and approved by ASX;
- (i) **(Permitted Encumbrances)** the Permitted Encumbrances being assigned as set out in Schedule 8 and all necessary forms and documents being executed and, if required, lodged with ASIC to give effect to the assignment of the Permitted Encumbrances;
- (j) **(Redeemable Preference Shares)** all of the Redeemable Preference Shares being redeemed in accordance with their terms of issue and all applicable Law and, if any Shares are issued as a consequence of the redemption of the Redeemable Preference Shares:
  - (i) those Shares being issued in accordance with VEC Constitution and all applicable Law;
  - (ii) all regulatory filing being made in respect of those Shares; and
  - (iii) VIML being advised of the total number of Shares so issued;
- (k) **(Executive Bonus Plan)** all obligations of VEC and its Subsidiaries being satisfied under the Executive Bonus Pool or the Executive Bonus Plan (including any obligation to make payment or issue any shares or other securities); and
- (l) **(directors' remuneration)** all obligations of VEC and its Subsidiaries being satisfied in respect of remuneration of its respective directors (including any obligation to make payment or issue any shares or other securities).

### 3.2 Reasonable endeavours

Each party must (in the case of VIML, subject to clause 2.4) use its reasonable endeavours to obtain the satisfaction of the Conditions Precedent, including procuring performance by a third party. The parties must keep each other informed of any circumstances which may result in any Condition Precedent not being satisfied in accordance with its terms.

### 3.3 Waiver by VIML

- (a) The conditions in clauses 3.1(a), 3.1(e) and 3.1(f) may not be waived.
- (b) The conditions in clauses 3.1(b), 3.1(c), 3.1(d), 3.1(h), 3.1(i), 3.1(j), 3.1(k) and 3.1(l) are for the benefit of VIML and may only be waived by VIML by notice given to the Owners.
- (c) The condition in clause 3.1(g) is for the benefit of VIML and may only be waived by VIML following consultation with the Owners in good faith.

### 3.4 Last date

If:

- (a) any of the conditions in clauses 3.1(b), 3.1(c), 3.1(d), 3.1(g), 3.1(h) and 3.1(j) are not satisfied by the close of business on the Business Day before the Meeting Date or such later date agreed by the parties and have not been waived by VIML;
- (b) the condition in clause 3.1(a) is not satisfied by 30 September 2009 or such later date agreed by the parties;
- (c) any of the conditions in clauses 3.1(e) and 3.1(f) are not satisfied by 9.00am on the Completion Date;
- (d) any of the conditions in clauses 3.1(i), 3.1(k) and 3.1(l) are not satisfied prior to Completion; or
- (e) any consent or approval required under the conditions in clause 3.1 is not granted on terms acceptable to VIML (acting reasonably),

then provided the party who seeks to terminate this deed has complied with clause 3.2, this deed may be terminated at any time before Completion by notice given by VIML or the Owners to the other parties.

### 3.5 Termination

Clause 12.5 applies in relation to any termination of this deed under clause 3.4.

---

## **4 Approvals and recommendations**

### **4.1 Convening of Securityholder Meeting**

Subject to clauses 2.4 and 4.7(a), as soon as reasonably practicable VIML will convene the Securityholder Meeting to be held on 29 July 2009 or such later date agreed by the parties to consider and approve the Proposal and the Ancillary Resolutions.

### **4.2 Notice of Meeting**

Subject to clauses 2.4 and 4.7(a), VIML must prepare the Notice of Meeting and the Explanatory Memorandum and ensure that:

- (a) it complies with all applicable laws; and
- (b) on satisfaction of the condition in clause 3.1(b), the Explanatory Memorandum includes the Independent Expert's report as to whether the Proposal is fair and reasonable to, and in the best interests of, Securityholders.

### **4.3 Preparation of Explanatory Memorandum**

- (a) VEC undertakes to:
  - (i) assist VIML at the earliest possible time in preparing the Explanatory Memorandum and, in particular, to prepare and give to VIML in a timely manner the VEC Information and the VEC Prepared Information;
  - (ii) ensure that neither the VEC Information nor the VEC Prepared Information are misleading or deceptive (whether by omission or otherwise) and to conduct verification processes for the VEC Information and the VEC Prepared Information; and
  - (iii) provide VIML with any information of which VEC becomes aware between the date of the Explanatory Memorandum and the date of the Securityholder Meeting that may reasonably result in the Explanatory Memorandum being false, misleading or deceptive, or likely to mislead or deceive, in any material respect (including because of any material omission), and if required, assist VIML in preparing any supplementary or replacement document to the Explanatory Memorandum.
- (b) Subject to VEC being satisfied (acting reasonably) with the final version of the Explanatory Memorandum, VEC agrees:
  - (i) to consent to the inclusion of the VEC Information and the VEC Prepared Information in the Explanatory Memorandum; and
  - (ii) that the Explanatory Memorandum may state that VEC is responsible for the VEC Information and the VEC Prepared Information and has consented to the inclusion of the VEC Information and the VEC Prepared Information in the Explanatory Memorandum in the form and context in which they appear.

### **4.4 Provision of information**

- (a) Without limiting clause 15.4, VEC must:
  - (i) provide or procure the provision of all reasonable assistance and information required by VIML under this deed in a timely manner to enable preparation of the Explanatory Memorandum so that the Notice of Meeting and the Explanatory Memorandum can be sent to the Securityholders in sufficient time for the Securityholder Meeting to be held on the date referred to in clause 4.1;
  - (ii) provide or procure the provision of the information or other assistance as reasonably required by the Independent Expert or VIML in connection with the preparation of the Independent Expert's report; and
  - (iii) provide or procure the provision to VIML of full and free access to, and on request, copies of all materials and documents used or created in connection with the preparation of the Notice of Meeting and the Explanatory Memorandum for the purposes of verification of the Notice of Meeting and the Explanatory Memorandum.
- (b) The Owners agree:
  - (i) to take all reasonable steps to procure VEC to perform its obligations under clauses 4.3 and 4.4(a); and
  - (ii) not to do anything that would prevent VEC from satisfying its obligations under clauses 4.3 or 4.4(a).

### **4.5 Recommendation by VIML Independent Directors**

Subject to clauses 2.4 and the VIML Independent Directors not taking any action under 4.7(a), VIML:

- (a) agrees to include in the Notice of Meeting a recommendation from the VIML Independent Directors that Securityholders vote in favour of all resolutions to be proposed at the Securityholder Meeting in relation to the Proposal and the Ancillary Resolutions; and

- (b) agrees to use its reasonable endeavours to include in the Notice of Meeting statement that the VIML Independent Directors who are entitled to vote on the resolutions to be proposed at the Securityholder Meeting in relation to the Proposal and the Ancillary Resolutions will vote their Stapled Securities in favour of all resolutions to be proposed at the Securityholder Meeting in relation to the Proposal and the Ancillary Resolutions.

#### **4.6 Withdrawal of recommendation**

Subject to clauses 2.4 and the VIML Independent Directors not taking any action under clause 4.7(a), VIML will procure that the VIML Independent Directors do not withdraw or adversely modify in any material respect their recommendation of the Proposal as contemplated by clause 4.5(a).

#### **4.7 Duties to Securityholders**

- (a) The VIML Independent Directors may decline to recommend, withdraw or adversely modify their recommendation of the Proposal or the Ancillary Resolutions or announce their intention to vote against the Proposal or the Ancillary Resolutions, or abstain from voting on the Proposal or Ancillary Resolutions if:
  - (i) the Independent Expert fails to conclude, or changes its conclusion, that the Proposal is fair and reasonable to, and in the best interests of, Securityholders;
  - (ii) they have determined in good faith, having received expert advice as appropriate, that they must do so because of their duties to the Securityholders; or
  - (iii) VIML or the VIML Independent Directors are otherwise required to do so in accordance with clause 2.4.
- (b) VIML must immediately give notice to the Owners if the VIML Independent Directors form the view that it is reasonably likely they will decline to recommend, withdraw or adversely modify their recommendation of the Proposal and the Ancillary Resolutions in accordance with clauses 2.4 and 4.7(a).

#### **4.8 Adjournment**

- (a) Notwithstanding clause 4.1, VIML may adjourn the Securityholder Meeting if:
  - (i) it has determined that it must do so having regard to its duties to the Securityholders;
  - (ii) it is required to do so in accordance with clause 2.4; or
  - (iii) the parties otherwise agree.
- (b) The rights of adjournment under clause 4.8(a) are in addition to, and not limited by, any other rights of adjournment by the chairman of the Securityholder Meeting in accordance with the VCET I Constitution and the VCET II Constitution.

#### **4.9 Executive Option Proposal**

- (a) VIML agrees to take all reasonable steps to enable VIML or its Subsidiary to give effect to the Executive Option Proposal, including seeking any necessary approval of the Securityholders in relation to the Executive Option Proposal at the Securityholder Meeting and procuring a recommendation from the VIML Independent Directors that Securityholders vote in favour of the Executive Option Proposal.
- (b) Provided that Securityholder approval and all relevant regulatory approvals have been obtained in respect of the Executive Option Proposal, VIML agrees to take all reasonable steps to grant the options under the Executive Option Proposal.

---

## **5 Completion**

### **5.1 Completion**

The Acquisition Steps and the Subscription Steps are to take place on the Completion Date.

### **5.2 Performance of Steps**

- (a) On the Completion Date, each party must perform the Completion Steps and obligations referable to it in accordance with clauses 5.3 to 5.7 (inclusive).
- (b) No party is obliged to perform any Completion Step or obligation under clause 5.3 to 5.7 (inclusive) unless all steps and obligations required to be performed under those clauses occur on the same date, it being the intention of the parties that those steps and obligations are interdependent.
- (c) All steps and obligations required to be performed under clauses 5.3 to 5.7 (inclusive) will be taken to have occurred in the order set out in those clauses on the Completion Date.

### 5.3 Acquisition Steps

On the Completion Date, the following steps (comprising the Acquisition Steps) are to take place in the following order:

- (a) the Owners are to execute and submit to VIML all necessary transfer forms for the Shares for execution by VIML (in its capacity as responsible entity of VCET II), or the Custodian at the direction of VIML;
- (b) VIML (in its capacity as responsible entity of VCET II), or the Custodian at the direction of VIML, is to execute the transfer forms referred to in clause 5.3(a) and pay the Purchase Price to the Owners in consideration for all the Shares;
- (c) the Owners are to transfer all the Shares to VIML (in its capacity as responsible entity of VCET II), or the Custodian at the direction of VIML; and
- (d) VEC is to record on the register of members of VEC that VIML (in its capacity as responsible entity of VCET II), or the Custodian if VIML directs under clause 5.3(c) is the holder of all the Shares transferred to it under clause 5.3(c).

### 5.4 Free from Encumbrance

The Shares must be transferred free from any Encumbrance and with all rights, including dividend rights, attached or accruing to them on and from the date of this deed.

### 5.5 Owners' obligations

On Completion, the Owners will give to VIML:

- (a) **(share certificates)** the share certificates for the Shares and any consents which VIML or the Custodian (as applicable) reasonably requires to obtain registration of the transfers referred to in clause 5.3(c);
- (b) **(records and common seal)** the records and the common seal (if any) of VEC and each Subsidiary of VEC, including all share certificates issued by each Subsidiary of VEC;
- (c) **(bank authority)** duly completed bank authorities directed to the bankers of VEC and each Subsidiary of VEC authorising the operation of each of the bank accounts of VEC and each Subsidiary of VEC by nominees of VIML and terminating the authority of each of the present signatories (if required);
- (d) **(Subscription Letter)** a duly executed Subscription Letter from each Owner or its nominee in connection with the acceptance of the offer in accordance with clause 2.2(b) and the subscription for Stapled Securities in accordance with clause 5.7; and
- (e) **(directors' resolution)** a certified copy of a resolution of directors of VEC resolving that, subject to the payment of stamp duty (if any), the transfer of the Shares referred to in clause 5.3(c) will be registered.

### 5.6 VIML as agent for Owners

Notwithstanding clause 5.3, each Owner irrevocably appoints VIML as the agent and attorney of the Owner to receive the Purchase Price and apply the Purchase Price in accordance with clause 5.7(f) and to do all things which VIML reasonably considers are necessary to give effect to the Subscription Steps.

### 5.7 Subscription Steps

On the Completion Date and immediately following completion of the Acquisition Steps, the following steps (comprising the Subscription Steps) are to take place in the following order:

- (a) IBAL is to subscribe for 2,415,420 Stapled Securities at the Subscription Price;
- (b) PEP is to subscribe for 2,114,840 Stapled Securities at the Subscription Price;
- (c) Chetwyn or its nominee is to subscribe for 71,260 Stapled Securities at the Subscription Price;
- (d) Oaktel is to subscribe for 9,269,400 Stapled Securities at the Subscription Price;
- (e) Hurstwood or its nominee is to subscribe for 129,080 Stapled Securities at the Subscription Price;
- (f) VIML as agent for the Owners is to apply the Purchase Price in payment of the aggregate amount payable for the subscription for Stapled Securities under clauses 5.7(a) to 5.7(e) (inclusive);
- (g) VIML is to issue to the Owners the number of Stapled Securities subscribed for under clauses 5.7(a) to 5.7(e) respectively at the Subscription Price; and
- (h) VIML is to record or procure recording on the register of Securityholders that the Owners are the holders of the Stapled Securities issued to them under clause 5.7(g).

### 5.8 Distribution entitlement of Stapled Securities

- (a) The Stapled Securities issued under clause 5.7(g) are to be issued on the condition that their entitlement to distributions for the distribution period ending 31 December 2009 is proportional to the length of time they have been on issue for that period.
- (b) Subject to clause 5.8(c), during the period in which the restrictions in clause 14.2 apply, distributions in respect of the Stapled Securities issued under clause 5.7(g) may be paid, at the election of VIML, as cash or as additional Stapled Securities at the issue price determined in accordance with the terms of the distribution reinvestment plan of VCEG from time to time.

- (c) Notwithstanding any other provision of this clause 5.8, the Owners will be entitled to be paid cash distributions in respect of the Stapled Securities issued under clause 5.7(g) if those distributions are not made in the ordinary course in accordance with VCEG's stated distribution policy (for example, a distribution which is made as a result of a reorganisation, extraordinary distribution, asset disposal or restructure).
- (d) For the avoidance of doubt, the right of VIML to make an election contemplated by clause 5.8(b) is not intended to be binding on any subsequent purchaser of any Stapled Securities issued under clause 5.7(g), except as provided for in this deed. It is intended that if, for any reason, any of the Owners transfers the Stapled Securities issued under clause 5.7(g) during the period in which the restrictions in clause 14.2 apply (including with the written consent of VIML), that Owner must procure that the transferee undertakes to be bound by the arrangement set out in clause 5.8(b).

## **5.9 Discharge of obligations**

- (a) The parties acknowledge and agree that VIML's obligations to pay the Purchase Price to the Owners under clause 5.3(b) and the Owners' obligations to pay the Subscription Price to VIML under clauses 5.7(a) to 5.7(e) (inclusive) are to be paid by direction, and neither VIML nor the Owners will be required to make cash payment. VIML and the Owners give all necessary directions to give effect to the steps in clause 5.3(b) and clauses 5.7(a) to 5.7(e) (inclusive).
- (b) The recording on the register of Securityholders under clause 5.7(h) that the Owners are the holders of the Stapled Securities issued to them under clause 5.7(g) operates to complete the full and final discharge of VIML's obligations to pay the Purchase Price to the Owners under clause 5.3(b) and neither the Owners nor VEC will have any further claim in respect of those payments.

---

## **6 Other Completion and Post Completion Steps**

### **6.1 Executive Bonus Plan and Excess Cash Amount**

- (a) The parties acknowledge that the Executives have existing entitlements under the Executive Bonus Plan under the terms of the existing senior executive employment agreement between each Executive and VEC.
- (b) Each of Chetwyn and Hurstwood on behalf of the relevant Executive represents and acknowledges that each Executive has agreed under the Amended Employment Agreement to waive all rights in respect of the entitlements described in clause 6.1(a) immediately prior to Completion, except that each Executive is entitled to receive \$55,000 from VEC, less any amount that must be withheld by VEC in accordance with the Tax Act.
- (c) VEC will pay on Completion the amounts described in clause 6.1(b) as specified below:
  - (i) \$55,000 to Chetwyn; and
  - (ii) \$55,000 to Hurstwood,
 less any amount that must be withheld by VEC in accordance with the Tax Act, provided that, immediately prior to Completion, VEC has an Excess Cash Amount exceeding the sum of the amounts specified in clauses 6.1(c)(i) and 6.1(c)(ii).
- (d) If, immediately prior to Completion, VEC has an Excess Cash Amount which is less than the sum of the amounts specified in clauses 6.1(c)(i) and 6.1(c)(ii), then VEC agrees to pay on Completion that Excess Cash Amount to each of Chetwyn and Hurstwood on a pro rata basis, less any amount that must be withheld by VEC in accordance with the Tax Act.
- (e) The payment made by VEC under clause 6.1(c) or 6.1(d) will be deemed to take effect immediately prior to Completion.
- (f) Each of Chetwyn and Hurstwood on behalf of the relevant Executive acknowledges that:
  - (i) the payment made by VEC under clause 6.1(c) or 6.1(d) will operate as the full and final discharge of VEC's liabilities to the Executives in respect of the entitlements described in clause 6.1(a); and
  - (ii) the Executives will not have any further claim in respect of the entitlements described in clause 6.1(a) or the amounts described in clause 6.1(b).
- (g) Each of Chetwyn and Hurstwood acknowledges that, if there is no Excess Cash Amount immediately prior to Completion, VEC will not make any payment to the Executives, however, the waiver given by the Executives as described to in clause 6.1(b) will operate as complete waiver of all rights in respect of the entitlements described in clause 6.1(a) or the amounts described in clause 6.1(b).
- (h) If, immediately after Completion, there is any Excess Cash Amount remaining after the payment has been made under clause 6.1(c), then VIML agrees to pay the remaining Excess Cash Amount to the Owners in their Respective Proportions.
- (i) If, on Completion, VEC does not have sufficient amount of cash to meet its cash needs requirement under condition 5(d) of the VEC Licence, VIML agrees to provide the shortfall to VEC, to ensure that condition 5(d) of the VEC Licence is satisfied at all times.
- (j) All actions required to be performed by a party under clause 6.1(c) or 6.1(d) (as applicable) and clause 6.1(i) are taken to have occurred simultaneously at Completion.

## 6.2 Application for Official Quotation

VIML will apply to the ASX for, and take all reasonable steps to achieve, Official Quotation of the Stapled Securities to be issued to the Owners under clause 5.7(g) in accordance with the Corporations Act and Listing Rules, such Official Quotation to be effective from the commencement of trading on ASX on the first ASX trading day after the Completion Date.

## 6.3 Provision of Notice

VIML will take all reasonable steps to issue a written notice that complies with section 1012DA(6) of the Corporations Act.

## 6.4 Executive Option Proposal

Each of Chetwyn and Hurstwood on behalf of the relevant Executive, VEC and VIML acknowledge that:

- (a) the implementation of the Executive Option Proposal is conditional on:
  - (i) all relevant regulatory approvals being obtained in respect of the Executive Option Proposal; and
  - (ii) Securityholder approval being obtained in respect of the Executive Option Proposal; and
- (b) the implementation of the Proposal is not conditional on any requisite Securityholder approval or regulatory approval of the Executive Option Proposal being obtained.

## 6.5 Amendments to Investment Management Agreement

On the Completion Date, VEC and VIML agree to amend the Investment Management Agreement to give effect to the amendments set out in Schedule 4.

## 6.6 2009 Accounts

For the purposes of the preparation of the 2009 Accounts in accordance with the Accounting Standards, the Owners must:

- (a) provide or ensure the provision of all information and assistance which may be reasonably requested by VIML and its representatives; and
- (b) permit VIML and its representatives to have reasonable access to and take extracts from or copies of any books, accounts or other records relating to VEC in its possession or control.

---

## 7 Adjustment to Purchase Price

### 7.1 Adjustment to Purchase Price

The parties agree that, if a VCEG Control Transaction where the Bid Price is greater than \$0.40 is:

- (a) completed prior to the date that is six months after Completion; or
- (b) recommended to Securityholders by the VIML Independent Directors prior to the date that is six months after Completion and subsequently completed,

then:

- (c) the total consideration receivable by the Owners under the VCEG Control Transaction in respect of the Stapled Securities issued or to be issued under clause 5.7(g) must not exceed the Cap;
- (d) to give effect to clause 7.1(c), the parties will take all steps that are reasonably necessary or beneficial to implement one of the Adjustment Mechanisms; and
- (e) the appropriate Adjustment Mechanism will be determined by VIML following consultation with the Owners. In making its determination, VIML must reasonably take into account the impact of the proposed Adjustment Mechanism on the Owners.

### 7.2 Limitations

- (a) Clause 7.1 and the Adjustment Mechanism do not apply to an Owner who does not participate in the relevant VCEG Control Transaction in respect of the Stapled Securities issued or to be issued to it under clause 5.7(g) and who has not entered into any agreement or understanding in respect of those Stapled Securities in connection with the relevant VCEG Control Transaction.
- (b) Where an Owner participates in a VCEG Control Transaction, or enters into any agreement or understanding in connection with a VCEG Control Transaction, in respect of only some of the Stapled Securities issued or to be issued to it under clause 5.7(g), clause 7.1 and the Adjustment Mechanism apply to that Owner in proportion to that Owner's participation.

---

## 8 Pre-Completion Conduct

The Owners will take all reasonable steps to ensure that (except as expressly required under this deed or agreed in writing by VIML) from the date of this deed until the Completion Date, each of VEC and its Subsidiaries:

- (a) **(ordinary course)** will conduct its business in the ordinary course of business and in accordance with all applicable Laws, contractual commitments, including the VCET I Constitution, the VCET II Constitution and the Investment Management Agreement, and will not change its business or enter into any new investment management agreements;
- (b) **(abnormal or unusual transactions)** will not enter into any abnormal or unusual transaction which relates to or adversely affects its business;

- (c) **(corporate actions)** will not:
  - (i) increase, reduce or otherwise alter its share capital or grant any options for the issue of shares or other securities;
  - (ii) make a distribution or revaluation of assets; or
  - (iii) buy back or make any offer to buy back its share capital;
- (d) **(constitution)** will not vary the its constitution or the rights attaching to its share capital;
- (e) **(contract)** will not enter into (or make any binding offer to enter into), amend in any material respect, or terminate, any contract or obligation which is not in the ordinary course of business;
- (f) **(asset disposal)** will not dispose, or agree to dispose of the whole or any substantial part of its business or assets;
- (g) **(no Encumbrance)** will not create any Encumbrance over all or any of its assets;
- (h) **(capital expenditure)** will not make any loans, advances or capital expenditure other than in the ordinary course of business;
- (i) **(liabilities)** will not incur any material liabilities other than in the ordinary course of business;
- (j) **(financing)** will not borrow or otherwise raise any amount of financial accommodation;
- (k) **(no forgiveness of debt)** will not cancel (or enter into any arrangement to cancel) any indebtedness for money owed to it, or waive any claim or right;
- (l) **(dividend)** will not declare or pay any dividend or return any capital;
- (m) **(employment contracts)** will not enter into any employment contract, or renew or amend any existing material employment contract (including with regard to superannuation benefits) other than the Amended Employment Agreement;
- (n) **(Tax matters)** will not make any Tax election or settle or compromise any Tax liability, unless that election, settlement or compromise:
  - (i) is required by law and is supported by an opinion of counsel; or
  - (ii) is in the ordinary course of business and is consistent with past practices;
- (o) **(accounting practices)** will not make any change in the accounting methods, principles or practices used by it at the Last Balance Date;
- (p) **(accounts)** will fully and properly maintain all accounts, books, financial and other records so that they contain accurate records of all matters required by Law and give a true and fair view of its financial and contractual position;
- (q) **(insurances)** will maintain (and where necessary use reasonable efforts to renew) the Insurance Policies;
- (r) **(intellectual property)** will not grant any licence, assignment or other right or interest in respect of intellectual property, other than in the ordinary course of business;
- (s) **(information)** will not disclose information, which is owned or used by it in relation to its business or assets, to any third party other than in the ordinary course of business; and
- (t) **(no Prescribed Event)** will ensure that no Prescribed Event occurs.

## **9 No solicitation**

### **9.1 No solicitation**

The Owners, until the Completion Date, will not (directly or indirectly), without VIML's prior written consent, through any director, officer, shareholder, employee, representative, agent or adviser of the Owners or any of their Related Bodies Corporate:

- (a) initiate, induce, solicit, invite or encourage another person to initiate a Competing Proposal or continue any existing Competing Proposal or negotiate the terms of a Competing Proposal with another person;
- (b) take any action of any kind which may compete or interfere with the Proposal; or
- (c) provide to any person any information with respect to or respond to any inquiries which may reasonably be expected to lead to any Competing Proposal or the making of any Competing Proposal.

### **9.2 Notification of Competing Proposal**

The Owners must immediately notify VIML of:

- (a) any current or future Competing Proposal; or
- (b) any request for non public information relating to VEC, its Subsidiaries or their respective businesses.

### **9.3 Notice details**

A notice given under clause 9.2 must be given orally and in writing and must indicate full details of the proposal, enquiry or contact and the identity of the person making it.

---

## **10 Representations and Warranties**

### **10.1 Representations and warranties by Owners and VIML**

Each of the Owners represents and warrants to VIML, and VIML represents and warrants to the Owners and VEC, that:

- (a) it has the power to enter into and perform this deed and (subject to obtaining the approvals contemplated by this deed) has obtained all necessary approvals and consents to enable it to do so;
- (b) the entry into and performance of this deed does not constitute a breach of any obligation (including any statutory, contractual or fiduciary obligation), or default under any agreement or undertaking, by which it is bound;
- (c) this deed constitutes valid and binding obligations upon it which are enforceable in accordance with its terms by appropriate legal remedy; and
- (d) subject to obtaining the approvals contemplated by this deed, this deed and Completion do not conflict with or result in a breach of or default under any applicable Law, its constitution or any material term or provision of any agreement or deed to which it is a party (and in the case of VIML, the VCET I Constitution, the VCET II Constitution or the Listing Rules).

### **10.2 Representations and warranties by VEC**

VEC represents and warrants to VIML that:

- (a) it has the power to enter into and perform this deed and (subject to obtaining the approvals contemplated by this deed) has obtained all necessary approvals and consents to enable it to do so;
- (b) the entry into and performance of this deed does not constitute a breach of any obligation (including any statutory, contractual or fiduciary obligation), or default under any agreement or undertaking, by which it or its Subsidiary is bound;
- (c) this deed constitutes valid and binding obligations upon it which are enforceable in accordance with its terms by appropriate legal remedy; and
- (d) subject to obtaining the approvals contemplated by this deed, this deed and Completion do not conflict with or result in a breach of or default under any applicable Law, VEC Constitution, the constitution of any of its Subsidiaries, or any material term or provision of any agreement or deed to which it or its Subsidiary is a party.

### **10.3 Owners' Warranties**

Each of the Owners represents and warrants to VIML that each of the Owners' Warranties is true and correct on the date of this deed and will be true and correct on Completion as if made on and as at each of those dates. Each of the Owners' Warranties is to be treated as a separate representation and warranty and the interpretation of any statement made may not be restricted by reference to or inference from any other statement.

### **10.4 Knowledge and belief of Owners**

- (a) If any of the Owners' Warranties is marked with an asterisk (\*), the representation and warranty of the Owners in clause 10.3 for that Owners' Warranty is made to the best of the knowledge and belief of the Owners.
- (b) The representation and warranty of the Owners in clause 10.3 for the Owners' Warranties in paragraphs 2.4, 2.5 and 2.6 of Schedule 2 is made to the best of the knowledge and belief of each Owner to the extent that those Owners' Warranties relate to the Shares held by each other Owner. For the avoidance of doubt, the Owners' Warranties in paragraphs 2.4, 2.5 and 2.6 are not qualified by knowledge and belief of an Owner to the extent that those Owners' Warranties relate to its own Shares.
- (c) For the purposes of this clause 10.4, the best of the knowledge and belief of the Owners means the actual knowledge of the Key Personnel having made all due and reasonable enquiries.

### **10.5 Acknowledgments**

VIML acknowledges that:

- (a) in entering into this deed and in proceeding to Completion, it does not rely on any representation, warranty or statement other than those made under or in accordance with this deed; and
- (b) except as expressly set out in this deed, subject to any law to the contrary, all terms, conditions, warranties and statements, whether express, implied, written, oral, collateral, statutory or otherwise, in relation to the Shares are excluded and the Owners disclaim all liability in relation to these to the maximum extent permitted by law.

### **10.6 Indemnity**

- (a) Each of the Owners indemnifies VIML both in its personal capacity and in its capacity as responsible entity of VCEG against all Liabilities or Loss arising from, or incurred as a consequence of, any inaccuracy in or breach of any of the Owners' Warranties. For the avoidance of doubt, Liabilities include an amount that would be necessary to put VIML in the same position as if the Owners' Warranties are true and correct.

- (b) Without limiting the generality of this clause 10, and as an additional right of VIML:
- (i) if the value of any asset of VEC is less than the value it would be if all of the Owners Warranties were accurate and not breached then the Owners agree to pay to the person(s) directed by VIML the difference between:
    - (A) the value of that asset at Completion had all of the Owners' Warranties been accurate and not breached; and
    - (B) the value of that asset at Completion,
 so that VIML is in the same position as if the Owners' Warranties were true and correct; and
  - (ii) if there is a liability of VEC which would not exist or would be less if all of the Owners' Warranties were accurate and not breached then the Owners agree to pay to the person(s) directed by VIML the amount of that liability or the amount of the increase in that liability, as applicable, so that VIML is in the same position as if the Owners' Warranties were true and correct.

#### **10.7 Adjustment to Purchase Price**

A payment made by the Owners in connection with the Owner's Warranties, Owner's Indemnities or a Tax Claim shall be treated, for the purposes of tax and accounting, as a pro rata reduction of the Purchase Price of each Share.

#### **10.8 Gross-up**

If a payment is made to a Group Member or the Buyer's Head Company ("**recipient**") in respect of the Owners' Warranties, Owners' Indemnities or a Tax Claim and that amount is treated as assessable income of the recipient or the Buyer's Head Company under any Law relating to Tax, the Owners must pay the recipient an additional payment so that:

- (a) after deducting all Tax or Duty from the total amount paid by the Owners to the recipient; and
- (b) adding any Tax benefit to the recipient that directly results from the payment or the satisfaction of the relevant claim,

the balance remaining is the amount that must be paid under clause 10 or 11 (as appropriate).

In applying clause 10.8(a) to a payment made to VIML in its capacity as responsible entity of VCEG, the Tax to be deducted is to be calculated by reference to the tax rate as specified in Section 99A of the Tax Act if Division 6C of Part III of the Tax Act does not apply to VCEG with respect to this receipt.

#### **10.9 Notification of Breach**

If VIML becomes aware of any matter or circumstance that may give rise to a claim against the Owners under the Owners' Warranties, VIML must notify the Owners within a reasonable time of becoming aware of that claim and must also provide the Owners with details of that fact.

#### **10.10 Limits on Owners' Warranties and Owners' Indemnities**

- (a) VIML may not claim for a breach of the Owners' Warranties or under the Owners' Indemnities:
  - (i) unless notice of the claim has been given in writing to the Owners setting out full particulars of the specific matter in respect of which the claim is made (which must be sufficient to demonstrate that the claim is bona fide and which must include the amount claimed (if ascertainable) and how that amount was calculated) within 18 months after the Completion Date, or in relation to a claim under a Tax Warranty or a Tax Indemnity, five years and six months after the Completion Date;
  - (ii) unless the amount finally adjudicated or agreed in respect of the claim exceeds \$10,000; and
  - (iii) unless the aggregate amount finally adjudicated or agreed in respect of all claims for breach of the Owners' Warranties would exceed \$75,000 (in which case a claim may be made for the whole amount of the claim and not merely the excess).
- (b) In applying the limits in clauses 10.10(a)(ii) and 10.10(a)(iii), any additional amounts payable under clause 10.8 are to be disregarded, so that the amount of the claim in the case of clauses 10.10(a)(ii) and 10.10(a)(iii) are determined before any additional amounts payable under clause 10.8 are added.
- (c) In applying the limit in clause 10.10(a)(ii), claims relating to a series of connected matters are to be aggregated and counted as one claim.

#### **10.11 Exclusions**

The limitations in clause 10.10(a) do not apply to a claim for breach of the Owners' Warranties to the extent the claim arises or is increased or is delayed as a result of fraud, wilful misconduct or wilful default by that Owner or any officer or shareholder of that Owner.

#### **10.12 Maximum liabilities**

- (a) Notwithstanding any other provision of this deed but subject to clause 10.12(b), the maximum liability of each Owner for loss or damage of any kind however caused, in contract, tort (including negligence), under any statute or otherwise from or relating in any way to this deed, including:

- (i) that Owner's liability in respect of any breach of the Owners' Warranties (including the Tax Warranties);
  - (ii) that Owner's liability in respect of a breach of the obligations under clause 9; and
  - (iii) that Owner's liability under the Owners' Indemnities (including the Tax Indemnities),
- is limited in aggregate for any and all claims to that Owner's Respective Proportion of the Purchase Price.

- (b) In applying the limit in clause 10.12(a), any additional amounts payable under clause 10.8 are to be disregarded, so that the amount of the liabilities under clause 10.12(a) are determined before any additional amounts payable under clause 10.8 are added.

#### **10.13 Individual Owner's Warranty**

- (a) To the extent that the Owners' Warranties in clauses 10.1 and 18.2 and paragraph 8 of Schedule 2 are given in respect of an Owner ("**Individual Owner's Warranty**"), it is given by that Owner individually, and VIML may make a claim in respect of a breach of an Individual Owner's Warranty only against the Owner who is in breach of that Individual Owner's Warranty.
- (b) In applying the limit in clause 10.10(a)(iii) in respect of a breach of any Individual Owner's Warranty, the limit is taken to be \$25,000.
- (c) For the avoidance of doubt, the maximum liability of an Owner in respect of any breach of an Individual Owner's Warranty is limited to that Owner's Respective Proportion of the Purchase Price in accordance with clause 10.12.

#### **10.14 Limitations**

- (a) The Owners' liability in respect of any breach of the Owners' Warranties will be reduced to the extent that the breach has arisen as a result of any act or omission after Completion by or on behalf of the Owners where VIML has expressly requested that act or omission.
- (b) If, at any time after 1 March 2010, a person acquires a relevant interest in or becomes the holder of all of the issued Stapled Securities, the Owners will not be liable for:
  - (i) any claim in respect of a breach of the Owners' Warranties; or
  - (ii) any claim under the Owners' Indemnities but excluding the Tax Indemnities,
 which are made after the date on which that person acquired a relevant interest in or became the holder of all of the issued Stapled Securities.

#### **10.15 Consequential loss**

The Owners will not be liable for consequential loss or damage, loss of profits, loss of business opportunity or loss of anticipated savings arising from or related in any way to this deed, including:

- (a) a claim in respect of a breach of the Owners' Warranties (including the Tax Warranties); and
- (b) a claim under the Owners' Indemnities (including the Tax Indemnities).

#### **10.16 No double recovery**

To the extent that VIML has recovered an amount:

- (a) under the Owners' Indemnities in respect of a matter that is also the subject matter of an Owners' Warranty, VIML is not entitled to recover that amount in respect of a breach of that Owners' Warranty;
- (b) for a breach of an Owners' Warranty, VIML is not entitled to recover that amount under the Owners' Indemnities; or
- (c) under clause 10.6(a) in respect of a matter that is also the subject matter of a claim under clause 10.6(b), VIML is not entitled to recover that amount under clause 10.6(b).

#### **10.17 Qualifications**

The Owners' Warranties are given subject to and qualified by any relevant fact, matter or circumstances disclosed:

- (a) in this deed;
- (b) fully, fairly and accurately in the material relating to VEC that has been disclosed to VIML and its advisers by or on behalf of VEC;
- (c) in the Disclosure Letter; or
- (d) in the Second Disclosure Letter provided in accordance with clause 10.18.

#### **10.18 Second Disclosure Letter**

- (a) During the period from the date of this deed until five Business Days prior to the Meeting Date, if the Owners become aware of any new matter or circumstance:
  - (i) which has arisen since the date of this deed; and
  - (ii) which was not within the control of the Owners; and
  - (iii) as a result of which an Owners' Warranty would become false, misleading or incorrect as at the Completion Date,

the Owners may disclose that matter or circumstance to VIML in a letter identifying the relevant Owners' Warranty and setting out full particulars of that matter or circumstance ("**Second Disclosure Letter**").

- (b) On receipt of the Second Disclosure Letter, VIML must consult with the Owners in connection with the content of the Second Disclosure Letter to enable it to assess the effect of the disclosures made in the Second Disclosure Letter on VIML and the Proposal. The Owners agree that VIML may conduct a reasonable due diligence investigation in relation to the subject matter of the Second Disclosure Letter.
- (c) Following the process described in clause 10.18(b), VIML may do any of the following:
  - (i) terminate this deed in accordance with clause 12.2(c), if VIML determines, in its absolute discretion, that the relevant Owners' Warranty would become materially false, misleading or incorrect as at the Completion Date;
  - (ii) serve a notice on the Owners requesting the Owners to take such action (including the payment of money) as is necessary to put VIML in the same position as if the relevant Owners' Warranty were true and correct as at the Completion Date, following which VIML may:
    - (A) notify the Owners that it will proceed to Completion, if it is satisfied, in its absolute discretion, that it has been put in the same position as if the relevant Owners' Warranty were true and correct as at the Completion Date; or
    - (B) terminate this deed in accordance with clause 12.2(c) if the Owners do not comply with the notice by the Meeting Date; or
  - (iii) notify the Owners that it will proceed to Completion without requiring any action by the Owners, if VIML determines, in its absolute discretion, that the new matter or circumstance disclosed in the Second Disclosure Letter would not adversely affect VEC, any of its Subsidiaries, their assets, their business or the implementation of the Proposal.
- (d) If VIML does not within five Business Days from the date of the receipt of the Second Disclosure Letter:
  - (i) terminate this deed under clause 10.18(c)(i); or
  - (ii) serve a notice on the Owners under clause 10.18(c)(ii),it is taken to have determined to proceed to Completion under clause 10.18(c)(iii).
- (e) For the avoidance of doubt, the Second Disclosure Letter must not relate to:
  - (i) any matter or circumstance as a result of which the Owners' Warranties would become false, misleading or incorrect as at the date of this deed; and
  - (ii) any matter or circumstance within the control of the Owners, including any matter or circumstance arising from fraud, dishonesty, bad faith, negligence, wilful misconduct or wilful default of the Owners.
- (f) VIML acknowledges to Owners that, where VIML determines to proceed to Completion under clause 10.18(c)(ii)(A) or 10.18(c)(iii):
  - (i) it will treat the relevant Owners' Warranty as not being breached in respect of the subject matter of the Second Disclosure Letter; and
  - (ii) it will not claim for a breach of the relevant Owners' Warranty or under the Owners' Indemnities in respect of the subject matter of the Second Disclosure Letter,provided that the Owners have not acted in any way misleading, deceptive or fraudulent in:
  - (iii) providing the Second Disclosure Letter;
  - (iv) consulting with VIML in connection with the Second Disclosure Letter;
  - (v) assisting VIML in its due diligence investigation in connection with the Second Disclosure Letter; or
  - (vi) taking any action to comply with a notice given by VIML under clause 10.18(c)(ii).
- (g) Nothing in this clause 10.18 limits:
  - (i) the Owners' obligations to indemnify VIML under clause 10.6 for any inaccuracy in or breach of the Owners' Warranties, except as provided for in clause 10.18(f);
  - (ii) the obligations of VEC under clauses 4.3 and 4.4(a); or
  - (iii) the obligations of the Owners under clause 4.4(b).

### **10.19 Third Party Claims**

- (a) If VIML becomes aware of a Third Party Claim:
  - (i) it must notify each of the Owners in writing describing the nature of the Third Party Claim and providing copies of all papers served with respect to the claim (if any); and
  - (ii) it must, at the cost of the Owners, take all reasonable action in good faith and with due diligence as the Owners may require to mitigate the Third Party Claim.

- (b) The Owners agree that upon receiving a notice in accordance with Clause 10.19(a)(i), they may appoint a person to act as their representative (“**Representative**”), who will be empowered by each of the Owners to take all necessary actions in relation to the Third Party Claim.
- (c) The Representative may notify VIML that it elects to assume the defence of the Third Party Claim. The Representative will (if it has elected to assume the defence) have full control of such defence and proceedings including any compromise or settlement.
- (d) If requested by the Representative, VIML agrees, at the expense of the Owners, to co-operate with the Representative in contesting any Third Party Claim.
- (e) If the Representative does not elect to assume the defence of the Third Party Claim, VIML must, at the expense and direction of the Representative, take such action as the Representative may reasonably require to avoid, dispute, defend, appeal, compromise or mitigate the Third Party Claim and any adjudication of it.

#### **10.20 VIML’s representation and acknowledgement**

- (a) VIML represents to the Owners that VIML is not actually aware as at the date of this deed that VIML will have a claim under any of the Owners’ Warranties. The actual awareness of VIML for this purpose means that of the VIML Independent Directors.
- (b) The VIML Independent Directors acknowledge that VIML, in connection with its entry into this deed, had an opportunity to conduct due diligence investigations and inquiries concerning VEC.

#### **10.21 No merger**

The Owners’ Warranties and the Owners’ Indemnities do not merge on Completion.

#### **10.22 Insurance**

- (a) Subject to all applicable Law, on and from Completion, VIML agrees to use its best endeavours to maintain or put in place insurance policies for such amounts and such risks similar to those covered by the Insurance Policies, provide that such insurance policies:
  - (i) are available from a reputable insurance company at commercial rates VIML considers appropriate; and
  - (ii) contain the terms, conditions, exclusions and covers VIML considers appropriate.
- (b) If, following a payment by the Owners of an amount for a claim in respect of a breach of the Owners’ Warranties, VIML recovers an amount in respect of that breach of the Owners’ Warranties under an insurance policy referred to in clause 10.22(a), then VIML agrees to pay the Owners as soon as reasonably practicable, the lesser of:
  - (i) the amount paid by the Owners to VIML; and
  - (ii) the amount recovered under the insurance policy, after deduction of applicable Tax or Duty.

#### **10.23 Obligation to mitigate**

Nothing in this clause 10 restricts or limits the general obligation at Law to mitigate any Loss or damage which a party may incur as a consequence of any breach of the terms of this deed, including a breach of the Owners’ Warranties.

#### **10.24 Benefit of VIML’s representations and warranties**

Each of the Owners acknowledges that:

- (a) in entering into this deed and in proceeding to Completion, they do not rely on any representation, warranty or statement other than those made under or in accordance with this deed, which may have been made by or on behalf of VIML; and
- (b) subject to any law to the contrary, all terms, conditions, warranties and statements, whether express, implied, written, oral, collateral, statutory or otherwise, in relation to the issue of Stapled Securities to them under clause 5.7(g) are excluded and VIML disclaims all liability in relation to these to the maximum extent permitted by law.

## **11 Tax indemnity**

### **11.1 Tax Claim**

If, at any time a Group Member receives or suffers a Tax Claim, then each of the Owners agree to pay to VIML (or as directed by VIML), by way of indemnity, an amount equal to the Tax Claim Amount with respect to the Tax Claim.

### **11.2 Exclusions**

The obligations of the Owners under clause 11.1 or with respect to the breach of a Tax Warranty do not apply:

- (a) to the extent that the Tax Claim or breach of Tax Warranty arises from an act by the Group Member after the Completion Date (other than an act by VIML to comply with an obligation imposed under the Tax Law), without the approval of the Owners (which must not be unreasonably withheld);

- (b) to the extent that the Tax Claim or breach of Tax Warranty arises from the failure by the Group Member after the Completion Date, in a timely manner, to:
- (i) lodge any return, notice, objection or other document in relation to the Tax Claim or breach of Tax Warranty;
  - (ii) lawfully claim all or any portion of any relief, allowance, deduction, credit, rebate or right to repayment;
  - (iii) disclose or correctly describe in any return, notice, objection or other document relating to the Tax Claim or breach of Tax Warranty, any material fact, matter or thing to the extent that it was within the knowledge of the Group Member; or
  - (iv) take any other action which the Group Member is required to take under this clause or any laws relating to Tax other than in circumstances where the Group Member is acting at the direction of the Owners,

except to the extent to which the failure by the Group Member arises from the a failure of the Owners to comply with its obligations under this deed in connection with the Tax Claim or breach of Tax Warranty; or

- (c) to the extent that the Tax Claim or breach of Tax Warranty arises from a change to, or the announcement, introduction or enactment of, any legislation or regulation, unless that change has been announced before Completion and that announcement specifies that the change in law will take effect from a date prior to the Completion Date.

### **11.3 No double claim**

If a breach of Tax Warranty arises from a fact or circumstance which also results in a Tax Claim, the Owner's liability for that breach of Tax Warranty is reduced by an amount equal to the amount paid by the Owners pursuant to clause 11.1.

### **11.4 Timing of Payments**

Payments under clause 11.1 or with respect to the breach of a Tax Warranty must be made to, or as directed by, VIML:

- (a) if the Group Member or Buyer's Head Company must make a payment of Tax - within 7 Business Days before the latest date on which that payment may lawfully be made without incurring any penalty or additional tax for late payment; or
- (b) in any other case - within 30 Business Days after notice has been received by the Owners in accordance with clause 11.5.

### **11.5 Notice of Tax Claims**

If a Group Member becomes aware of a Tax Claim or breach of Tax Warranty or receives written notification which could give rise to such a claim or breach ("**potential Tax Claim**"), the Group Member must give written notice of it to the Owners as soon as reasonably practicable after becoming so aware.

### **11.6 Access**

The Group Member must give the Owners and their professional advisers reasonable access to the personnel and premises of the Group Member and to relevant chattels, accounts, documents and records within the power, possession or control of the Group Member in relation to the Tax Claim or the potential Tax Claim to enable the Owners and its professional advisers to examine such circumstances, premises, chattels, accounts, documents records and to take copies or photographs thereof at their own expense. However, the parties must at all times act having regard to the extent to which legal professional privilege or similar privilege extends to any communication or document.

### **11.7 Resisting Tax Claims**

- (a) At the direction of the Owners, VIML must procure that the relevant Group Member in good faith and with all necessary diligence takes such action (including legal proceedings) as the Owners may reasonably require to dispute, defend, appeal or compromise any Tax Claim and any adjudication of it, provided that this action is supported by an opinion from a senior counsel, QC or qualified tax adviser with at least 10 years of relevant experience. The Owners shall have the right to have any such action conducted by professional advisers nominated by it for this purpose.
- (b) The Owners agree to pay the Group Member's reasonable costs and expenses that are incurred by the Group Member or Buyer's Head Company in connection with any action taken to avoid, resist or settle any Tax Claim, but only to the extent that such action has been undertaken on the instruction of the Owners.

### **11.8 Ceasing resistance of Tax Claim**

If the Group Member:

- (a) does not wish to comply with a request by the Owners under clause 11.7; or
- (b) wishes to cease to comply with the directions of the Owners in relation to a Tax Claim under clause 11.5 or 11.6, then the Group Member must give written notice to the Owners to that effect under this clause 11.8;

then:

- (c) the relevant Group Member will be under no obligation to undertake the action requested by the Owners in relation to the Tax Claim under clause 11.5, 11.6 or 11.7;
- (d) the Owners are not liable to make a payment in respect of the Tax Claim; and
- (e) to the extent to which the Owners have made a payment with respect to the Tax Claim, the Group Member must immediately refund that payment to the Owners.

## 11.9 Refunds

If, following payment by the Owners of an amount with respect to a Tax Claim, all or part of that amount is refunded either in cash or by credit to a Group Member, VIML must immediately pay to the Owners an amount equal to the lesser of:

- (a) the refund; and
- (b) the amount of the payment paid by the Owners with respect to the Tax Claim.

## 11.10 Tax returns

The Owners must provide VIML with reasonable assistance and access to all relevant information, to the extent that such information is within the custody or control of the Owners, in order to allow VIML (or its advisers) to prepare any tax return that relates to a post-Completion period.

---

## 12 Termination

### 12.1 Termination by either party

Either VIML or the Owners may terminate this deed by giving notice to the other parties:

- (a) **(agreement)** at any time immediately by written agreement between the parties (or on such later date as specified in such agreement);
- (b) **(Independent Expert)** at any time before the Meeting Date, if the Independent Expert opines that the Proposal is not fair and reasonable to, or in the best interests of, Securityholders;
- (c) **(withdrawal of recommendation)** at any time before the Meeting Date, if the VIML Independent Directors decline to recommend, withdraw or adversely modify their recommendation of the Proposal where permitted to do so under clause 4.7(a);
- (d) **(approvals)** if the Proposal is not approved by the requisite majorities at the Securityholders Meeting;
- (e) **(Insolvency)** at any time if a party becomes Insolvent;
- (f) **(conditions precedent)** in accordance with clause 3.4;
- (g) **(material breach)** at any time if a party is in material breach of this deed (other than a breach of the Owners' Warranties) which is not remedied by the earlier of five Business Days after it receives a notice setting out the breach or the scheduled time for Completion; or
- (h) **(Material Adverse Change)** at any time if a Material Adverse Change occurs in respect of:
  - (i) in the case of VIML being the terminating party, VEC or any of its Subsidiaries; or
  - (ii) in the case of the Owners being the terminating party, VCEG.

### 12.2 Termination by VIML

VIML may terminate this deed by giving notice to the other parties:

- (a) **(solicitation)** at any time immediately after service of notice by VIML, if the Owners are in breach of clause 9.1;
- (b) **(Owners' Warranties)** at any time immediately after service of notice by VIML, if any of the Owners' Warranties is or becomes materially false, misleading or incorrect when made or regarded as made under this deed;
- (c) **(Second Disclosure Letter)** at any time immediately after service of notice by VIML if it becomes entitled to terminate this deed in accordance with clause 10.18(c)(i) or 10.18(c)(ii)(B); or
- (d) **(Prescribed Event)** at any time if a Prescribed Event occurs.

### 12.3 Termination by the Owners

The Owners may terminate this deed by giving notice to VIML:

- (a) **(disposals)** at any time if VIML disposes, or agrees to dispose of the whole or a substantial part of the assets of VCEG, other than:
  - (i) sale of its interest in the German wind farms;
  - (ii) sale of its interest in the Ardrossan wind farm; and
  - (iii) any action taken by VIML which is in accordance with a recommendation or consent of VEC;
- (b) **(new class of securities)** at any time if VIML creates or issues a new class of securities in VCEG or other instruments convertible into a new class of securities in VCEG; or

- (c) **(winding up)** at any time if:
  - (i) VIML gives a notice to Securityholders terminating VCET I or VCET II in accordance with the VCET I Constitution or the VCET II Constitution, respectively;
  - (ii) the Securityholders call a securityholders' meeting to consider and vote on an extraordinary resolution directing VIML to wind up VCET I or VCET II; or
  - (iii) the Court, by order, directs VIML to wind up VCET I or VCET II.

#### **12.4 Rights not limited**

- (a) The rights of termination under this clause 12 are in addition to, and not limited by, any other rights and remedies of the parties.
- (b) If a party does not exercise its rights under this clause 12, its other rights and remedies against the other parties will not be limited or lost in any way.

#### **12.5 Effect of termination**

If this deed is terminated under this clause 12 or clause 3.4, then in addition to any other rights, powers or remedies provided by law:

- (a) each party is released from its obligations to further perform this deed except those under clauses 13.2, 13.3 and 17 to 22 inclusive; and
- (b) each party retains any accrued rights or remedies it has against any other party (including in respect of any past breach of this deed).

---

### **13 Transaction Costs**

#### **13.1 Acknowledgment**

The Owners acknowledge that:

- (a) VIML will suffer Transaction Costs if the Proposal is not implemented; and
- (b) VIML has required that this clause 13 be included in this deed and would not otherwise have entered into this deed.

#### **13.2 Reimbursement of Transaction Costs**

VEC must pay or reimburse VIML on demand for its Transaction Costs up to an amount not exceeding \$500,000, if VIML terminates this deed pursuant to clause 12.2(a), 12.2(b) or 12.1(g) (in the case of 12.1(g), in respect of material breach by the Owners or VEC).

#### **13.3 Expert determination**

In the event of a dispute as to the quantification of the amount of VIML's Transaction Costs, any party may require the dispute to be resolved by an Expert. The Expert shall make a determination within 4 weeks acting as an expert and not as an arbitrator and his or her determination shall in the absence of manifest error be conclusive and binding upon the parties. The Expert's fees in respect of any determination shall be borne equally by VEC and VIML.

---

### **14 Undertaking**

#### **14.1 Standstill Deed Poll**

The Owners acknowledge and agree that they continue to be bound by the Standstill Deed Poll until the first to occur of:

- (a) the Completion Date; and
- (b) the date of termination of this deed.

#### **14.2 Standstill**

Subject to clauses 14.3 and 14.4, each of Oaktel, IBAL, PEP, Chetwyn and Hurstwood (each a "**Relevant Owner**") undertakes to VIML that it will not, for 18 months from the Completion Date:

- (a) Deal in all or any part of the Restricted Stapled Securities or Deal in any interest or right in respect of all or any part of the Restricted Stapled Securities;
- (b) create, or agree or offer to create, any Encumbrance over or affecting all or any part of the Restricted Stapled Securities; or
- (c) do, or omit to do, any act if the act or omission would have the effect of transferring effective ownership or control of all or any part of the Restricted Stapled Securities.

#### **14.3 Exceptions**

After 6 months from the Completion Date, notwithstanding the period of restriction specified in clause 14.2:

- (a) in the case of PEP, for any reason;
- (b) in the case of IBAL, if it ceases to be represented on the board of directors of VIML;

- (c) in the case of Oaktel, if it ceases to be represented on the board of directors of VIML other than as a result of fraud, dishonesty, bad faith, negligence, wilful misconduct or breach of duty of Oaktel or its representative on the board of directors of VIML;
- (d) in the case of Chetwyn, if Duncan Jewell ceases to be employed by VEC other than as a result of fraud, dishonesty, bad faith, negligence, wilful misconduct, bankruptcy or a material criminal offence; or
- (e) in the case of Hurstwood, if Edward Northam ceases to be employed by VEC other than as a result of fraud, dishonesty, bad faith, negligence, wilful misconduct, bankruptcy or a material criminal offence,

the Relevant Owner may be released from the restrictions in clause 14.2, provided that VIML has confirmed to the Relevant Owner in writing that the sale process of the Restricted Securities being proposed by the Relevant Owner is satisfactory to VIML (acting reasonably).

#### **14.4 Exclusion**

Notwithstanding clause 14.2, the Relevant Owners will be released from the restrictions in clause 14.2 to participate in:

- (a) a takeover bid for VCEG in accordance with Chapter 6 of the Corporations Act; or
- (b) an informal trust scheme in respect of VCEG.

#### **14.5 Guarantee**

If the restrictions in clause 14.2 have ceased to apply in respect of Oaktel or PEP for any reason, then Oaktel or PEP must provide to VIML a duly executed Guarantee, unless VIML and Oaktel or PEP (as applicable) enter into an agreement to give effect to the continuance of the restrictions in clause 14.2 in respect of Oaktel or PEP (as applicable).

#### **14.6 Holding lock**

Each Relevant Owner agrees that while the restrictions in clause 14.2 apply to that Relevant Owner, to the extent permitted by the ASTC Settlement Rules, a holding lock may be placed on its Restricted Stapled Securities on ITS or any other register to prevent a Proper ASTC Transfer of the Restricted Stapled Securities.

### **15 Confidentiality and publicity**

#### **15.1 Confidentiality Agreement**

Nothing in this clause 15 limits or otherwise affects the terms of the Confidentiality Agreement.

#### **15.2 Confidential information**

The terms of the Proposal and this deed and all information exchanged between the parties under this deed or in connection with the Proposal or during the negotiations preceding the execution of this deed are confidential to the parties, their officers, employees, agents, advisers, auditors, financiers and other consultants (who must only be informed of that information if that person needs to know that information for the purposes of the Proposal or this deed and who must be instructed to maintain the confidentiality of that information) and must not be disclosed to any person except:

- (a) for the purposes of this deed or the Proposal or otherwise with the consent of the party who supplied the information;
- (b) if required by law;
- (c) in connection with legal proceedings relating to this deed or the Proposal;
- (d) where reasonably provided (on conditions similar to those contained in this clause) to the Independent Expert for the preparation of the Independent Expert's report in relation to the Proposal;
- (e) in connection with any announcement, the Notice of Meeting or the Explanatory Memorandum contemplated by this deed, having regard to the need to make full disclosure of all material matters to Securityholders; or
- (f) if the information is generally and publicly known otherwise than as a result of a breach of this clause 15.2.

#### **15.3 Publicity**

- (a) The parties acknowledge that, immediately on execution of this deed, VIML will make an announcement to the ASX relating to this deed and the transactions the subject of this deed.
- (b) A party may not make any press or other announcements or releases relating to this deed or the transactions the subject of this deed without the approval of the other parties to the form and manner of the announcement or release (each acting reasonably), unless that announcement or release is required to be made by law or any Governmental Agency or rules of a stock exchange.

#### **15.4 Provision of information**

Each party agrees to provide to each other party all relevant information which is in its possession and is reasonably requested by another party in relation to the preparation of the Notice of Meeting and the Explanatory Memorandum, and such further information reasonably requested in connection with the Proposal.

This includes, in the case of the Owners, allowing VIML and its directors, officers, employees, agents and advisers reasonable access (including taking copies) at reasonable times to:

- (a) books, records, contracts, financial, operating and other data and information in relation VEC; and
- (b) directors, officers, employees, agents and contractors providing services to VEC to provide assistance and give information and explanation,

which they may reasonably request from time to time (including or the purposes of conducting due diligence investigation referred to in clause 3.1(c)).

---

## **16 GST**

### **16.1 Consideration does not include GST**

The consideration specified in this deed does not include any amount for GST.

### **16.2 Recovery of GST**

If a supply under this deed is subject to GST, the recipient must pay to the supplier an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate.

### **16.3 Time of payment**

The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not be paid until the supplier gives the recipient a Tax Invoice.

### **16.4 Adjustment of additional amount**

If the additional amount differs from the amount of GST payable by the supplier, the parties must adjust the additional amount accordingly.

### **16.5 Reimbursement**

If a party indemnifies, reimburses or makes a contribution (“**Contribution**”) to the other party, and the other party can obtain an input tax credit on an acquisition associated with the Contribution, the amount of the Contribution for the first party is reduced by the amount of that input tax credit. The reduction is to be made before any increase under clause 16.2.

---

## **17 VIML’s limitation of liability**

- (a) Any liability of VIML arising in connection with this deed is limited to the extent that VIML is able to be indemnified for that liability out of the assets of VCET I under the VCET I Constitution or VCET II under the VCET II Constitution.
- (b) Each other party acknowledges and agrees that it may enforce its rights against VIML with respect to the non-observance of VIML’s obligations under this deed only to the extent necessary to enforce the other party’s rights, powers and remedies against VIML in respect of the assets of VCET I or VCET II by subrogation or otherwise.
- (c) Despite anything in this clause 17, VIML is liable to the extent that a liability under this deed arises out of VIML’s own fraud, negligence, breach of trust or breach of duty which disentitles it from an indemnity out of the assets of VCET I or VCET II in relation to the relevant liability.

---

## **18 Certain Owners as trustee**

### **18.1 Acknowledgement**

Each of Oaktel, Hurstwood and Chetwyn acknowledges that it enters into this deed in its capacity as trustee of the trust specified opposite its name in the Details (“**Respective Trust**”).

### **18.2 Representations and warranties**

Each of Oaktel, Hurstwood and Chetwyn represents and warrants to VIML, that:

- (a) it is the only trustee of the Respective Trust and no action has been taken or is proposed to remove it as trustee of the Respective Trust;
- (b) it has the power under the terms of the Respective Trust to enter into and comply with its obligations under this deed including the power to sell the Shares;
- (c) it has a right to be fully indemnified out of the assets of the Respective Trust in respect of obligations incurred by it under this deed and the assets of the Respective Trust are sufficient to satisfy that right of indemnity and all other obligations in respect of which the trustee has a right to be indemnified out of the assets of the Respective Trust;
- (d) it is not, and has never been, in default under the terms of the Respective Trust;
- (e) no action has been taken or is proposed to terminate the Respective Trust; and
- (f) it and its directors and other officers have complied with their obligations in connection with the Respective Trust.

### **18.3 Restrictions**

Until all obligations under this deed are discharged, each of Oaktel, Hurstwood and Chetwyn may not, without the consent of VIML, do anything which:

- (a) effects or facilitates the retirement, removal or replacement of it as trustee of the Respective Trust;
- (b) could restrict its right of indemnity from the assets of the Respective Trust in respect of obligations incurred by it under this deed;
- (c) could restrict or impair its ability to comply with its obligations under this deed;
- (d) effects or facilitates the termination of the Respective Trust;
- (e) effects or facilitates the variation of the terms of the Respective Trust;
- (f) effects or facilitates the resettlement of the funds of the Respective Trust; or
- (g) could result in the assets of the Respective Trust being mixed with other property.

---

## **19 Notices and other communications**

### **19.1 Form**

Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be:

- (a) in writing;
- (b) signed by the sender (if an individual) or an authorised officer of the sender; and
- (c) marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

Communications sent by email need not be marked for attention in the way stated in clause 19.1(c). However, the email must state the first and last name of the sender. Communications sent by email are taken to be signed by the named sender.

### **19.2 Delivery**

Communications must be:

- (a) left at the address set out or referred to in the Details;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details;
- (c) sent by fax to the fax number set out or referred to in the Details;
- (d) sent by email to the address set out or referred to in the Details; or
- (e) given in any other way permitted by Law.

However, if the intended recipient has notified a changed address, fax number or email address, then the communication must be to that address, fax number or email address.

### **19.3 When effective**

Communications take effect from the time they are received or taken to be received under clause 19.4 (whichever happens first) unless a later time is specified.

### **19.4 When taken to be received**

Communications are taken to be received:

- (a) if sent by post, three days after posting (or seven days after posting if sent from one country to another);
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
- (c) if sent by email, the earlier of:
  - (i) when the sender receives an automated message confirming delivery; and
  - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

### **19.5 Receipt outside business hours**

Despite clauses 19.3 and 19.4, if communications are received or taken to be received under clause 19.4 after 5.00 pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00 am on the next Business Day and take effect from that time unless a later time is specified.

---

## **20 Costs and stamp duty**

- (a) Each of the parties agrees to bear their own legal and other costs and expenses in connection with the negotiation, preparation and execution of this deed, except for stamp duty.
- (b) VIML agrees to pay all stamp duty payable or assessed in connection with the execution of this deed and the transactions contemplated by it. Nothing in this deed limits or restricts VIML's right of reimbursement under the VCET I Constitution and the VCET II Constitution.

---

## **21 Miscellaneous**

### **21.1 Exercise of Rights**

A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent further exercise of that or any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

### **21.2 Approvals and Consent**

A party may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this deed expressly provides otherwise.

### **21.3 Further assurances**

Each party undertakes to the other that it will, upon request by another party and at its own expense, sign and deliver all documents and do all things necessary or appropriate for giving effect to the terms of this deed and the transactions contemplated by it.

### **21.4 Waiver and variation**

- (a) This deed may not be varied except in writing signed by the parties.
- (b) A provision of or a right created under this deed may not be waived except in writing signed by the party granting the waiver.

### **21.5 Remedies Cumulative**

The rights, powers and remedies provided in this deed are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this deed.

### **21.6 No merger**

The warranties, undertakings and indemnities in this deed do not merge on the Completion Date.

### **21.7 Survival of Indemnities**

Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this deed.

### **21.8 Enforcement of Indemnities**

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this deed.

### **21.9 Assignment**

A party may not assign its rights under this deed without the consent of the other parties.

### **21.10 Counterparts**

This deed may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

### **21.11 Entire agreement**

Except for:

- (a) the Confidentiality Agreement; and
- (b) the Standstill Deed Poll,

and subject to clause 2.4, this deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

---

**22 Governing law**

- (a) This deed and the transactions contemplated by it are governed by the laws in force in Victoria and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Victoria and courts of appeal from them.
- (b) Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address in the Details.

**EXECUTED** as a deed.

## Schedule 1 - Details of share capital and Respective Proportions

### Part 1 – Shares

The Shares are held by the Owners as follows:

Shareholder	Class of Shares	No. of Shares	Fully paid?
IBAL	Ordinary	2,678	Yes
PEP	Ordinary	624	Yes
Chetwyn	Ordinary	32	Yes
Oaktel	Ordinary	2,897	Yes
Hurstwood	Ordinary	58	Yes
<b>Total</b>		<b>6,289</b>	

### Part 2 – Redeemable Preference Shares

The Redeemable Preference Shares are held by the Owners as follows:

Shareholder	Class of Shares	No. of Shares	Fully paid?
PEP	Redeemable Preference	680,740	Yes
Oaktel	Redeemable Preference	2,645,678	Yes
<b>Total</b>		<b>3,326,418</b>	

### Part 3 – Respective Proportions

Shareholder	Respective Proportions
IBAL	17.253%
PEP	15.106%
Chetwyn	0.509%
Oaktel	66.210%
Hurstwood	0.922%
<b>Total</b>	<b>100.000%</b>

## Schedule 2 - Owners' Warranties

Owners' Warranties are the representations and warranties given by the Owners in respect of the following subject matters:

- 1 Incorporation and power
- 2 Shares
- 3 Information
- 4 Documents and records
- 5 Corporate information
- 6 VEC Information and VEC Prepared Information
- 7 Accounts
- 8 Solvency
- 9 Business affairs
- 10 Assets
- 11 Material Contracts
- 12 Employment
- 13 Litigation
- 14 Tax and Duty
- 15 Insurance
- 16 Intellectual property
- 17 Compliance with Laws
- 18 Position since Last Balance Date
- 19 Shareholdings and memberships
- 20 Permanent establishment

## Annexure B - Supplemental Deed Polls

### Details

---

<b>Responsible Entity</b>	Name	<b>Viridis Investment Management Limited</b>
	ACN	099 788 431
	Capacity	Responsible Entity of the Scheme
	Address	Level 1 167 Flinders Lane MELBOURNE VIC 3000

---

<b>Recitals</b>	<b>A</b>	The Scheme is registered as a managed investment scheme under Chapter 5C of the Corporations Act.
	<b>B</b>	Section 601GC(1) of the Corporations Act provides that the constitution of a registered scheme may be modified, or repealed and replaced with a new constitution: (a) by special resolution of the members of the scheme; or (b) by the responsible entity if it reasonably considers the change will not adversely affect members' rights.
	<b>C</b>	Under clause 27.1 of the Constitution, the Constitution may be modified by Resolution and the Responsible Entity may give effect to the modification by executing a supplemental deed.
	<b>D</b>	The Responsible Entity wishes to modify the Constitution, as set out in this deed, to give effect to the Resolution to modify the Constitution that was passed by Members of the Scheme at the meeting held on 7 August 2009.

---

<b>Governing law</b>	Victoria
----------------------	----------

---

<b>Date of deed</b>	See signing page
---------------------	------------------

## General terms

---

### 1 Interpretation

#### 1.1 Definitions

In this deed, these words and phrases have the following meanings and any other words and phrases have the meaning given to them in the Constitution, unless the contrary intention appears:

**Constitution** means the trust deed dated [*insert date*] under which the Scheme was constituted, as amended from time to time.

**Effective Date** means the date that a copy of this deed is lodged with the Australian Securities and Investments Commission.

**Scheme** means the registered managed investment scheme currently named [Viridis Clean Energy Trust I / Viridis Clean Energy Trust II].

#### 1.2 Headings

Headings are inserted for convenience only and do not affect the interpretation of this deed.

---

### 2 Modifications to the Constitution

The Constitution is modified on and from the Effective Date by:

(a) replacing clause 19.1 with the following new clauses 19.1(a), (b), and (c):

- “(a) Under the Investment Management Agreement between the Manager and RE, the Manager undertakes, for as long as the Investment Management Agreement is in force and to the extent such amounts are not paid to RE under clause 19.1(b), to reimburse RE for its reasonable costs in properly providing its services as RE for which it is not otherwise reimbursed pursuant to clause 19.2, including all overheads, and regardless of whether incurred directly by RE or reimbursed by RE to any of its related bodies corporate.
- (b) Subject to the Corporations Act, RE is entitled to be paid out of the Assets a management fee equal to RE's reasonable estimate of its costs, including all overheads and whether incurred directly by the RE or reimbursed by the RE to any of its related bodies corporate, in providing services as RE for which it is not otherwise reimbursed pursuant to clause 19.2.
- (c) To the extent RE is to be paid under clause 19.1(b):
- (i) the management fee is payable from time to time upon demand by RE. RE may make demand for payment for all or part of the fee at any time if it has incurred costs whether or not it has paid those costs;
  - (ii) RE must produce a statement within 1 month from the end of each month setting out the management fee for the month and any amount remaining unpaid; and
  - (iii) RE may in respect of any period accept lower fees than it is entitled to receive under this constitution in respect of that period, or may defer payment for any period. Where payment is deferred, the fee accrues daily until paid.”

---

### 3 Confirmation and conflict

#### 3.1 Confirmation

The Responsible Entity confirms and acknowledges that, other than as provided for in this deed poll, the Constitution remains in full force and effect.

#### 3.2 Conflict

If there is a conflict between the Constitution and this deed poll, the terms of this deed poll prevail.

---

### 4 Costs

The Responsible Entity will be indemnified by the Scheme for its reasonable costs incurred in connection with the preparation and execution of this deed poll.

---

### 5 Governing law

This deed is governed by the laws in force in the place specified in the Details. Each person affected by it must submit to the non-exclusive jurisdiction of the courts of that place and the courts of appeal from them.

**EXECUTED** as a deed

## Annexure C - Post Internalisation Employment Arrangements

The following assumes that all necessary regulatory and Securityholder approvals are obtained.

	<b>Edward Northam</b>	<b>Duncan Jewell</b>
<b>Base Salary</b>	<p>\$440,000 per annum</p> <ul style="list-style-type: none"> <li>■ inclusive of superannuation</li> <li>■ to be reviewed annually but with no obligation to increase</li> </ul>	<p>\$360,000 per annum</p> <ul style="list-style-type: none"> <li>■ inclusive of superannuation</li> <li>■ to be reviewed annually but with no obligation to increase</li> </ul>
<b>Annual Bonus</b>	<p>Annual bonus subject to achieving performance criteria set by the Board of VEC.</p> <p>The amount of bonus will be determined by the Board of VEC based on the following principles:</p> <ul style="list-style-type: none"> <li>■ target amount is 50% of the Executives' salaries where the performance criteria are achieved. Higher amounts may be payable in the case of exceptional performance. Lower amounts (including nil) may be payable if the performance criteria are not achieved; and</li> <li>■ the amounts will be pooled between the Executives and generally paid based on a 1.0 to 0.7 ratio between Edward Northam and Duncan Jewell.</li> </ul>	
<b>Options</b>	<p>VEC will take all reasonable steps to give effect to the EOP and a grant of options to the Executives as set out in Section 9 of the Explanatory Memorandum.</p>	
<b>Termination</b>	<p>Either VEC or the Executive may terminate the employment on 3 months' notice (VEC may pay the Executive in lieu of such notice).</p> <p>If VEC terminates the Executive's employment without providing 3 months' notice, the Executive will receive a payment equal to 3 months salary unless the Executive has previously become entitled to a change of control or substantial asset sale payment (see summary below).</p>	
<b>Change of control or substantial asset sale payment</b>	<p>In the event of a VCEG Control Transaction or a sale of all or substantially all of VCEG's assets with a subsequent return of all or substantially all of VCEG's capital to Securityholders, the Executives will receive a payment equal to 9 months salary.</p>	

## Annexure D - Notice of Meeting

### NOTICE OF MEETING OF THE SECURITYHOLDERS OF VIRIDIS CLEAN ENERGY TRUST I (ARSN 115 340 442) AND VIRIDIS CLEAN ENERGY TRUST II (ARSN 115 340 639)

Notice is given that a Meeting of Securityholders of the Viridis Clean Energy Trust I and the Viridis Clean Energy Trust II (together, "**Group**") will be held at Level 61, 1 Farrer Place, Sydney NSW 2000 on Friday, 7 August 2009 at 10.30 am, Sydney time, or if the Meeting is adjourned, such date and time as determined by Viridis Investment Management Limited ("**Responsible Entity**").

Please refer to the accompanying Explanatory Memorandum, of which this Notice of Meeting forms part, for further information about the items of business.

#### Quorum

The quorum for the Meeting is at least two Securityholders present in person or by proxy. If a quorum is not present within 15 minutes after the scheduled time for the Meeting, the Meeting will be adjourned to a place and time determined by the Responsible Entity.

#### AGENDA

##### Resolution 1: Approval of the Proposal

To consider and, if thought fit, pass the following resolution as an ordinary resolution:

"That:

- (a) *the Proposal as described in the Explanatory Memorandum accompanying the Notice of Meeting convening this meeting, including but not limited to:*
- (i) *the acquisition of all of the issued shares in Viridis Energy Capital Pty Limited ("**Shares**") by Viridis Investment Management Limited in its capacity as responsible entity of Viridis Clean Energy Trust II, so that Viridis Clean Energy Group will be the holding company of its investment manager, Viridis Energy Capital Pty Limited, and its responsible entity, Viridis Investment Management Limited;*
  - (ii) *the payment of the purchase price for the Shares out of the funds of Viridis Clean Energy Group, and related completion mechanics (including any necessary adjustments under the Internalisation Deed);*
  - (iii) *the reinvestment of the purchase price for the Shares as Stapled Securities by the shareholders of Viridis Energy Capital Pty Limited;*
  - (iv) *the issue by Viridis Investment Management Limited of 14 million Stapled Securities to the shareholders of Viridis Energy Capital Pty Limited on the terms and conditions set out in the Explanatory Memorandum; and*
  - (v) *the enabling of the amended employee arrangements for Duncan Jewell and Edward Northam, as described in this Explanatory Memorandum, to come into effect,*
- be approved for all purposes, including for the purposes of ASX Listing Rules 7.1, 10.1 and 10.11 and Chapter 2E (as modified by Part 5C.7) of the Corporations Act; and*
- (b) *Viridis Investment Management Limited, as responsible entity of each of Viridis Clean Energy Trust I and Viridis Clean Energy Trust II, be authorised to do all things which it considers are necessary, desirable or reasonably incidental to give effect to the Proposal."*

##### Resolution 2: Amendments to the Constitutions

To consider and, if thought fit, pass the following resolution as a special resolution in accordance with section 601GC(1)(a) of the Corporations Act:

"That:

- (a) *the constitution of each of Viridis Clean Energy Trust I and Viridis Clean Energy Trust II (together, "**Constitutions**") be amended in accordance with the provisions of the supplemental deed polls in the form tabled at the meeting and initialled by the Chair for the purposes of identification ("**Supplemental Deed Polls**"); and*
- (b) *Viridis Investment Management Limited, as responsible entity of each of Viridis Clean Energy Trust I and Viridis Clean Energy Trust II, be authorised to execute the Supplemental Deed Polls and lodge them with the Australian Securities and Investments Commission to give effect to the amendments to the Constitutions,*
- provided that such authorisation and amendment will not come into effect until and unless Resolution 1 is approved."*

### **Resolution 3: Executive Option Plan**

To consider and, if thought fit, pass the following resolution as an ordinary resolution:

“That:

- (a) the Executive Option Plan as described in the Explanatory Memorandum accompanying the Notice of Meeting convening this meeting (“EOP”) be approved for all purposes, including for the purposes of ASX Listing Rule 7.2 Exception 9;
- (b) the grant of options over Stapled Securities under the EOP and the subsequent issue of Stapled Securities under the EOP in connection with the exercise of options granted under the EOP be approved for all purposes, including for the purposes of ASX Listing Rule 7.2 Exception 9;
- (c) the acquisition of 3.6 million options over Stapled Securities by Edward Northam or his nominee, and the acquisition of Stapled Securities on exercise of those options in accordance with the EOP, be approved for all purposes, including for the purposes of ASX Listing Rule 10.14;
- (d) the acquisition of 2.4 million options over Stapled Securities by Duncan Jewell or his nominee, and the acquisition of Stapled Securities on exercise of those options in accordance with the EOP, be approved for all purposes, including for the purposes of ASX Listing Rule 10.14; and
- (e) Viridis Investment Management Limited, as responsible entity of each of Viridis Clean Energy Trust I and Viridis Clean Energy Trust II, be authorised to do all things which it considers are necessary, desirable or reasonably incidental to give effect to the Executive Option Plan,

provided that such approvals and authorisation will not come into effect until and unless Resolution 1 is approved.”

### **INFORMATION FOR SECURITYHOLDERS**

#### **Meeting**

The units in Viridis Clean Energy Trust I and Viridis Clean Energy Trust II are stapled together to form Stapled Securities. Accordingly, the meetings of holders of units in each of those trusts are to be held concurrently and in conjunction with each other.

#### **Defined terms**

Unless otherwise defined in this Notice of Meeting, terms used in this Notice of Meeting have the same meaning as defined in the Glossary (Section 11) of the Explanatory Memorandum.

#### **Majority required**

Each of resolutions 1 and 3 will not be passed unless at least 50% of the votes entitled to be cast on the resolution are cast in favour of the resolution.

Resolution 2 will not be passed unless at least 75% of the votes entitled to be cast on the resolution are cast in favour of the resolution.

#### **Voting Exclusion Statement**

##### *Resolution 1*

There are a number of voting exclusions under the Corporations Act and ASX Listing Rules which apply to Resolution 1.

Under section 253E of the Corporations Act, VIML and its associates are not permitted to vote on Resolution 1 if they have an interest in the resolution other than as a member. A person who is not entitled to vote on Resolution 1 solely as a result of section 253E of the Corporations Act may vote on the resolution as proxy for another person entitled to vote on the resolution if the proxy’s appointment specifies the way in which they are to vote on the resolution.

For the purposes of the ASX Listing Rules, VIML will disregard any votes cast on Resolution 1 by:

- an Owner or VIML; and
- any of their associates (other than the Independent Directors).

However, the Responsible Entity need not disregard a vote if:

- it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or
- it is cast by the person chairing the meeting as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.

### *Resolution 2*

VIML and its associates are not permitted to vote on Resolution 2 if they have an interest in the resolution or matter other than as a member.

A person who is not entitled to vote on Resolution 2 solely as a result of section 253E of the Corporations Act may vote on the resolution as proxy for another person entitled to vote on the resolution if the proxy's appointment specifies the way in which they are to vote on the resolution.

### *Resolution 3*

For the purposes of the ASX Listing Rules, VIML will disregard any votes cast on Resolution 3 by:

- Edward Northam or Duncan Jewell; and
- any of their associates.

However, VIML need not disregard a vote if:

- it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or
- it is cast by the person chairing the meeting as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.

For resolutions 1, 2 and 3, "associate" has the meaning it is given in Division 2 of Part 1.2 of the Corporations Act.

### **Independent Expert's Report**

The Responsible Entity has obtained an Independent Expert's Report that states whether the Proposal is fair and reasonable to, and in the best interests of, the Securityholders who are entitled to vote on the Resolutions. A copy of the Independent Expert's Report accompanies and forms part of Explanatory Memorandum, of which this Notice of Meeting also forms part.

### **Eligibility to Vote**

The Responsible Entity has determined that for the purpose of voting at the Meeting, Stapled Securities will be taken to be held by the persons who are the registered holders of those Stapled Securities at 7.00 pm on 5 August 2009. Accordingly, transactions registered after that time will be disregarded in determining entitlement to attend and vote at the Meeting.

### **Voting**

Each of the resolutions is to be decided on a poll. On a poll, each Securityholder has one vote for each dollar of the value of the Stapled Securities held. The value of a Stapled Security will be equal to the last sale price of the Stapled Securities on the ASX on 6 August 2009, being the last day of trading immediately prior to the Meeting.

### **Jointly held Stapled Securities**

If your Stapled Securities are jointly held, only one of the joint holders is entitled to vote. If both joint holders are present at the Meeting, only the vote of the person named first in the register counts.

### **Meeting Attendance**

If you propose to attend the Meeting, please bring the enclosed proxy form with you. This will assist in registering your attendance.

Unless you are appointing a proxy, you will not need to complete the proxy form.

### **Proxies**

If you do not plan to attend the Meeting, you are entitled to appoint a proxy to attend and vote on your behalf and you are encouraged to do so. You can appoint a proxy by completing and returning the enclosed proxy form.

Proxy forms must be received by Computershare Investor Services Pty Limited, no later than 10.30 am on Wednesday, 5 August 2009.

A proxy need not be a Securityholder. The proxy form must specify the proxy's name or the name of the office held by the proxy. To be valid, the form appointing the proxy may be lodged in one of the ways described in the proxy form accompanying this Notice of Meeting. You can simply return the form in the reply paid envelope enclosed with the Explanatory Memorandum. Alternatively, you can deliver the proxy form to the registry of Viridis Clean Energy Group, Computershare Investor Services Pty Limited in person at Yarra Falls, 452 Johnston Street, Abbotsford VIC 3067, or by mail to GPO Box 242, Melbourne VIC 3001, or by fax to 1800 783 447 (within Australia) or +61 3 9473 2555 (outside Australia).

A Securityholder entitled to attend and vote at the Meeting is entitled to appoint no more than two proxies. If two proxies are appointed, each proxy may be appointed to represent a specified number or portion of your votes. If no such number is specified, each proxy may exercise half your votes. If you wish to appoint two proxies, please refer to the back of the proxy form for instructions.

### **Corporate Securityholders**

To vote at the Meeting (other than by proxy), a corporation that is a Securityholder must appoint a person to act as its representative. The appointment must comply with section 253B of the Corporations Act. The representative must bring to the Meeting evidence of his or her appointment including any authority under which it is signed.

### **Enquiries**

Securityholders seeking further information on the Proposal should contact Computershare Investor Services Pty Limited on 1300 850 505 within in Australia or +61 3 9415 4000 outside Australia between 9:00 am and 5:00 pm, Monday to Friday.

By Order of the Board

A handwritten signature in black ink, appearing to read 'A. J. Berry', written in a cursive style.

Andrew J. Berry  
Chairman  
Viridis Investment Management Limited  
15 July 2009

## Corporate Directory

<p><b>Responsible Entity</b> Viridis Investment Management Limited ABN 51 099 788 431 AFSL 222 547</p>	<p><b>Independent Expert</b> Grant Samuel &amp; Associates Pty Limited Level 6 1 Collins Street Melbourne VIC 3000</p>
<p><b>Registered Office</b> Level One 167 Flinders Lane Melbourne VIC 3000</p>	<p><b>Financial Adviser</b> Rothschild Australia Limited Level 16 1 O'Connell Street Sydney NSW 2000</p>
<p><b>Directors</b> Andrew J. Berry, Independent Chairman Robert Webster, Independent Director Walter Pahor, Director Stephen Chipkin, Director</p>	<p><b>Legal Adviser</b> Mallesons Stephen Jaques Level 61 1 Farrer Place Sydney NSW 2000</p>
<p><b>Company Secretary</b> Duncan Jewell</p>	<p><b>Tax Adviser</b> KPMG 147 Collins Street Melbourne VIC 3000</p>
<p><b>Investment Manager</b> Viridis Energy Capital Pty Limited ABN 94 098 467 988 AFSL 222 548</p>	<p><b>Auditor</b> PricewaterhouseCoopers Freshwater Place 2 Southbank Boulevard Southbank VIC 3006</p>
<p><b>Registry</b> Computershare Investor Services Pty Limited Yarra Falls 452 Johnston Street Abbotsford VIC 3067</p>	