

23 August 2024

By electronic lodgement

The Manager
Market Announcements Office
ASX Limited
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Dear ASX

Takeover bid by Yumbah Aquaculture Limited for East 33 Limited – Replacement Bidder's Statement

We act for Yumbah Aquaculture Limited (ACN 082 219 636) (**Yumbah**) in relation to its off-market takeover bid under Chapter 6 of the *Corporations Act 2001* (Cth) (**Corporations Act**) for all of the ordinary shares in East 33 Limited (ACN 636 173 281) (ASX:E33) (**E33**) that Yumbah does not currently own (**Offer**).

On 8 August 2024, Yumbah lodged a bidder's statement in relation to the Offer.

Pursuant to section 633A(2)(c) of the (**Corporations Act**) (as notionally inserted by ASIC Corporations (Replacement Bidder's and Target's Statements) Instrument 2023/688), we attach a copy of Yumbah's replacement bidder's statement dated 23 August 2024 (**Replacement Bidder's Statement**).

A copy of the Replacement Bidder's Statement has been lodged with the Australian Securities and Investments Commission and sent to E33 today.

Yours faithfully



Harry Kingsley
Partner
K&L Gates

encl.

Bidder's Statement

ACCEPT

CONDITIONAL OFF-MARKET OFFER

by

Yumbah Aquaculture Ltd (Bidder)

(ACN 082 219 636)

to acquire all of your shares in

East 33 Limited (E33)

(ACN 636 173 281)

for A\$0.022 (2.2 cents) cash per share.

The Offer Period officially closes at 5:00 pm (Sydney time) on [#] 2024 unless extended.

Offer Information Line: 1300 737 760 (within Australia) or +61 2 9290 9600 (outside Australia).

This is an important document and requires your immediate attention. If you are in doubt as to how to deal with this document, you should consult your financial or other professional advisers as soon as possible.

Financial advisor



Legal Adviser

The logo for K&L Gates, featuring the words "K&L GATES" in a white, bold, sans-serif font, centered within an orange rectangular box.

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Important information

Replacement Bidder's Statement

This document is a replacement Bidder's Statement issued by Yumbah Aquaculture Ltd ACN 082 219 636 (**Bidder**) under Part 6.5 of the Corporations Act as modified by Corporations (Replacement Bidder's and Target's Statements) Instrument 2023/688 (**Replacement Bidder's Statement**).

This Replacement Bidder's Statement is dated 23 August 2024 and replaces the Bidder's Statement lodged with ASIC on 8 August 2024 (**Original Bidder's Statement**). All references to "this Bidder's Statement" in this document are to this Replacement Bidder's Statement.

This Bidder's Statement includes an Offer by the Bidder to acquire all E33 Shares as described in Section 12 (**Offer**).

A copy of this Bidder's Statement was lodged with ASIC and the ASX on 23 August 2024. Neither ASIC, the ASX nor any of their officers takes any responsibility for the content of this Bidder's Statement or the merits of the Offer.

No account of personal circumstances

The information provided in this Bidder's Statement is not investment advice and does not take into account the individual investment objectives, financial situation and particular needs of each shareholder of East 33 Limited (**E33**). You should consider the contents of this Bidder's Statement in light of your personal circumstances (including financial and taxation issues) and seek independent professional advice from an accountant, stockbroker, lawyer or other professional advisor before making a decision as to whether or not to accept the Offer.

Maps and diagrams

Any diagrams and maps appearing in this Bidder's Statement are illustrative only and may not be drawn to scale. Unless stated otherwise, all data contained in charts, maps, graphs and tables is based on information available at the date of this Bidder's Statement.

Disclaimer as to forward looking statements

Some of the statements appearing in this Bidder's Statement may be in the nature of forward-looking statements, including as set out in section 7.5. You should be aware that such

statements are only predictions and are subject to inherent risks and uncertainties. Those risks and uncertainties include factors and risks specific to the industry in which E33 operates, as well as general economic conditions, prevailing exchange rates, interest rates and conditions in the financial markets in Australia and globally. Actual events or results may differ materially from the events or results expressed or implied in any forward-looking statement. Matters as yet not known to the Bidder or not currently considered material by the Bidder may cause actual results or events to be materially different from those expressed, implied or projected in any forward-looking statements. Any forward-looking statement contained in this document is qualified by this cautionary statement.

None of the Bidder, its Related Bodies Corporate or any of the officers or employees of any of them, nor any persons named in this Bidder's Statement or any person involved in the preparation of this Bidder's Statement makes any representation or warranty (express or implied) as to the accuracy or likelihood of fulfilment of any forward-looking statement, or any events or results expressed or implied in any forward-looking statement, except to the extent required by law. You are cautioned not to place undue reliance on any forward-looking statement. The forward-looking statements in this Bidder's Statement reflect views held only as at the date of this Bidder's Statement.

Disclaimer as to information on E33

The information concerning E33 contained in this Bidder's Statement has been obtained from publicly available sources, except as set out in this Bidder's Statement, including in section 7.5. The information in this Bidder's Statement concerning E33's financial position, assets and liabilities and performance, profits and losses and prospects of the E33 Group has not been independently verified by the Bidder, its Related Bodies Corporate or any of their respective officers or employees. Neither the Bidder, its Related Bodies Corporate nor any of their respective directors, officers or advisers assume any responsibility for the accuracy or completeness of this information. Accordingly, subject to the Corporations Act, the Bidder, its Related Bodies Corporate or any of their respective officers or employees do not make any representation or warranty, express or implied, as to the accuracy or completeness of the information. The information concerning

E33 contained in this Bidder's Statement should not be deemed to be comprehensive.

Further information on E33's business will likely be included in the Target's Statement which E33 is required to provide to E33 Shareholders in response to this Bidder's Statement.

Foreign shareholders

The Offer is being proposed and will be conducted in accordance with the laws in force in Australia and the Listing Rules. The disclosure requirements in relation to the Offer in Australia will differ from those applying in other jurisdictions.

The distribution of this Bidder's Statement may be restricted in some countries. Therefore, persons who come into possession of this Bidder's Statement should make themselves aware of, and comply with, those restrictions.

This document does not constitute an Offer to acquire E33 Shares in any jurisdiction in which such an offer would be illegal.

Privacy

The Bidder has collected your information from the register of E33 Shareholders for the purpose of making the Offer and, if accepted, administering acceptances over, your shareholding in E33. The Corporations Act requires the name and address of E33 Shareholders to be held in a public register. Your information may be disclosed on a confidential basis to the Bidder, and their respective officers, employees, advisers and other external service providers, and may be required to be disclosed to regulators such as ASIC. If you would like details of information about you held by the Bidder, please call the Offer Information Line on 1300 737 760 (within Australia) or +61 2 9290 9600 (outside Australia) between 8:30 am to 5:30 pm (Sydney time) on Business Days, or contact your legal, financial or other professional adviser.

Effect of rounding

Figures, amounts, percentages, prices, estimates, calculations of value and fractions in this Bidder's Statement may be subject to the effect of rounding. Accordingly, the actual figures may vary from those included in this Bidder's Statement. Any discrepancies between totals in tables or financial statements or in calculations graphs or charts are due to rounding.

Estimates and assumptions

Unless otherwise indicated, all references to estimates, assumptions and derivations of the same in this Bidder's Statement are references to estimates, assumptions and derivations of the same by the Bidder and its management. Management estimates reflect, and are based on, views as at the date of this Bidder's Statement, and actual facts or outcomes may materially differ from those estimates or assumptions.

Websites

References in this Bidder's Statement to the Bidder's website (<https://yumbah.com/>) or to E33's website (<https://east33.sydney/>) are for your reference only. Information contained in or otherwise accessible from these websites are not part of this Bidder's Statement.

How to accept

To accept the Offer, follow the instructions set out in Section 4 of this Bidder's Statement.

Defined terms

A number of defined terms are used in this Bidder's Statement. Unless the context otherwise requires, capitalised terms have the meaning given in Section 13. A reference to "**Unified Capital Partners**" in this document is a reference to Unified Capital Partners Pty Ltd ACN 666 560 050 financial advisor to the Bidder.

Further information

This is an important document and should be read in its entirety before you decide whether to accept the Offer. If you are in any doubt as to how to deal with this document or whether to accept the Offer, you should consult your financial or other professional advisers.

If you have any questions or require any further information in relation to the Offer, please contact the Offer Information Line on 1300 737 760 (within Australia) or +61 2 9290 9600 (outside Australia) between 8:30 am to 5:30 pm (Sydney time) on Business Days, or contact your legal, financial or other professional adviser.

1. Key dates

Event	Date [#]
Announcement of Offer	5 August 2024
Original Bidder's Statement lodged with ASIC, ASX and E33	8 August 2024
Replacement Bidder's Statement lodged with ASIC, ASX and E33	23 August 2024
Offer Period officially opens	[#]
Offer Period closes* (unless extended)	5:00pm on [#]

**This date is indicative only and may be extended as permitted by the Corporations Act.*

#All dates and times are references to the date and/or time in Sydney, New South Wales, unless otherwise stated.

2. Letter from the Bidder

Dear Shareholder

Offer to acquire 100% of your E33 Shares for \$0.022 (2.2 cents) per E33 Share

We are pleased to present this conditional Offer by Yumbah Aquaculture Ltd (the **Bidder**) to acquire all your shares in East 33 Limited (ASX: E33) (**E33**) for A\$0.022 (2.2 cents) per E33 Share in cash (the **Offer Price**).

Accepting the Offer provides you with a simple, attractive, certain and immediate exit for your E33 Shares.

Background

As you would be aware, the Bidder currently has a Relevant Interest of approximately 37.42% and, together with its Associates, collectively own the largest holding of E33 Shares with a combined interest and Voting Power of approximately 55.82% in E33 Shares.

In August 2023, E33 reached agreement with Yumbah Finance, an Associate of the Bidder, to provide a \$15 million loan facility. E33's Chair Ms Sarah Courtney has previously stated that this refinancing provides E33 the certainty to continue its recovery and rebuilding of biological assets. In April 2024, E33 reached agreement with Yumbah Finance to convert \$5 million of the debt facility into shares in E33.

Further, as illustrated in recent public disclosures, the capital provided by Yumbah Finance through its loan facility has fundamentally been applied to restructure the balance sheet and for working capital to stabilise the business rather than for growth investment, with \$12.2 million being applied to balance sheet restructure and only \$5.2 million remaining for working capital and ongoing commitments in the short term.

Accordingly, while the Bidder recognises the existing loan facility with Yumbah Finance, including the recent debt-to-equity conversion, improves the way E33 can operate in the short term, the Bidder believes that additional focus is required and that this would be best achieved by delisting E33 so that management can focus on the immediate need to turnaround the operational performance without the burden of the time and cost pressure necessitated by being listed.

Why E33 Shareholders should ACCEPT the Offer

The Bidder believes that for a successful recovery of E33's operations, its board and executive team must operate in a more simple, lower-cost environment with complete focus on rebuilding the company's biological assets.

The key reasons why E33 Shareholders should **ACCEPT** this Offer are:

- The Offer Price represents a significant premium to E33 Shares' historical trading prices which have been trading consistently between \$0.01 and \$0.018 over the last 3 month period, including a 83.3% premium to the closing price of E33 Shares on the Trading Day immediately preceding the Announcement Date of \$0.012 (1.2 cents) per share;
- E33 Shareholders will receive certain and immediate value for your E33 Shares through a 100% cash consideration payable following the close of the Offer Period;
- E33 Shareholders will no longer be exposed to the risks and uncertainties associated with E33's business including the 10 per cent increase in operating expenses year-on-year as reported in the FY23 annual report that E33 has delivered, and the historical losses in E33 of approximately \$9m per year across the last two financial years, with \$30.19m of accumulated losses reported in the interim financial statements to 31

December 2023 and only 4.4 quarters of estimated available funds due to operating costs exceeding expected earnings as disclosed on 19 July 2024;

- E33 incurs the costs of being listed but is unable to effectively realise the benefits, including access to capital and liquidity for shareholders, as demonstrated by just 0.5% of the register turning over per month on average (based on the last 6-month trading) and 39 out of the last 100 trading days on which not a single share traded;
- There is no current superior or alternative proposal in relation to the E33 Shares, and if E33 Shareholders do not accept the Offer and the Offer lapses, the trading price of E33 Shares may continue to fall; and
- The likelihood of a Superior Proposal is low given the Bidder's level of interest in E33.

The Bidder believes E33 would be better placed to operate as an unlisted company to allow it to focus entirely on the urgent and significant task of turning around operational performance.

Bid Conditions

The Offer is conditional on the following:

- **(Minimum acceptance)** During, or at the end of, the Offer Period, the number of E33 Shares in which the Bidder has a Relevant Interest is at least 90% of all E33 Shares;
- **(Prescribed Occurrences)** No Prescribed Occurrence (as defined in Section 12.2(b) of the Bidder's Statement) occurs between the Announcement Date or during the Offer Period;
- **(Regulated Events)** No Regulated Event (as defined in Section 12.2(c) of the Bidder's Statement) occurs between (and including) the Announcement Date and the end of the Offer Period (inclusive);
- **(No restraint)** Between the Announcement Date and the end of the Offer Period (each inclusive), nothing restrains, prohibits or impedes, or otherwise materially adversely impacts the Offers and the completion of the Offer or which requires the divestiture by the Bidder of any E33 Shares or any material assets of E33 or any Subsidiary of E33; and
- **(No termination of BID)** Between the Announcement Date and the end of the Offer Period (each inclusive), the Bidder does not become entitled to terminate the BID as a result of any of the representations and warranties given by E33 under the BID becoming untrue or incorrect in any material respect.

What are the risks associated with accepting the Offer?

The risks associated with accepting the Offer include:

- **(Conditional)** The Offer is subject to conditions. If the conditions are not satisfied or waived by the applicable date, the Bidder may allow the Offer to lapse with unsatisfied conditions, in which case the Offer will not proceed.
- **(Superior Proposal)** If a Superior Proposal emerges or is announced, and an E33 Shareholder has already accepted the Offer at that time, the E33 Shareholder may not be able to withdraw acceptance and accept the Superior Proposal except in limited circumstances as set out in the Corporations Act.
- **(Withdrawal rights)** E33 Shareholders that accept the Offer will only be able to withdraw acceptance in very limited circumstances as set out in the Corporations Act.
- **(Possibility of future East 33 Share price appreciation)** E33 Shareholders that accept the Offer will forego the opportunity to benefit from price appreciation of E33 Shares and

will be unable to sell their E33 Shares for more valuable consideration than that offered under the Offer. However, this risk should be balanced against the risk of the E33 Share price depreciating, which has been the case in recent times.

- **(No interest in upside)** E33 Shareholders that accept the Offer will lose their interest and exposure in the future profits and dividends (if any) associated with E33.

Next Steps

We encourage you to carefully read this Bidder's Statement and follow the instructions on the accompanying Acceptance Form to **ACCEPT** this Offer, which delivers you certain value for your E33 Shares and an opportunity for E33 Shareholders to sell their E33 Shares at an attractive price that is significantly above the current trading prices.

If you have any questions about the Offer, please call the Offer Information Line on 1300 737 760 (within Australia) or +61 2 9290 9600 (outside Australia).

We appreciate your consideration of this Offer.

Yours faithfully,



Jonathan Lillie
Director, Yumbah Aquaculture Ltd

3. Why you should ACCEPT the Offer

3.1 The Offer provides You with certainty of receiving value for your E33 Shares and provides an opportunity for minority shareholders to receive liquidity

The Bidder is offering all E33 Shareholders 100% cash consideration of A\$0.022 per E33 Share, which provides You with certainty of receiving value for your E33 Shares regardless of future market conditions or the future operating performance of E33. There is no guarantee that the share price will not fall below the Offer Price after the Offer closes.

3.2 The Offer Price represents a significant premium to E33's historical trading prices

The Offer represents a significant premium to E33's last closing share price and VWAP of E33 Shares as follows:

- 83.3% premium to the closing price of E33 Shares on the Trading Day immediately preceding the Announcement Date of \$0.012.
- 57.8% premium to the VWAP for the 10 Trading Days immediately preceding the Announcement Date of \$0.0139; and
- 66.6% premium to the VWAP for the 3 trading months immediately preceding the Announcement Date of \$0.0132.

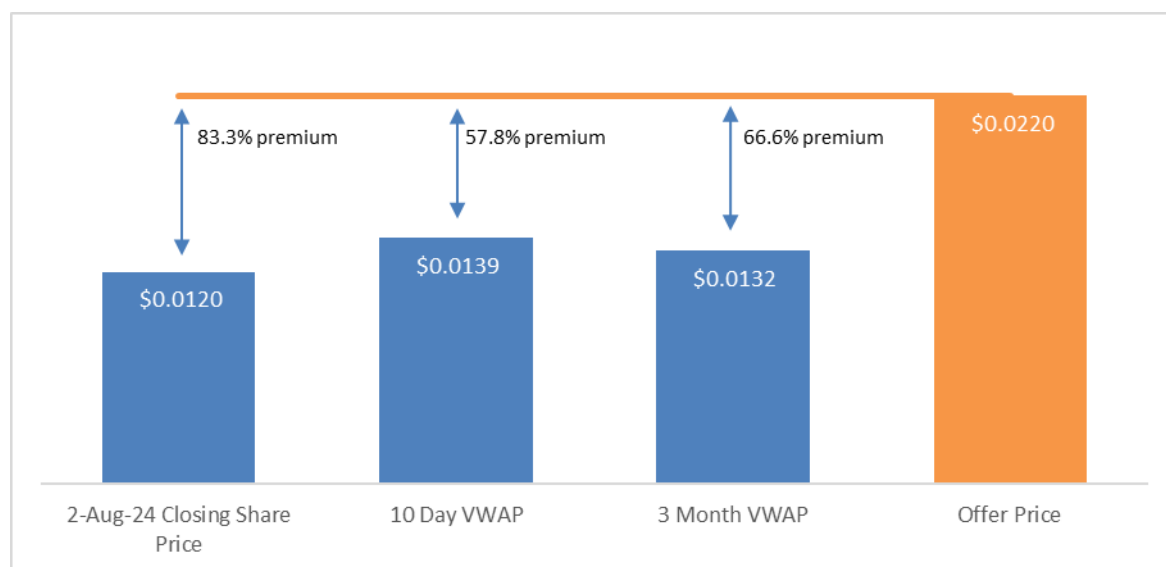


Figure 1: Offer premium relative to recent trading prices

The Offer represents a particularly attractive value to E33 Shareholders given the current risks and uncertainties associated with remaining an E33 Shareholder in the face of prevailing economic and equity market risks. The Bidder believes these risks appear to be weighing on E33's valuation, as demonstrated by the 66.7% decline in its share price over the last 12 months and 70.0% decline in its share price over the last 18 months.

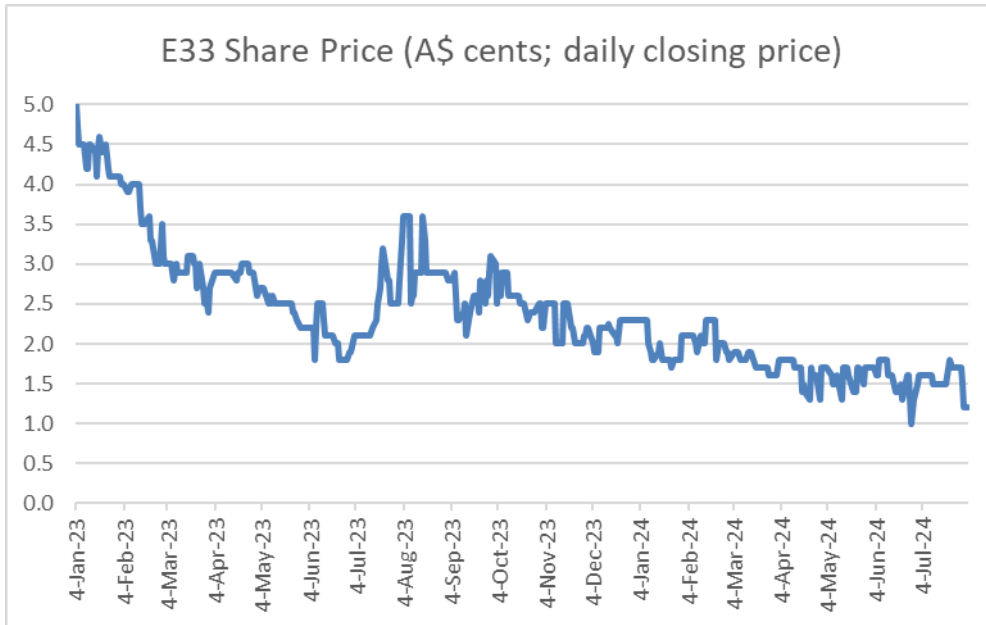


Figure 2: E33 historical share price performance

For information relating to the source of the above information, please refer to section 11.7.

3.3 The Offer Price represents a significant premium to E33's net tangible asset value per Share and the net tangible asset value per Share has been declining over the last 6 and 12 months.

The Offer represents a significant premium to the net tangible asset value of E33 Shares of \$0.0048 or 0.48 cents per E33 Share as disclosed in E33's latest balance sheet as at 31 December 2023 (as announced to ASX on 29 February 2024).

The net tangible asset value per Share has been steadily declining over the last 12 months to 18 months:

- The net tangible asset value per Share of E33 as disclosed in E33's latest balance sheet as at 31 December 2023 is \$0.0048 or 0.48 cents per E33 Share as announced to ASX on 29 February 2024.
- The net tangible asset value per Share of E33 as at 30 June 2023 was \$0.008 or 0.8 cents per E33 Share as announced in its preliminary final report announced to ASX on 30 August 2023 and corrected on 1 September 2023.
- The net tangible asset value per Share of E33 as at 31 December 2022 was \$0.0156 or 1.56 cents per E33 Share as announced to ASX on 27 February 2023.

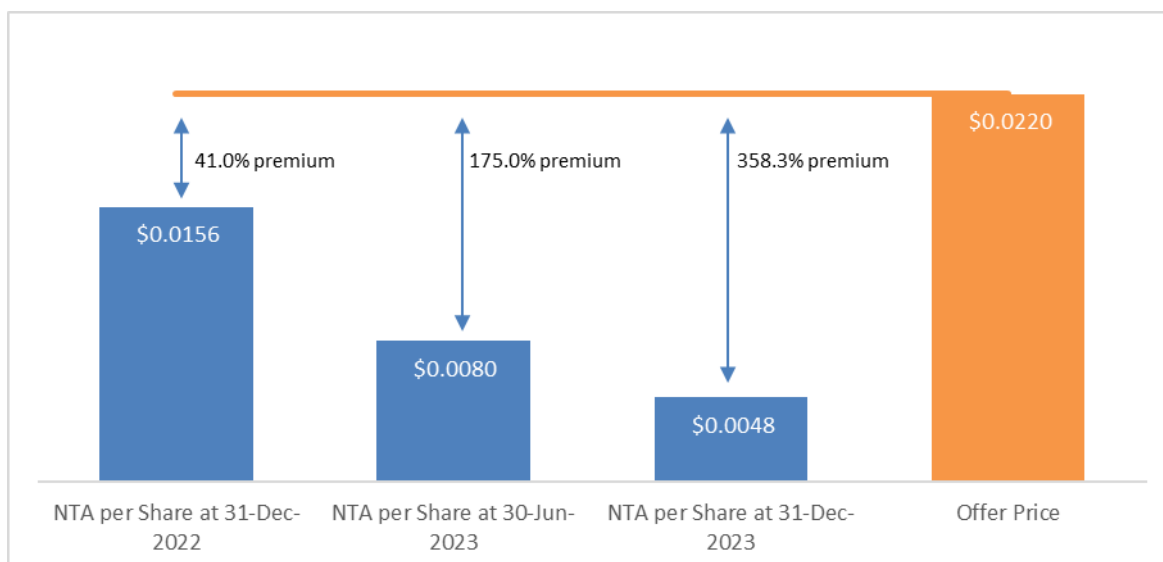


Figure 3: net tangible asset value per Share of E33

3.4 You will receive certain value for your E33 Shares through cash consideration after the Offer Period

The Offer is fully funded at A\$0.022 per E33 Share for all E33 Shares, enabling E33 Shareholders to dispose of large parcels of shares for certain and attractive value without any liquidity concerns. The cash consideration will be paid to you following the Offer Period.

3.5 You will no longer be exposed to the risks and uncertainties associated with E33's business

The certainty of this receipt of the all-cash Offer should be compared against the uncertainties of, and risks associated with, remaining an E33 Shareholder in the current uncertain economic environment. Some key risks associated with not accepting the Offer and remaining an E33 Shareholder include, but are not limited to:

- **uncertainty about E33 as a standalone business** – the Offer allows you to receive immediate value for your investment in E33 and removes uncertainty about the future of E33's business and operations, including but not limited to:
 - potential further adverse weather events and/or disease events which E33 has experienced in the past;
 - the historical losses in E33 of approximately \$9m per year across the last two financial years, with \$30.19m of accumulated losses reported in the HY24 interim financial statements reported on 29 February 2024 (an increase of \$4.6m from its 2023 annual report);
 - the historical negative cash flow from operating activities in E33 of approximately \$926,000 for the last quarter ended 30 June 2024 and \$4.30 million for the financial year ended 30 June 2024 as reported in the 30 June 2024 Quarterly cash flow report lodged by E33 on 19 July 2024, and a negative cash flow from operating activities of approximately \$4.2 million for the year ended 30 June 2023 as reported in the FY23 annual report, which has required E33 to draw down \$8.3 million of funding over the last 12 months;
 - the increasing operating expenses of E33's business, including the 10 per cent increase in operating expenses year-on-year as reported in the FY23 annual report; and

- uncertainty around the strength of the global and the Australian economy and any potential recession, and the impact that an economic slowdown or a recession could have on the demand for oysters which are considered a luxury food product;
- **liquidity risk – E33 becomes unlisted** – if you do not accept the Offer and the Bidder acquires additional E33 Shares, ASX may permit a de-listing of E33, in circumstances where the Bidder does not obtain a Relevant Interest of 90% or otherwise waives the Minimum Acceptance Condition and does not move to compulsory acquisition, in which case, you may not be able to sell your E33 Shares and realise any value for them;
- **liquidity risk – E33 remains listed** - depending on the level of acceptances the Bidder receives under the Offer, the market for E33 Shares may become even less liquid than at present, in circumstances where the Bidder does not obtain a Relevant Interest of 90% or otherwise waives the Minimum Acceptance Condition and does not move to compulsory acquisition. This could make it more difficult for you to sell your E33 Shares at an attractive price in the future;
- **market risks** – recent global economic events have contributed to greater uncertainty, volatility and a general 'risk-off' sentiment in financial markets. There continues to be speculation surrounding movement in the global economy; and
- **share price volatility** – the potential risk of share price falls due to a number of factors including those mentioned in this Section 3.5.

You can choose, in effect, between the Offer of certain value in cash by the Bidder which is available now, or future uncertain value by retaining your E33 Shares.

3.6 E33 is incurring the costs of being listed but cannot realise the benefits, including access to capital and liquidity for shareholders

As at the Trading Day immediately prior to the Announcement Date, the market capitalisation of E33 was \$9.3 million and the share price has declined by 63.6% since the Entitlement Offer completed in October 2022, which raised capital at \$0.033 per share.

The Bidder believes that E33 would be better placed to operate as an unlisted company, given that E33 is incurring all the costs of being listed but is unable to realise the benefits of being listed. Just 0.5 per cent of the register turns over monthly, and for 39 of the previous 100 Trading Days immediately prior to the Announcement Date no E33 Shares traded at all, making it very difficult for any E33 Shareholders to realise the value of their E33 Shares without negatively impacting the share price.

3.7 Consequences of not accepting

The Bidder believes that the Offer for E33 Shares is attractive and represents fair value. However, if you choose not to accept the Offer, there are certain risks of which you should be aware, including:

- **A lower Share price with limited liquidity:** following the close of the Offer, the E33 Share price may drop to pre-Offer levels with a reduced level of trading liquidity;
- **Being a minority shareholder in an unlisted company:** if the Bidder does not achieve compulsory acquisition at the end of the Offer Period but elects to waive the Minimum Acceptance Condition, subject to meeting the eligibility requirements of the Listing Rules, the Bidder will seek to have E33 removed from the official list of the ASX. Should a delisting occur, remaining as a minority shareholder in E33 as an unlisted company presents additional risks including significant difficulty in selling your E33 Shares at the current price levels in the future or at all; and
- **Delay in receiving cash for your E33 Shares:** if the Bidder becomes entitled to acquire your E33 Shares compulsorily, it intends to exercise those rights. If your E33 Shares are compulsorily acquired by the Bidder, you will be paid the Offer consideration of A\$0.022

cash for each of your E33 Shares. However, you will receive the money later than the E33 Shareholders who choose to accept the Offer.

You should consult with your broker or financial or other professional advisers to ascertain the impact of the risks outlined above on the value of your E33 Shares.

3.8 There is no superior or alternative proposal for your E33 Shares

The Bidder's Offer is the only offer to acquire your E33 Shares at the date of this Bidder's Statement.

If no other offers are made for your E33 Shares, E33's share price may fall below the Offer Price after the Offer closes and no other alternative offer or proposal emerges.

3.9 The likelihood of a Superior Proposal is low as the Bidder and its Associates currently have Voting Power of approximately 55.82% of E33 Shares

The Bidder currently has a Relevant Interest of approximately 37.42% and, together with its Associates, currently have aggregate Voting Power in approximately 55.82% of E33 Shares. Further, through its Associates, the Bidder has provided all of the primary first ranking secured facility to E33 of \$15 million plus interest, of which \$12.5 million has been drawn down and a further \$2.5 million to be drawn down on 12 August 2024. For any alternate proposal to be successful, it would likely require the support of the Bidder and its Associates. As such, the Bidder believes that the likelihood of a Superior Proposal emerging for E33 is low.

3.10 No stamp duty or GST in accepting the Offer

You will not pay stamp duty or GST on the disposal of your E33 Shares if you accept the Offer (other than GST payable by your broker in respect of brokerage fees, if any, charged to you). The Bidder will pay the stamp duty (if any) payable in Australia on the transfer of E33 Shares under the Offer.

4. How to accept the Offer

The Offer be accepted in the following ways:

(a) **Issuer Sponsored Holding (your SRN starts with an "I")**

If your E33 Shares are held on E33's issuer-sponsored subregister, then to accept this Offer in respect of those E33 Shares, you must:

- (i) **Paper acceptance:** Complete and sign the Acceptance Form, which accompanies this Bidder's Statement in accordance with the terms of the Offer and the instructions on the Acceptance Form and return the Acceptance Form together with all other documents required by the terms of this Offer and the instructions on the Acceptance Form to the address specified on the Acceptance Form, so that they are received before the close of the Offer Period. A reply paid is enclosed for your convenience.

(b) **CHESS Holding (your HIN starts with an "X")**

If your E33 Shares are held in a CHESS Holding, then to accept this Offer:

- (i) **Acceptance through your broker or Controlling Participant:** contact your broker and instruct your Controlling Participant (for E33 Shareholders who are not institutions this is normally the stockbroker either through whom you bought the relevant E33 Shares or through whom you ordinarily acquire shares on the ASX) to accept the Offer on your behalf, before the Offer closes; or
- (ii) **Paper acceptance:** complete and sign the Acceptance Form enclosed with this Bidder's Statement in accordance with the instructions on the form and send it with all other documents required by those instructions on it to the address shown on the Acceptance Form,

in each case sent and received in sufficient time for BoardRoom to give instructions to your Controlling Participant and for your Controlling Participant to carry out those instructions before the end of the Offer Period. Neither the Bidder or Boardroom Pty Limited will be responsible for any delays incurred by this process.

(c) **Participants**

If you are a Participant, acceptance of this Offer must be initiated in accordance with Rule 14.14 of the ASX Settlement Operating Rules before the Offer closes. If completing the Acceptance Form physically, ensure you complete and sign the Acceptance Form which accompanies this Bidder's Statement in accordance with the terms of the Offer and the instructions on the Acceptance Form and return the Acceptance Form together with all other documents required by the terms of this Offer and the instructions on the Acceptance Form to the address specified on the Acceptance Form, so that they are received before the close of the Offer Period.

If you have any questions about the Offer, please call the Offer Information Line on 1300 737 760 (within Australia) or +61 2 9290 9600 (outside Australia) between 8:30 am to 5:30 pm (Sydney time) on Business Days, or contact your legal, financial or other professional advisers.

5. Summary of the Offer

This Section 5 provides summary answers to some questions you may have in relation to the Offer and is intended to assist in your understanding of the Offer. The information in this section is qualified by the information contained in the rest of this Bidder's Statement. It is not intended to address all relevant issues for E33 Shareholders. Section 12 of this Bidder's Statement contains the full terms of the Offer and Bid Conditions. You should read this Bidder's Statement in full before deciding how to deal with your E33 Shares.

Question	Answer
What is the Offer?	The Bidder is offering to acquire all your E33 Shares for A\$0.022 per E33 Share on the terms and Bid Conditions set out in this Bidder's Statement. You may only accept this Offer in respect of all your E33 Shares.
Who is making the Offer?	The Bidder is an Australian owned and registered public unlisted company. Further information on the Bidder is set out in Section 6.
How do I accept the Offer?	<p>Depending on the nature of your holding, you may accept the Offer in the following ways:</p> <p>Issuer Sponsored Holding (your SRN starts with an "I")</p> <p>If your E33 Shares are held on E33's issuer-sponsored subregister, then to accept this Offer in respect of those E33 Shares, you must:</p> <ul style="list-style-type: none"> • Paper acceptance: complete and sign the Acceptance Form which accompanies this Bidder's Statement in accordance with the terms of the Offer and the instructions on the Acceptance Form and return the Acceptance Form together with all other documents required by the terms of this Offer and the instructions on the Acceptance Form to the address specified on the Acceptance Form, so that they are received before the close of the Offer Period. <p>CHESS Holding (your HIN starts with an "X")</p> <p>If your E33 Shares are held in a CHESS Holding, then to accept this Offer:</p> <ul style="list-style-type: none"> • Acceptance through your broker or Controlling Participant: contact your broker and instruct your Controlling Participant (for E33 Shareholders who are not institutions this is normally the stockbroker either through whom you bought the relevant E33 Shares or through whom you ordinarily acquire shares on the ASX) to accept the Offer on your behalf, before the Offer closes; or • Paper acceptance: complete and sign the Acceptance Form enclosed with this Bidder's Statement in accordance with the instructions on the form and send it with all other documents required by those instructions on it to the address shown on the Acceptance Form, <p>in each case sent and received in sufficient time for BoardRoom to give instructions to your Controlling Participant and for your</p>

Question	Answer
	<p>Controlling Participant to carry out those instructions before the end of the Offer Period.</p> <p>Participants</p> <p>If you are a Participant, acceptance of this Offer must be initiated in accordance with Rule 14.14 of the ASX Settlement Operating Rules before the Offer closes. If completing the Acceptance Form physically, ensure you complete and sign the Acceptance Form which accompanies this Bidder's Statement in accordance with the terms of the Offer and the instructions on the Acceptance Form and return the Acceptance Form together with all other documents required by the terms of this Offer and the instructions on the Acceptance Form to the address specified on the Acceptance Form, so that they are received before the close of the Offer Period.</p> <p>If you have any questions about the Offer, please call the Offer Information Line on 1300 737 760 (within Australia) or +61 2 9290 9600 (outside Australia) between 8:30 am to 5:30 pm (Sydney time) on Business Days, or contact your legal, financial or other professional advisers.</p> <p>Section 4 provides more detailed instructions on how to accept the Offer.</p>
Can I sell part of my shareholding?	You may only accept this Offer in respect of all your E33 Shares.
When can I accept the Offer?	<p>The Offer opens on [#]</p> <p>The Offer closes on [#]</p> <p>You may accept the Offer any time before the Offer closes.</p>
If I accept the Offer, when will I be paid for my shares?	<p>If you accept the Offer, and subject to satisfaction of the Bid Conditions, the Bidder will pay any cash to which you are entitled on or before the earlier of:</p> <ul style="list-style-type: none"> • one month after the Offer is validly accepted or the contract resulting from its acceptance becomes unconditional (whichever is the later); and • 21 days after the Offer closes.
Can the Offer Period be extended?	Yes, the Offer Period can be extended in accordance with section 624(2) and/or section 650C of the Corporations Act. In certain circumstances, the Corporations Act imposes a mandatory extension of the Offer Period.
Does the Offer apply to Performance Rights and E33 Options?	The Offer will not extend to the acquisition of any Performance Rights or E33 Options currently on issue. See sections 7.4(b) and 7.4(c) for further details in relation to the Performance Rights and E33 Options.
What will the tax consequences be?	You should consult your financial, tax or other professional advisor regarding the tax implications of acceptance. However, please refer to Section 10 for a general description of some of the potential tax implications for E33 Shareholders who accept the Offer.

Question	Answer
<p>Do I pay brokerage or stamp duty if I accept?</p>	<p>If your E33 Shares are registered in an Issuer Sponsored Holding in your name, the relevant broker you instruct to initiate acceptance on your behalf may charge transactional fees or service charges in connection with acceptance of the Offer.</p> <p>If your E33 Shares are registered in a CHESS Holding or if you are a beneficial holder and your E33 Shares are registered in the name of a broker, bank, custodian or other nominee (i.e. your Controlling Participant), the Controlling Participant may charge transactional fees or service charges in connection with acceptance of the Offer.</p> <p>Accordingly, you should ask your broker or Controlling Participant (as applicable) in relation to brokerage.</p> <p>The Bidder will bear the cost of its own brokerage (if any) on the transfer of E33 Shares acquired through acceptance of the Offer.</p> <p>You will not pay stamp duty or GST on the disposal of your E33 Shares if you accept the Offer (other than GST payable by your broker in respect of brokerage fees charged to you).</p>
<p>What are the conditions to the Offer?</p>	<p>The Offer is subject to several Bid Conditions, including:</p> <ul style="list-style-type: none"> • (Minimum acceptance) the Bidder has a Relevant Interest is at least 90% of all E33 Shares during or at the end of the Offer Period; • (Prescribed Occurrences) No Prescribed Occurrences (as defined in Section 12.2(b)) has occurred between the Announcement Date and the end of the Offer Period; • (Regulated Events) No Regulated Events (as defined in Section 12.2(c)) has occurred between the Announcement Date and the end of the Offer Period; • (No restraint) Between the Announcement Date and the end of the Offer Period (each inclusive), nothing restrains, prohibits or impedes, or otherwise materially adversely impacts the Offers and the completion of the Offer or which requires the divestiture by the Bidder of any E33 Shares or any material assets of E33 or any Subsidiary of E33; and • (No termination of BID) Between the Announcement Date and the end of the Offer Period (each inclusive), the Bidder does not become entitled to terminate the BID as a result of any of the representations and warranties given by E33 under the BID becoming untrue or incorrect in any material respect. <p>More details regarding the Bid Conditions are set out in full in Section 12.2.</p>
<p>What happens if the Offer conditions are not satisfied/waived?</p>	<p>If the conditions of the Offer are not satisfied or waived before the Offer closes, the Offer will lapse. The Bidder will make an announcement to the ASX if the conditions of the Offer are satisfied or waived during the Offer Period.</p>

Question	Answer
<p>Can the Offer be withdrawn?</p>	<p>The Bidder may withdraw the Offer in respect of any Offers that are unaccepted in accordance with any requirements of section 652B of the Corporations Act, including at any time with the written consent of ASIC and subject to the conditions (if any) specified in such consent; or</p> <p>Notice of withdrawal of the Offer must be given by the Bidder to ASX.</p>
<p>Can You withdraw Your acceptance</p>	<p>Under the Offer, you can withdraw your acceptance if a withdrawal right arises under section 650E of the Corporations Act.</p>
<p>What happens if I do not accept?</p>	<p>If you do not accept the Offer, you will remain an E33 Shareholder and will not receive the consideration offered by the Bidder.</p> <p>If the Bidder becomes entitled to compulsorily acquire your E33 Shares, it intends to do so. If your E33 Shares are compulsorily acquired by the Bidder, you will be paid the Offer consideration of A\$0.022 cash for each of your E33 Shares. However, you will receive the money later than the E33 Shareholders who choose to accept the Offer.</p> <p>Further information on the intentions of the Bidder is set out in Section 8.</p>
<p>What are the risks associated with accepting the Offer?</p>	<p>The risks associated with accepting the Offer include:</p> <ul style="list-style-type: none"> • (Conditional) The Offer is subject to conditions. If the conditions are not satisfied or waived by the applicable date, the Bidder may allow the Offer to lapse with unsatisfied conditions, in which case the Offer will not proceed. • (Superior Proposal) If a Superior Proposal emerges or is announced, and an E33 Shareholder has already accepted the Offer, the E33 Shareholder may not be able to withdraw acceptance and accept the Superior Proposal except in limited circumstances as set out in the Corporations Act. • (Withdrawal rights) E33 Shareholders that accept the Offer will only be able to withdraw acceptance in very limited circumstances as set out in the Corporations Act. • (Possibility of future East 33 Share price appreciation) E33 Shareholders that accept the Offer will forego the opportunity to benefit from price appreciation of E33 Shares and will be unable to sell their E33 Shares for more valuable consideration than that offered under the Offer. However, this risk should be balanced against the risk of the E33 Share price depreciating, which has been the case in recent times. • (No interest in upside) E33 Shareholders that accept the Offer will lose their interest and exposure in the future profits and dividends (if any) associated with E33.
<p>What if I require further information?</p>	<p>If you have any questions about the Offer, please call the Offer Information Line on 1300 737 760 (within Australia) or +61 2 9290 9600 (outside Australia) between 8:30 am to 5:30 pm (Sydney time) on Business Days, or contact your legal, financial or other professional adviser.</p>

6. Overview of the Bidder

6.1 About the Bidder

The Bidder is a public unlisted company owned and registered in Australia which manages a diverse portfolio of aquaculture projects and aims to invest in and develop projects in the aquaculture sector.

6.2 The Bidder's board directors and public officers

Details of the directors of the Bidder are set out below:

Director	Position	Appointed
Gary Higgins	Non-Executive Chairman	31 March 2008
Anthony Hall	Non-Executive Director	08 June 2016
Jonathan Lillie	Non-Executive Director	31 March 2008
Ben Cameron	Executive Director	15 October 2021
Richard Davey	CFO and Company Secretary	21 December 2022

Note: Gary Higgins and Ben Cameron also hold nominee directorships on the board of directors of E33. Accordingly, Messrs Higgins and Cameron have been excluded from decision making in relation to the Offer by the Bidder, and are excluded from the E33 Independent Board Committee. Anthony Hall also indirectly holds 7,333 shares in Yumbah Finance Pty Ltd (Yumbah Finance) representing 73.33% of its shares on issue, which are held through Research Corporation Pty Ltd, an entity which Mr Hall controls.

6.3 Holdings of common directors

Ben Cameron and Gary Higgins are directors of both the Bidder and E33 and have the following beneficial holdings in the Bidder:

Director	Bidder Share	Ownership %
Gary Higgins ¹	863,160	0.388%
Ben Cameron ²	2,911,592	1.309%
Total	3,774,752	1.697%

Note (1) Held directly by Gary Higgins and indirect interest through shares held by Elary Nominees Pty Ltd (2) Held directly by Ben Cameron and indirect interest through shares held by NBC Personal Pty Ltd <B N Cameron Investment A/C>.

6.4 Holdings of common directors

As Ben Cameron and Gary Higgins are directors of both the Bidder and E33, the board of the Bidder decided to convene an independent board committee to approve matters relating to the Offer. The Bidder IBC excludes Ben Cameron and Gary Higgins from all decisions that relate to the Offer and E33.

7. Overview of E33

7.1 Disclaimer

The information in this Section 7 concerning E33 has been prepared based on a review of publicly available information (which has not been independently verified), other than as set out in section 7.5. Neither the Bidder, nor any of their respective directors, officers, employees or advisers, subject to the Corporations Act, make any representation or warranty, express or implied, as to the accuracy or completeness of such information.

The information on E33 in this Bidder's Statement should not be considered comprehensive.

In addition, the Corporations Act requires the E33 Directors to provide a Target's Statement to E33 Shareholders in response to this Bidder's Statement, setting out material information concerning E33. Further information relating to E33 may be included in its Target's Statement in relation to the Offer, which will be sent to you directly by E33.

7.2 Overview of E33 and its principal activities

E33 is an ASX listed Australian company involved in oyster farming and sales.

As at the date of this Bidder's Statement, E33's Subsidiaries are as follows:

Name of entity	Country of incorporation	Holding (%)
Hamilton Supervisory Pty Ltd	Australia	100%
MS Verdich & Sons Pty Ltd	Australia	100%
HR Browne & Sons Pty Ltd	Australia	100%
East 33 Farming Pty Ltd (incorporated Aug 2020)	Australia	100%
East 33 Deliveries Pty Ltd (incorporated Jul 2020)	Australia	100%
Mid Coast Exco Pty Ltd	Australia	100%
CMB Seafoods Pty Ltd	Australia	100%

7.3 Directors and senior managers

(a) As at the date of this Bidder's Statement, the E33 Directors are as follows:

- (i) Ms Sarah Courtney – Independent Non-Executive Chair;
- (ii) Mr Gary Higgins – Non-Executive Director;
- (iii) Mr Ben Cameron – Non-Executive Director;
- (iv) Mr Michael Ryan – Independent Non-Executive Director, and
- (v) Ms Veronica Papacosta – Independent Non-Executive Director.

- (b) As at the date of this Bidder's Statement, E33's executive leadership team is as follows:
 - (i) Ms Amy Knoll – Chief Financial Officer;
 - (ii) Mr Mathew Watkins – Company Secretary; and
 - (iii) Dr Justin Welsh – Chief Executive Officer.

7.4 E33 securities on issue

- (a) Based on documents provided by E33 to ASX as at the date immediately before the Announcement Date:
 - (i) there were a total of 775,183,937 E33 Shares on issue;
 - (ii) there were a total of 91,268,000 Performance Rights on issue;
 - (iii) there is 1 convertible note on issue; and
 - (iv) there were a total of 1,000,000 E33 Options on issue.
- (b) On 5 August 2024, the Bidder entered a proposal with Dr Justin Welsh and Ms Amy Knoll whereby the Bidder will conditionally acquire Dr Justin Welsh's and Ms Amy Knoll's Performance Rights in consideration for like-for-like performance rights in the Bidder, which will become effective only if the Offer becomes unconditional. It is also anticipated that 775,183 Performance Rights held by Dr Welsh may be converted into E33 Shares prior to the end of the Offer Period on the basis of satisfaction of KPI hurdles. Dr Welsh has indicated that he will then accept the Offer.
- (c) On 5 August 2024, the Bidder entered a proposal with Ms Sarah Courtney whereby Ms Courtney agreed to exercise the E33 Options no later than immediately following the satisfaction of the Bid Conditions. Ms Courtney also advised that she intends to, in the absence of a superior proposal, accept into the Offer. This proposal has no effect until after the date on which the Bid Conditions are either satisfied or waived.
- (d) The convertible note is issued to Yumbah Finance Pty Ltd, an Associate and related body corporate of the Bidder. The convertible note does not form part of the Offer. The Bidder is comfortable for the convertible note to remain on foot following completion of the Offer.

7.5 Other information about E33

(a) Background and informational disclaimers

On 25 April 2024, Yumbah Finance Pty Ltd (**Yumbah Finance**), an Associate of the Bidder, and the financier of E33, was provided with special purpose management forward numbers and supporting information prepared by E33 to support the strategic review (**Strategic Review**) completed by E33 and announced on 29 February 2024 (**Forward Financial Information**). The Forward Financial Information was provided to Yumbah Finance as part of the final due diligence information to satisfy the requirements for the further debt financing of E33 in April 2024.

The Forward Financial Information was prepared to reflect the anticipated financial position of E33 assuming the continued implementation of the Strategic Review.

Important Notice in relation to the Forward Financial Information

The relevant information set out in this Section 7.5 was provided by E33 on the basis that it represents 'management best estimates' and was not independently verified or

prepared in accordance with ASIC Regulatory Guide 170 at the time. On the basis of its preparation, it was provided on the basis that it was not considered reasonable for investors and their professional advisers to expect to find the Forward Financial Information in a disclosure document. There is a considerable degree of subjective judgement involved in preparing forecasted financial information as they relate to event(s) and transaction(s) that have not yet occurred and may not occur, particularly in an industry as susceptible to environmental and trading conditions as the aquaculture industry. Actual results are likely to be different from the Forward Financial Information since anticipated event(s) or transaction(s) frequently do not occur as expected and the variation between actual results and those forecasts may be material. Accordingly, subject to the Corporations Act, E33, its Related Bodies Corporate or any of their respective officers or employees do not make any representation or warranty, express or implied, as to the accuracy or completeness of this Forward Financial Information.

The Forward Financial Information is therefore inherently unreliable and consequently insufficiently definitive. Economic and environmental changes could have significant impact on the decision-making for this information. Risks and uncertainties include factors and risks specific to the industry in which E33 operates and general economic conditions. Actual events or results may differ materially from the events or results expressed or implied in any forward-looking statement. Shareholders should not place undue reliance on any forward-looking statement.

Notwithstanding the above, it is the view of the Bidder that certain information in the Forward Financial Information may be considered material to the value of the E33 Shares and may reasonably influence E33 Shareholders in making a fully informed decision regarding the Offer and for this reason, has been provided in this Bidders' Statement.

The information in this section 7.5 has not been independently verified by the Bidder, its Related Bodies Corporate or any of their respective officers or employees. Neither the Bidder, its Related Bodies Corporate nor any of their respective directors, officers or advisers assume any responsibility for the accuracy or completeness of this information. Accordingly, subject to the Corporations Act, the Bidder, its Related Bodies Corporate or any of their respective officers or employees do not make any representation or warranty, express or implied, as to the accuracy or completeness of the information.

(b) Strategic production and supply chain stabilisation initiatives

As set out in the Forward Financial Information, E33 anticipates that:

- (i) farming strategies will increase the forecasted indicative harvest targets;
- (ii) steady state volumes harvested from the farm will be achieved in FY27 through farm-restocking initiatives aimed at maximising gear utilisation; and
- (iii) increasing on-farm volumes using improved operational efficiency will decrease the cost of production without impacting quality.

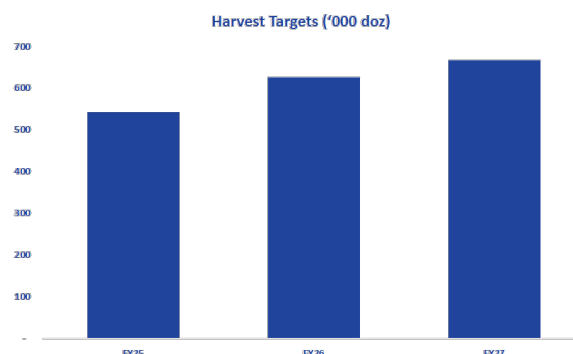


Figure 4: E33 harvest targets from FY25 to FY27 based on E33's best estimates only and provided to Yumbah Finance on 25 April 2024.

(c) **Cash flow and EBITDA adjustments**

E33 provided the following information in the Forward Financial Information:

Matter	FY25	FY26	FY27
Revenue (\$'000)	28,400	29,800	30,600
EBITDA (\$'000)	3,900	2,400	2,000
EBITDA excl bio value (\$'000)	200	2,100	2,600
Cash min (\$'000)	800	(1,000)	(1,600)
Cash max (\$'000)	2,900	1,800	1,300

Figure 5: E33's anticipated financial performance for FY25 to FY27 based on E33's best estimates only and provided to Yumbah Finance on 25 April 2024.

The above financial information is summarised as follows:

- Cashflow and EBITDA may improve under the revised strategic approach to the business as internal oyster supply stabilises and business opportunities captured in the Strategic Review are expected by management to be realised.
- Despite the anticipated improvements, intervention is expected to be required as overhead costs create a material burden on the business' cashflow and create material negative cash minimums in FY26 and FY27.

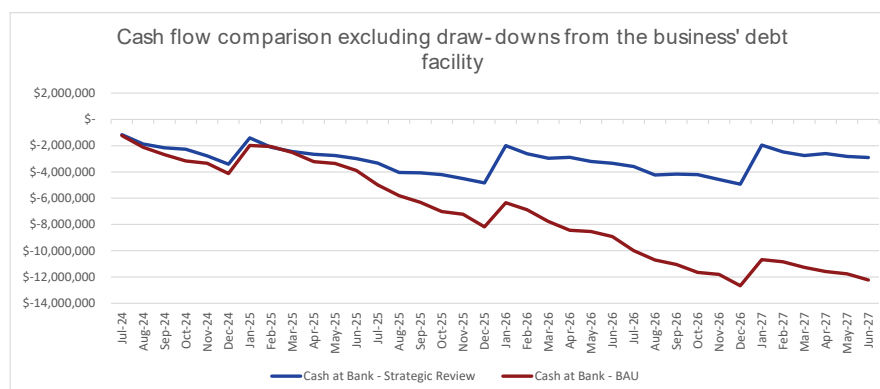


Figure 6: E33's cash flow comparisons excluding draw-downs from the business' debt facility based on E33's best estimates only provided to Yumbah Finance on 25 April 2024. The cash projection based on the Strategic Review represents management's best estimates following the Strategic Review. The BAU scenario represents the business' position preceding the Strategic Review.

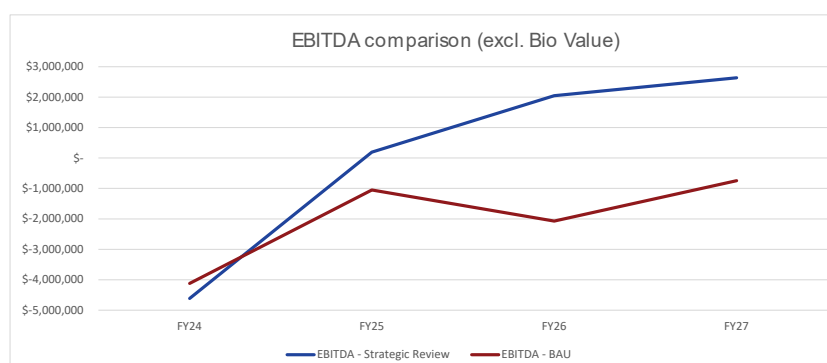


Figure 7: E33's EBITDA over FY25 to FY27 based on E33's best estimates only provided to Yumbah Finance on 25 April 2024. The cash projection based on the Strategic Review represents management's best estimates following the Strategic Review. The BAU scenario represents the business' position preceding the Strategic Review.



Figure 8: E33's cash at bank outlook through to FY25 based on E33's best estimates only provided to Yumbah Finance on 25 April 2024.

E33 will have the opportunity to disclose in its Target's Statement any other information about the E33 Group it considers E33 Shareholders would reasonably require to make an informed assessment as to whether to accept the Offer.

(d) Key Assumptions of the Forward Financial Information

The key assumptions on which the Forward Financial Information are based are as follows:

(i) **(Projected revenue)** In relation to the revenue forecast set out in the Forward Financial Information, E33 notes:

- (A) Revenue projections for the farming segment are derived from anticipated oyster harvest volumes, which are aligned with both planned production targets and market demand. These projections also take into account the expected pricing, which varies according to the oyster's type, size, and quality;
- (B) Revenue predictions for the distribution segment are based on the expected availability of oysters for sale, sourced both from E33's farming operations and from third-party suppliers. These projections incorporate anticipated sales prices, which are determined by the oysters' type, size, and quality;
- (C) Restaurant revenue predictions consider seasonality and apply an increase factor from the last period; and
- (D) Movements in the fair value of biological assets are determined based on their assessed valuations considering expected changes in market conditions and biological growth patterns.

(ii) **(Cost of Goods Sold (COGS))** Regarding the COGS assumptions in the Forward Financial Information, it is noted that:

- (A) COGS projections for the farming segment are based on estimated harvest volumes, calculated from historical yields, anticipated advancements in aquaculture practices, and environmental influences on oyster growth. These projections are adjusted for expected sales prices, which vary with the oysters' type, size, and quality;
- (B) COGS projections for the distribution segment are determined by the expected volume of oysters available for sale, sourced from both East 33's farming operations and third-party suppliers. These estimates account for the procurement cost, which is influenced by the type, size, and quality of the oysters;
- (C) COGS for the restaurant segment are based on an increase factor from the last period, adjusted for seasonality; and

- (D) COGS are projected to align proportionally with revenue expansion across all the business segments, reflecting a consistent cost-to-income ratio as the business scales.
- (iii) **(Expenses)** The main expenses in Forward Financial Information are employment expenses, rent and outgoings expenses, general expenses, consulting, lease expenses, depreciation and finance costs.

7.6 Publicly available information

E33 is listed on ASX and is obliged to comply with the periodic and continuous disclosure requirements of the Corporations Act and the Listing Rules. For more information concerning the financial position and affairs of E33, you should refer to the full range of information that has been disclosed by E33 pursuant to those obligations. Further publicly available information about E33 is available on E33's website at <https://east33.sydney/> or the ASX website at <https://www2.asx.com.au/markets/company/e33>.

E33's annual report for the year ended 30 June 2023 was lodged with ASIC and given to ASX on 18 September 2023.

E33's half-yearly financial report for the half year ended 31 December 2023 was lodged with ASIC and given to ASX on 29 February 2024.

E33's quarterly cash flow report & appendix 4C for the quarter ended 30 June 2024 was lodged with ASIC and given to ASX on 19 July 2024.

7.7 Interests of the Bidder in E33's issued securities

- (a) **Prices paid for E33 Shares by the Bidder or its Associates:** On 26 April 2024, Yumbah Finance Pty Ltd (**Yumbah Finance**), an Associate of the Bidder, was issued 238,095,238 E33 Shares at \$0.021 per E33 Share pursuant to the Recapitalisation Transaction entered on 28 February 2024 (and announced on 29 February 2024) in which Yumbah Finance agreed to convert \$5.0 million of the face value of a convertible note into E33 Shares. This transaction was approved by shareholders at E33's general meeting held on 23 April 2024.

Other than as described above, neither the Bidder, nor any of its respective Associates provided, or agreed to provide, consideration for an E33 Share under a purchase or agreement during the last four (4) months before the date of the Announcement.

- (b) **No Escalation Agreements:** Neither the Bidder, nor any of their respective Associates has entered into any escalation agreement that is prohibited by section 622 of the Corporations Act.
- (c) **No Collateral Benefits:** During the four (4) months before the date of the Announcement, neither the Bidder, nor any of their respective Associates gave, or agreed to give, a benefit to another person which was likely to induce the other person, or an Associate of the other person to:
 - (i) accept the Offer; or
 - (ii) dispose of E33 Shares,

and which is not offered to all E33 Shareholders under the Offer.

8. Bidder's intentions

This Section 8 sets out the intentions of the Bidder on the basis of the facts and information concerning E33 and the existing circumstances affecting the business of E33 which are known to the Bidder at the time of preparation of this Bidder's Statement, in relation to the following:

- (a) the continuation of the business of E33;
- (b) any major changes to be made to the business of E33, including any redeployment of fixed assets of E33; and
- (c) the future employment of the present employees of E33.

The Bidder has nominee directors on the board of E33 but are otherwise not privy to any non-public information in relation to E33 as E33 have established an independent board committee that excludes those nominee directors of the Bidder.

The statements set out in this Section 8 are statements of current intentions only which may vary as new information becomes available or circumstances change.

8.2 Intentions upon ownership of less than 90% of E33

The Offer is subject to a Minimum Acceptance Condition. The Bidder reserves its rights to declare the Offer free from the Minimum Acceptance Condition (or any other condition). However, it has made no decision as at the date of this Bidder's Statement as to whether it will do so.

This Section 8.2 sets out the Bidder's current intentions if it were to declare the Offer free of the Bid Conditions, including the Minimum Acceptance Condition, and the Bidder and its Associates continue to hold more than 50.1% of the E33 Shares, but the Bidder is not entitled to compulsorily acquire the remaining E33 Shares under the Corporations Act.

In that circumstance, the Bidder's intentions are as follows:

(a) **Directors**

The Bidder intends to reduce the size and make changes to the composition of the E33 Board to streamline cost efficiencies.

(b) **Review**

The Bidder will propose that a review of E33, of the type referred to in Section 8.3(d) below, be undertaken with the aim of pursuing, to the maximum extent possible and appropriate, the types of strategies and intentions, as described in Section 8.3(d), which might have been pursued if the Bidder held 100% of E33. However, the Bidder does not presently envisage that such a review will result in any substantive changes to the nature of the business of E33. Rather, the Bidder will endeavour to explore, identify and implement further opportunities for the Bidder and E33 to collaborate to accelerate the turnaround of the operations of E33.

(c) **Capital structure**

The Bidder intends that a review of E33's capital structure would be undertaken as part of the operational review discussed at Section 8.3(d). That review will consider E33's need to retain sufficient funds to meet its ongoing activities and requirements for additional capital, as well as whether E33's capital structure is efficient and maximises shareholder value.

(d) **Quotation on ASX – Removal**

In relation to the removal of E33 from the official list of the ASX, ASX guidance indicates that the usual conditions that the ASX would expect to be satisfied in order for it to approve the removal of E33 from the official list in the context of a successful takeover bid include:

- (i) at the end of the Offer, the Bidder owns or Controls at least 75% of the E33 Shares and the Offer has remained open for at least two weeks after the Bidder attained ownership or Control of at least 75% of the E33 Shares; and
- (ii) the number of E33 Shareholders (other than the Bidder) having holdings with a value of at least \$500 is fewer than 150,

and in such case, the ASX will not usually require the Bidder to obtain E33 Shareholder approval for E33's removal from the official list of the ASX.

In addition, ASX may approve an application for E33 to be removed from the official list of the ASX with shareholder approval and, where such removal is sought later than 12 months after the close of the Offer, the Bidder would be entitled to vote on the resolution approving the removal.

After the end of the Offer Period the Bidder intends to seek the removal of E33 from the official list of the ASX in accordance with the above as soon as practicable and will consider its ability to do so subject to its Relevant Interest following the Offer Period.

If E33 is removed from the official list of the ASX, the Bidder intends to convert E33 to a proprietary company. In that case, there may be risks related to remaining as a minority shareholder in E33. These include significantly reduced liquidity, remaining a minority shareholder with only statutory rights under the Corporations Act and no automatic rights to dividends or financial reports.

(e) **Further acquisitions of E33 Shares**

The Bidder may acquire additional E33 Shares under the "creep" provisions of the Corporations Act. In summary, those provisions would permit the Bidder and its Associates to acquire up to 3% of E33 Shares every 6 months. The Bidder has not yet determined whether it will acquire further E33 Shares under the "creep" provisions in the future, as that will be dependent upon (among other things) the extent of Voting Power of the Bidder in E33 and market conditions at the time.

If the Bidder becomes entitled to give notices to compulsorily acquire any outstanding E33 Shares in accordance with section 664C of the Corporations Act (general compulsory acquisition power) because of acquisitions of additional E33 Shares, the Bidder intends to give such notices depending on the circumstances at the time.

(f) **Limitations on intentions**

The implementation of the Bidder's intentions in the event of less than 100% ownership of E33 will be subject to the Corporations Act, the Listing Rules and the E33 constitution, and to the obligations of the E33 Directors to act in the best interests of E33 and all E33 Shareholders.

If the Bidder has Control (but not 100%) of E33, the "related party" provisions of Chapter 2E of the Corporations Act (and the Listing Rules) will apply.

The Bidder would only decide on its courses of action in these circumstances after it receives appropriate legal and financial advice on such matters, including in relation to any requirements for E33 Shareholder approval.

8.3 Intentions upon becoming able to compulsorily acquire E33 Shares

This Section 8.3 sets out the Bidder's current intentions if it has a Relevant Interest in 90% or more of all E33 Shares and are entitled to proceed to compulsory acquisition of the outstanding E33 Shares on issue.

(a) **Compulsory acquisition**

If it becomes entitled to do so under the Corporations Act, the Bidder will:

- (i) pursuant to section 661A of Corporations Act (compulsory acquisition power following takeover bid), give notices to compulsorily acquire any outstanding E33 Shares in accordance with section 661B of the Corporations Act, including any E33 Shares which are issued as a result of the vesting and exercise of Performance Rights after the end of the Offer Period and in the 6 weeks after the Bidder gives the compulsory acquisition notices; and
- (ii) if necessary, give notices to compulsorily acquire any outstanding E33 Shares in accordance with section 664C of the Corporations Act (general compulsory acquisition power), depending on the relevant circumstances at the time.

If it is required to do so under section 662A and section 663A of the Corporations Act, the Bidder intends to give notices to E33 Shareholders offering to acquire their E33 Shares, in accordance with section 662B and section 663C of the Corporations Act.

(b) **Directors**

The Bidder would make changes to the composition of the E33 Board to streamline cost efficiencies.

(c) **Quotation on ASX – Removal**

Upon acquiring ownership of 100% of E33, the Bidder will seek to have E33 removed from the official list of ASX. The Bidder may also seek to change the status of E33 from a public company limited by shares to a proprietary company limited by shares.

(d) **Operational review**

Following the close of the Offer, if the Bidder is entitled to acquire 100% Control of E33, the Bidder intends to conduct a review of the operations, assets, structure and employees of E33 in light of that information to identify:

- (i) business opportunities and areas of revenue generation which may provide overall strategic operational benefit;
- (ii) areas of costs saving which may provide overall strategic and operational benefit; and
- (iii) any business or businesses which do not fit into the strategic plan for E33 and to evaluate the best and most appropriate way of organising such business or businesses.

Final decisions will only be reached after that review and in light of all material facts and circumstances.

While the Bidder does not currently have any specific intentions in relation to this review or its outcomes, its current expectation is that the review will focus on identifying the most effective means of utilising E33's assets and maximising the investment the Bidder has made in E33.

(e) **Management and other employees**

The Bidder believes that E33's current management have appropriate skills and experience. The Bidder would review the future employment of the management of E33 after the close of the Offer, having regard to its plans for E33 and upon completing the review referred to above at Section 8.3(d).

It is the current intention of the Bidder that the employment of most of E33's employees will not be adversely affected. The Bidder intends those employees made redundant because of any changes to E33's business would receive payments and other benefits to which they are legally entitled.

(f) **Limitations on intentions**

The intentions and statements of future conduct set out in this Section 8 must be read as being subject to:

- (i) the law (including the Corporations Act) and the Listing Rules, including, in particular, the requirements of the Corporations Act and the Listing Rules in relation to conflicts of interest and "related party" transactions given that, if the Bidder obtain Control of E33 but the Bidder does not acquire all of the E33 Shares, it will be treated as a related party of E33 for these purposes;
- (ii) the legal obligation of the E33 Directors at the time, including any nominees of the Bidder, to act in good faith, in the best interest of E33 and for the proper purposes and to have regard to the interests of E33 Shareholders; and
- (iii) the outcome of reviews referred to in Sections 8.2(b) and 8.3(d).

Accordingly, this Section 8 must be read and understood on this basis.

9. Funding of cash consideration

9.1 Cash consideration under the Offer

The cash consideration for the acquisition of E33 Shares to which the Offer relates will be satisfied by the payment of cash (in Australian dollars).

Based on the number of E33 Shares on issue as at the date of the Announcement, and noting that the Bidder already has 52,000,000 E33 Shares as at the date of the Announcement, the maximum amount of cash consideration that would be payable by the Bidder under the Offer if all acceptances were received for all E33 Shares which the Bidder does not already directly own (including any additional E33 Shares which become part of the bid class during the Offer Period as a result of exercising of any other securities), is approximately A\$16 million at the Offer Price of \$0.022 (2.2c) per E33 Share, not including transaction costs.

9.2 Overview of the Bidder funding arrangements

The Bidder has immediate access to sufficient funds to pay for all the bid class securities and will fund the maximum possible cash consideration (**Maximum Consideration Amount**) including associated transaction costs under the Offer (**Aggregate Amount**) from a financing arrangement between the Bidder and Research Corporation Pty Ltd (**Research Corporation**). Research Corporation has agreed to provide 100% of the funds required to pay for all the bid class securities under a limited recourse loan agreement with the Bidder (**Funding Agreement**). At this stage, the amount under the Funding Agreement is \$17 million (which may be varied if the Offer is varied).

Research Corporation Pty Ltd, an entity controlled by Mr Anthony Hall has agreed to provide the Bidder with financing to pay the Aggregate Amount, being the expected total amount to pay for all the bid class securities. Mr Hall also holds 53.625% of the shares in the Bidder.

There is no restriction on the availability of the funds under the Funding Agreement. The funds are being held in an at-call interest-bearing bank account for use by the Bidder to pay the consideration for any acceptances under the Offer, subject to the Offer becoming unconditional.

The terms of the Funding Agreement are summarised as follows:

Matter	Detail
Loan Amount	\$17 million (which may be varied if the Offer is varied)
Interest rate	BBSW + 5.0% per annum
Final repayment date	Earlier of 30 June 2025 and 3 business days after the Bidder completes its next equity capital raising
Prepayment available	Yes

The funds available to the Bidder under the Funding Agreement is more than sufficient to fund the Aggregate Amount payable by the Bidder pursuant to the Offer and all other transaction costs.

Based on the arrangements described above, the Bidder is of the opinion that it has a reasonable basis for forming the view, and it holds the view, that it will have sufficient funds available to meet its payment obligations to the E33 Shareholders under the Offer.

9.3 Payment of cash consideration

Having regard to the matters set out above, the Bidder is of the opinion that it has a reasonable basis for forming, and it holds, the view that it will be able to pay cash consideration including any relevant transaction cost pursuant to the Offer. The Offer is not subject to any financing conditions.

10. Taxation information

The following is a general description of Australian income and capital gains tax consequences for E33 Shareholders of the acceptance of the Offer and does not take into account the specific circumstances of any particular E33 Shareholder. It does not constitute tax advice and should not be relied upon as such. All E33 Shareholders should seek independent professional advice on the consequences of their disposal of E33 Shares, based on their particular circumstances.

The outline reflects the current provisions of the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth) (collectively, **the ITAA**) and the regulations made under those Acts. The outline does not otherwise take into account or anticipate any changes in the law, whether by way of judicial decision or legislative action, nor does it take into account tax legislation from countries apart from Australia.

The comments below are not exhaustive of all possible Australian tax considerations that could apply to E33 Shareholders. In particular, the comments are relevant to those E33 Shareholders who are individuals, complying superannuation entities, trusts and companies that hold their investments on capital account. The tax treatment for E33 Shareholders who hold their investments on revenue account or as trading stock, such as banks and other trading entities, has not been addressed. In addition, these comments do not take into account the circumstances of E33 Shareholders who acquired their E33 Shares in respect of their, or an Associate's employment with E33 or any member of the E33 Group.

For E33 Shareholders who are non-residents of Australia for tax purposes, it is assumed that the E33 Shares are not held, and never have been held or used at any time, as an asset in carrying on a business through a permanent establishment of that E33 Shareholder in Australia.

It is further noted that these comments do not address the position for E33 Shareholders who are partnerships, tax exempt organisations, temporary residents, have a functional currency for Australian tax purposes other than an Australian functional currency, who are subject to the taxation of financial arrangements rules in Division 230 of the ITAA in relation to gains and losses on their E33 Shares, or are subject to the Investment Manager Regime under Subdivision 842-I of the ITAA in respect of their E33 Shares.

10.1 Australian tax resident E33 Shareholders

The acceptance of the Offer in respect of an E33 Share gives rise to a disposal for CGT purposes of that E33 Share by the relevant E33 Shareholder. The disposal gives rise to CGT Event A1. An Australian tax resident E33 Shareholder should make a capital gain at the time of that CGT Event if the capital proceeds received on disposal exceed their cost base in the E33 Share. An Australian resident E33 Shareholder should make a capital loss at the time of that CGT Event if the capital proceeds received on disposal are less than their reduced cost base in the E33 Share.

In broad terms, the capital proceeds should constitute the Offer Price (being A\$0.022 per E33 Share) an E33 Shareholder receives by accepting the Offer.

The cost base and reduced cost base (in the case of a capital loss) of an E33 Share is generally the amount the Australian resident E33 Shareholder paid for the E33 Share (including incidental costs of acquisition and disposal that have not otherwise been deducted). In some cases, there may be financing costs of ownership that will form part of the cost base of the E33 Share.

The taxable amount of any capital gain may be reduced if the CGT discount applies. If an Australian resident E33 Shareholder is an individual, a complying superannuation entity or a trust or a specified life insurance company, the amount of the Australian resident E33 Shareholder's capital gain may be reduced by the relevant CGT discount. If an Australian resident E33 Shareholder who is an individual or trust applies the CGT discount, the shareholder's capital gain (after offsetting any current year capital losses or carry forward net capital losses from previous income years) will be reduced by one half (or one third if the

Australian tax resident E33 Shareholder is a complying superannuation entity or specified life insurance company). The CGT discount rules are not available for capital gains made on an E33 Share where indexation applies to the relevant E33 Share.

The CGT discount is only available to an Australian tax resident E33 Shareholder that is an individual, a complying superannuation entity trust or specified life insurance company where the disposal occurs at least 12 months and one day after the acquisition (for CGT purposes) of the relevant E33 Share. That is, the E33 Share must have been held for at least 12 months (for CGT purposes) prior to accepting the Offer for the CGT discount to be available for that E33 Share.

If the Australian resident E33 Shareholder is a company, the CGT discount is not available at any time.

The above comments do not apply to E33 Shareholders who buy and sell shares in the ordinary course of business, or those who acquired the shares for resale at a profit. In those cases, any gain will generally be taxed as ordinary income. All E33 Shareholders should seek their own advice.

10.2 Non-resident E33 Shareholders

An E33 Shareholder who is not a resident of Australia for tax purposes and who has never used their shares in carrying on a business through a permanent establishment in Australia will generally not have to pay Australian tax on any capital gain made when disposing of E33 Shares.

This is unless the shares in E33 are 'indirect Australian real property interests'. E33 Shares will be 'indirect Australian real property interests' where both of the following requirements are satisfied:

- (a) the interest held in E33 is a "non-portfolio" interest; and
- (b) the E33 Shares pass the "principal asset test" at the time of disposal.

If either of these tests are not satisfied, any capital gain made on the disposal of the E33 Shares should not be subject to income tax in Australia.

A non-resident E33 Shareholder will hold a "non-portfolio interest" in E33 if (together with Associates) they own at the time of the disposal for CGT purposes, or owned, throughout a 12 month period that begins no earlier than 24 months before that time and ends no later than that time, 10% or more of all of the shares in E33.

The E33 Shares would pass the "principal asset test" if the market value of E33's direct and indirect interests in Australian real property (including leases of land, if the land is situated in Australia, and Australian mining, quarrying or prospecting rights) is more than the market value of its other assets at the time a non-resident E33 Shareholder accepts the Offer. There are tracing rules that will take into account any real property interests held by Subsidiaries of E33.

Detailed calculations are required to determine the results of the "principal asset test" and to determine the amount of Australian tax that is payable (to the extent tax is payable).

If a non-resident E33 Shareholder buys and sells shares in the ordinary course of business, or acquired the shares for resale at a profit, any gain could be taxed in Australia as ordinary income and not as a capital gain, subject to the provisions of any applicable Double Taxation Agreement. Again, non-resident E33 Shareholders should seek their own advice.

Non-resident E33 Shareholders should seek advice from their taxation advisor as to the taxation implications of accepting the Offer in their country of residence (as well as any Australian taxation implications).

10.3 Foreign resident capital gains withholding

Broadly, under the 'foreign resident capital gains withholding' (**FRCGTW**) regime, a purchaser of shares may have an obligation to withhold and remit to the Australian Taxation Office an amount equal to 12.5% of the purchase price for each share under section 14-200 of Schedule 1 of the *Taxation Administration Act 1953* (Cth) (**TAA**) where the vendor is a non-resident.

The Bidder does not expect to withhold any amount from the Offer Price on account of FRCGTW on the basis that the acquisition of each E33 Share will occur through acceptance of the Offer which will result in the acquisition occurring on an approved stock exchange (being, the ASX). The acquisition should therefore be an 'excluded transaction' for the purposes of the FRCGTW regime.

10.4 Stamp duty

No stamp duty will be payable by E33 Shareholders in respect of a transfer of their E33 Shares under the Offer. The Bidder will pay the stamp duty (if any) payable in Australia on the transfer of E33 Shares under the Offer.

10.5 Goods & Services Tax

No GST will be payable by E33 Shareholders in respect of a transfer of their E33 Shares under the Offer.

11. Additional information

11.1 Bid Implementation Deed

As announced on the Announcement Date, the Bidder and E33 have entered a Bid Implementation Deed dated 5 August 2024 (**BID**) which sets out the terms for implementation of the Offer.

The key terms of the BID are as follows:

- (a) (**Bid Conditions**) The Offer is subject to several Bid Conditions. These Bid Conditions are detailed in full at section 12.2 of this Bidder's Statement.
- (b) (**Conduct of Business**) During the Exclusivity Period, E33 must conduct its business in the ordinary course, in accordance with all applicable laws and regulations, provided that nothing restricts E33 from engaging in anything required or permitted to be done or not done under the BID or otherwise required to be done in connection with the legal obligations for the implementation of the Offer or matters consented to in writing by the Bidder (acting reasonably).
- (c) (**Variation**) The BID provides that the Bidder may vary the Offer in any manner permitted by the Corporations Act so far as the terms are no less favourable to E33 Shareholders than the Bid Conditions (detailed at Schedule 1 of the BID). Further, the Bidder may declare the bid to be free from any Bid Condition and extend the Offer Period at any time.
- (d) (**Exclusivity**) E33 has agreed to exclusivity obligations. The BID contains no shop, no talk and no due diligence restrictions on E33. During the Exclusivity Period, E33 must not directly or indirectly:
 - (i) (**no shop**) solicit, invite, encourage or initiate (including by the provision of non-public information to any Third Party) any inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or communicate to any person an intention to do anything referred to in this clause;
 - (ii) (**no talk**):
 - (A) participate in or continue any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any person to make, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or participate in or continue any negotiations or discussions with respect to any actual, proposed or potential Competing Proposal;
 - (B) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Competing Proposal;
 - (C) disclose or otherwise provide any non-public information about the business or affairs of the E33 Group to a Third Party (other than a Government Agency) with a view to obtaining, or which would reasonably be expected to encourage or lead to receipt of, an actual, proposed or potential Competing Proposal (including, without limitation, providing such information for the purposes of the conduct of due diligence investigations in respect of the E33 Group whether by that Third Party or another person); or

- (D) communicate to any person an intention to do anything referred to in the preceding paragraphs
- (e) **(Notification of approaches)** Subject to the fiduciary exception noted below, during the Exclusivity Period, E33 must as soon as possible (and in any event within 24 hours) notify the Bidder in writing if it, or any of its Related Persons, becomes aware of any:
 - (i) written proposal (**Written Proposal**) is received by E33 or any of its Related Persons, in connection with, or in respect of any exploration or completion of, an actual, proposed or potential Competing Proposal; or
 - (ii) following a Written Proposal being received by E33, provision by E33 or any of its Related Persons of any non-public information concerning the business or operations of E33 or the E33 Group to any a Third Party (other than a Government Agency) in connection with an actual, proposed or potential Competing Proposal,

whether direct or indirect, solicited or unsolicited, and in writing or otherwise.

- (f) **(Matching right)** Subject to the fiduciary exception noted below, E33:
 - (i) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, E33 or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Proposal; and
 - (ii) must use reasonable endeavours to procure that none of its independent directors change their recommendation of the Offer or publicly recommend an actual, proposed or potential Competing Proposal or recommend against the Offer (provided that a statement that no action should be taken by E33 Shareholders pending the assessment of a Competing Proposal by the E33 IBC and its advisers shall not contravene this clause),

unless:

- (iii) the E33 IBC determines that the Competing Proposal constitutes a Superior Proposal;
- (iv) E33 has provided Yumbah with all known terms and conditions of the actual, proposed or potential Competing Proposal, including price and the identity of the Third Party making the actual, proposed or potential Competing Proposal;
- (v) E33 has given Yumbah no less than 5 Business Days and no more than 10 Business Days after the date of the provision of the information referred to section 11.1(f)(iv) above to provide a counter proposal to the Competing Proposal (**Yumbah Counterproposal**); and
- (vi) either:
 - (A) Yumbah has not announced or otherwise formally proposed to E33 a Counterproposal by the expiry of period referred to above; or
 - (B) Yumbah has announced or provided to E33 a E33 Counterproposal by the expiry of the period referred above, that the E33 IBC, acting reasonably and in good faith, determines would not provide a matching or superior outcome for E33 Shareholders as a whole compared with the Competing Proposal, taking into account all of the terms and conditions of the Yumbah Counterproposal.

- (g) **(Fiduciary exception)** The restrictions detailed above do not apply to the extent that it restricts E33 from responding to an actual, proposed or potential Competing Proposal, provided the E33 IBC has determined in good faith based on the information then available and after consultation from its legal advisers, that:
- (i) the Competing Proposal is, or may reasonably be expected to become a Superior Proposal; and
 - (ii) failing to respond with respect to the Competing Proposal would be reasonably likely to constitute a breach of any of the legal obligations or fiduciary duties of the members of the E33 IBC.
- (h) **(Warranties)** Both the Bidder and E33 have provided standard warranties to one another.
- (i) **(Termination)** Standard termination clauses have been agreed to in the BID including where:
- (i) **(Material breach)** a material breach of the BID occurs;
 - (ii) **(Change of recommendation – Bidder)** the Bidder may terminate the BID if any of the following occurs:
 - (A) any member of the E33 IBC withdraws, adversely revises or adversely modifies his or her recommendation that E33 Shareholders accept the Offer;
 - (B) any member of the E33 IBC makes a public statement indicating that he or she no longer recommends the Offer or recommends, supports or endorses another transaction (including any Competing Proposal but excluding a statement that no action should be taken by E33 Shareholders pending the assessment of a Competing Proposal by the E33 IBC);
 - (iii) **(Superior Proposal)** E33 may terminate the BID by written Notice to the Bidder at any time before the end of the Offer Period if E33 has received a Superior Proposal and the E33 IBC has determined that the proposal is a Superior Proposal, and the Bidder does not exercise its matching right;
 - (iv) **(Change of recommendation – E33)** E33 may terminate the BID by written notice to the Bidder at any time before the end of the Offer Period if the E33 IBC or a majority of the E33 IBC has changed, withdrawn or modified its recommendation; or
 - (v) **(Withdrawal by Bidder)** E33 may terminate the BID by written notice to the Bidder at any time before the end of the Offer Period if the Bidder withdraws the Offer or applies to ASIC for consent to withdraw unaccepted offers under the Corporations Act.
 - (vi) **(Breach of representations and warranties)** Each party may terminate the BID if the other party breaches any representation and warranty made by it and:
 - (A) the other party has given written notice to breaching party setting out the relevant circumstances and stating an intention to terminate the BID;
 - (B) the relevant breach continues to exist 5 Business Days (or any shorter period ending at the end of the Offer Period) after the date on which the notice is given; and

- (C) the relevant breach is material in the context of the Offer taken as a whole.
- (j) (**Reimbursement Fee**) Each party may be liable to pay the other party a Reimbursement Fee if the other party is entitled to terminate the BID.

11.2 Date for determining holders of E33 Shares

For the purposes of section 633(2) of the Corporations Act, the date for determining the people to whom information is to be sent under items 6 and 12 of section 633(1) is the Register Date.

11.3 Recapitalisation Transaction

As announced by E33 on ASX on 16 August 2023, an Associate of the Bidder, Yumbah Finance Pty Ltd (**Yumbah Finance**) and E33 entered into a loan facility for \$15 million and convertible note agreement. Further details are set out in the notice of meeting and independent experts report dated 23 October 2023 prepared for the general meeting held on 24 November 2023 where shareholder approval was obtained.

On 28 February 2024, Yumbah Finance and E33 entered an Amended Convertible Note Subscription Agreement and the Amended Facility Agreement (**Recapitalisation Documents**) as approved at the general meeting held by E33 on 23 April 2024 (**Recapitalisation Transaction**).

As announced on 29 February 2024 and described in E33's notice of general meeting on 22 March 2024, the Recapitalisation Transaction involved:

- » ordinary shares in E33 (**Conversion Shares**), with such number of Conversion Shares being determined by dividing \$5.0 million of the face value by a minimum price of \$0.021 (being the higher of \$0.021 or a 10% discount to the 20-day volume weighted average price calculated to the last trading day prior to the conversion date). The \$5.0 million was deemed to be paid by Yumbah Finance in reduction of the amount owing by E33 under the facility agreement between E33 and Yumbah Finance (**Facility Agreement**), which has a facility limit of \$15.0 million plus capitalised interest and has \$10.0 million drawn down, so bringing the amount owing under the Facility Agreement to \$5.0 million plus capitalised interest; and
- » following the Convertible Note Conversion, allowing E33 to maintain the facility limit under the Facility Agreement at \$15.0 million plus capitalised interest, meaning that, with the facility paid down by \$5.0 million, E33 has access to a further \$10.0 million under the Facility Agreement.

An independent expert's report was prepared in respect of the approval of the Amended Convertible Note Subscription Agreement under ASX Listing Rule 10.11 and Chapter 2E of the Corporations Act, as well as approval for the issue of the Conversion Shares to Yumbah Finance and the consequential increase in the Relevant Interest of Yumbah Finance (and its associated entities), under item 7 of s611 and Chapter 2E of the Corporations Act.

11.4 On Market Purchases

Subject to the Corporations Act, and in accordance with rule 5.13.1 of the ASIC Market Integrity Rules, the Bidder may appoint a broker to acquire E33 Shares on market during normal trading hours on the ASX during the Offer Period (as defined in the ASIC Market Integrity Rules) at prices equal to, below, or higher than, the Offer Price (**On Market Purchases**).

If the Bidder instructs its broker to make on market acquisitions of E33 Shares on its behalf above the then Offer Price, it will instruct its broker that upon the order on market First Executing on ASX Trade (such that it results in any acquisition above the then Offer Price), the broker is to remove any other orders on the Bidder's behalf from the market (if any have been entered)

at that time. On the happening of the order First Executing on ASX Trade, the Bidder will promptly make an announcement on ASX of the purchase or purchases, and the price (or highest price) paid and that the Offer Price is automatically increased accordingly under section 651A of the Corporations Act, before the Bidder (through its broker) makes any further on-market acquisitions other than as ASX trade automatically matches any unfilled balance under the order. As soon as practicable following that announcement on ASX, the Bidder will lodge and serve a supplementary bidder's statement as required by law.

If the Offer Price paid to acquire E33 Shares in an On Market Purchase is higher than the Offer Price, E33 Shareholders who have previously received consideration for accepted E33 Shares shall be entitled to receive the increase in consideration.

11.5 Consents

(a) K&L Gates - Australian legal advisers

K&L Gates LLP has given and has not, before the date of this Bidder's Statement, withdrawn, its written consent to be named in this Bidder's Statement as legal adviser to the Bidder in respect of the Offer.

(b) Unified Capital Partners – Financial advisor

Unified Capital Partners has given and have not, before the date of this Bidder's Statement, withdrawn, their written consent to be named in this Bidder's Statement as financial advisor in respect of the Offer.

(c) BoardRoom – Registry services providers

BoardRoom has given and has not, before the date of this Bidder's Statement, withdrawn, its written consent to be named in this Bidder's Statement as registry services provider to the Bidder in respect of the Offer.

(d) East 33 Limited

E33 has given and has not, before the date of this Bidder's Statement, withdrawn, its written consent for the Bidder to use the statements attributed to it in this Bidder's Statement in respect of the Offer as set out in Section 7.5.

Each person named in this Section 11.5 as having given its consent to the inclusion of a statement or being named in this Bidder's Statement:

- does not make, or purport to make, any statement in this Bidder's Statement or any statement on which a statement in this Bidder's Statement is based other than, in the case of a person referred to above as having given their consent to the inclusion of a statement included in this Bidder's Statement with the consent of that person; and
- to the maximum extent permitted by law, expressly disclaims and takes no responsibility for any part of this Bidder's Statement, other than a reference to its name and, in the case of a person referred to above as having given their consent to the inclusion of a statement, any statement which has been included in this Bidder's Statement with the consent of that party.

11.6 No other material information

Except as set out in this Bidder's Statement, there is no other information that is material to the making of the decision by a holder of E33 Shares whether or not to accept the Offer which is known to the Bidder and has not previously been disclosed to E33 Shareholders.

11.7 ASIC modifications

The Bidder has not obtained from ASIC any modifications to, nor exemptions from, the Corporations Act in relation to the Offer. However, ASIC has published various instruments providing modifications and exemptions that apply generally to all persons, including the Bidder, and on which the Bidder may rely.

This Bidder's Statement includes statements which are made in, or based on statements made in, documents lodged with ASIC or given to ASX. Under the terms of ASIC Corporations (Takeover Bids) Instrument 2023/683, the parties making those statements are not required to consent to, and have not consented to, inclusion of those statements in this Bidder's Statement whether the Bidder's Statement fairly represents the statement or includes, or is accompanied by, a correct and fair copy of the document or the part of the document that contains the statement.

The Bidder will make available a copy of these documents (or of relevant extracts from these documents) free of charge to E33 Shareholders who request it during the Offer Period. If you would like to obtain a copy of these documents (or the relevant extracts), please contact the Offer Information Line on 1300 737 760 (within Australia) or +61 2 9290 9600 (outside Australia) between 8:30 am to 5:30 pm (Sydney time) on Business Days.

As permitted by ASIC Corporations (Consents to Statements) Instrument 2016/72 (**Corporations Instrument 2016/72**), this Bidder's Statement may include or be accompanied by certain statements:

- (a) which fairly represent what purports to be a statement by an official person;
- (b) which are a correct and fair copy of, or extract from, what purports to be a public official document; or
- (c) which are a correct and fair copy of, or extract from, a statement which has already been published in a book, journal or comparable publication.

In addition, as permitted by ASIC Corporations Instrument 2016/72, this Bidder's Statement contains security price trading data sourced from IRESS, who has not consented to the use of the reference in the disclosure document.

11.8 Regulatory and other approvals

There are no regulatory approvals that the Bidder is required to obtain before acquiring E33 Shares under the Offer.

11.9 Risks of accepting the Offer

The risks associated with accepting the Offer include:

- (a) If the Conditions are not satisfied or waived, the Bidder may allow the Offer to lapse.
- (b) If a Superior Proposal emerges, and an E33 Shareholder has already accepted the Offer, the E33 Shareholder may not be able to withdraw acceptance and accept the Superior Proposal except in limited circumstances.
- (c) E33 Shareholders that accept the Offer will only be able to withdraw acceptance in very limited circumstances as set out in the Corporations Act.
- (d) E33 Shareholders that accept the Offer will forego opportunities from price appreciation of E33 Shares and may be unable to sell E33 Shares for more valuable consideration.

12. The Offer

12.1 General Terms

- (a) As announced to the ASX in the Announcement, the Bidder is making an Offer under an off-market takeover bid to acquire all E33 Shares which exist (or will exist) and are listed for quotation on ASX at any time during the Offer Period.
- (b) The Bidder offers to acquire all of your E33 Shares on the terms and conditions set out in this Bidder's Statement.
- (c) The consideration offered for each of your E33 Shares is the equivalency of A\$0.022 in cash consideration.
- (d) The Offer is subject to conditions as set out below.

12.2 Bid Conditions

Subject to Section 12.3, the completion of this Offer and any contract that results from an acceptance of this Offer, are subject to the fulfilment or waiver of the conditions set out below before the end of the Offer Period:

(a) **Minimum acceptance**

During, or at the end of, the Offer Period, the number of E33 Shares in which the Bidder has a Relevant Interest is at least 90% of all E33 Shares.

(b) **Prescribed Occurrences**

None of the following events occur, is announced or otherwise becomes known to the Bidder between the Announcement Date and the end of the Offer Period:

- (i) E33 converting all or any of the E33 Shares into larger or smaller numbers of shares under section 254H of the Corporations Act;
- (ii) any E33 Group member resolving to reduce its share capital in any way;
- (iii) any E33 Group member entering into a buy-back agreement or resolving to approve the terms of a buy-back agreement under section 257C(1) or 257D(1) of the Corporations Act;
- (iv) other than as agreed with Yumbah, any E33 Group member issuing shares, or granting an option over its shares, or agreeing to make such an issue or grant such an option;
- (v) any E33 Group member issuing, or agreeing to issue, convertible notes;
- (vi) any E33 Group member disposing or agreeing to dispose of the whole, or a substantial part, of its business or property;
- (vii) any E33 Group member granting, or agreeing to grant, a security interest in the whole, or a substantial part, of its business or property; and
- (viii) any E33 Group member resolving to be wound up.

(c) **Regulated Events**

None of the following events (each a **Regulated Event**) occurs, is announced or otherwise becomes known to the Bidder between the Announcement Date and the end of the Offer Period:

- (i) **(Issue of securities)** other than as agreed with Yumbah, E33 issues securities, derivatives, options or other rights convertible into, or that may result in the issue of, E33 Shares being issued or granted (or agreed to be issued or granted) or otherwise alters E33's capital structure or rights attaching to E33 securities, derivatives, options or other rights occurring;
- (ii) **(Acceleration of employee incentives)** any E33 Group member agrees to accelerate rights of any person to receive any benefit under any employee incentive plan, vary any employee incentive plan, grant or issue any new rights under any employee incentive plan or introduce a new employee incentive plan, other than acceleration or vesting of any existing E33 convertible securities pursuant to the terms of any employee incentive plan;
- (iii) **(Dividends)** any E33 Group member announces, declares or determines to pay any dividend or announces or makes any other distribution (whether in cash or in specie) to its members;
- (iv) **(Acquisitions and disposals)** any E33 Group member:
 - » acquires or disposes of any shares or other securities in any body corporate or any units in any trust;
 - » acquires substantially all of the assets of any business;
 - » other than as agreed with the Bidder, disposes of, or agrees to dispose of or licences, the whole, or a substantial part of its business or property; or
 - » exercises or waives any pre-emptive rights or rights of first or last refusal in respect of any undertaking, entity, asset or business (or such interest in an undertaking, entity, asset or business) held by another person, the value of which exceeds, or which could reasonably be expected to exceed, A\$300,000 in aggregate;
- (v) **(Licences)** any E33 Group member varies or waives its rights in any materially adverse respect, or terminates, cancels, surrenders, forfeits or allows to lapse or expire (without renewal on terms and conditions that are no less favourable to the E33 Group) any material licence, lease or authorisation (or a number of licences, leases or authorisations which, when taken together, are material to the conduct of the business of the E33 Group as a whole);
- (vi) **(Joint ventures)** any E33 Group member enters into or agrees to enter into any agreement, contract, lease, joint venture, partnership, or other arrangement or instrument (including a commitment to contribute to exploration, appraisal, development or other costs and expenditure if a call or other demand is made upon it), which restricts the ability of any E33 Group member or any person who controls E33 from engaging in or competing with any business in any place;
- (vii) **(Capital expenditure)** any E33 Group member incurs or agrees to incur capital expenditure in excess of the Board Endorsed Budget, with any such excess being subject to agreement between E33 and the Bidder;
- (viii) **(Capital commitments)** any E33 Group member gives or agrees to give:

- (A) any guarantee of, or security for, or financial accommodation, or indemnity in connection with the obligations of any person other than a E33 Group member;
- (B) any encumbrance over any of its assets (or an interest in any of its assets), other than liens in the ordinary and usual course of business;
- (ix) **(Employment terms)** other than as agreed between E33 and the Bidder, any E33 Group member agrees to increase in any material respect the remuneration of, makes or offers to make any bonus payment, retention payment or termination payment to, or otherwise materially change the terms and conditions of employment of any E33 Director or any employee of any E33 Group member, other than (i) in respect of an annual salary review in the ordinary course of business or (ii) in respect of any bonus, retention or termination payments which does not in aggregate exceed A\$100,000;
- (x) **(Disputes)** any E33 Group member commences, comprises or settles any litigation or similar proceeding for an amount exceeding A\$300,000; and
- (xi) **(Compliance with law)** any E33 Group member fails to comply in all material respects with all laws and regulations applicable to its business or does or omits to do anything which might result in the termination, revocation, suspension, modification or non-renewal of any authorisation held by it.
- (d) **(No restraint)** Between the Announcement Date and the end of the Offer Period (each inclusive), nothing restrains, prohibits or impedes, or otherwise materially adversely impacts the Offers and the completion of the Offer or which requires the divestiture by the Bidder of any E33 Shares or any material assets of E33 or any Subsidiary of E33.
- (e) **(No termination of BID)** Between the Announcement Date and the end of the Offer Period (each inclusive), the Bidder does not become entitled to terminate the BID as a result of any of the representations and warranties given by E33 under the BID becoming untrue or incorrect in any material respect.

12.3 Nature and benefit of conditions

- (a) The conditions in Section 12.2 are conditions subsequent. The non-fulfilment of any condition subsequent does not, until the end of the Offer Period, prevent a contract to sell your E33 Shares from arising, but non-fulfilment of any of those conditions will have the consequences set out in Section 12.3.
- (b) Subject to the Corporations Act, the Bidder alone is entitled to the benefit of the conditions in Section 12.2, or to rely on any non-fulfilment of any of them.
- (c) Each condition in Section 12.2 is a separate, several and distinct condition. No condition will be taken to limit the meaning or effect of any other condition.

12.4 Waiver of conditions

- (a) The Bidder may, in its sole discretion, waive this Offer, and any contract resulting from its acceptance, from all or any of the conditions subsequent in Section 12.2, either generally or by reference to a particular fact, matter, event, occurrence or circumstance (or class thereof), by giving a notice to E33 and to ASX declaring this Offer to be free from the relevant condition or conditions specified, in accordance with section 650G(b) and 650F(1) of the Corporations Act (as modified by ASIC Corporations (Takeover Bids) Instrument 2023/683). This notice will be given:
 - (i) in the case of a Bid Condition, no more than three (3) Business Days after the end of the Offer Period; and

- (ii) in any other case, no less than seven (7) days before the end of the Offer Period.
- (b) If, at the end of the Offer Period (or in the case of the Bid Conditions in Section 12.2, at the end of the third Business Day after the end of the Offer Period), the conditions have not been fulfilled and the Bidder has not declared the Offer (or it has not become) free from those conditions, all contracts resulting from the acceptance of the Offer will be automatically void.

12.5 Offer Period

Unless withdrawn, this Offer will remain open for acceptance during the period commencing on the date of this Offer, being [#] 2024, and ending at 5:00 pm (Sydney time) on the later of [#] 2024 and any date to which the Offer Period is extended in accordance with the Corporations Act. The Bidder expressly reserves its rights to extend the Offer Period in accordance with the Corporations Act.

12.6 Accepting this Offer

(a) General information

You may accept this Offer in respect of all of your E33 Shares but for no more or less. You may only accept this Offer at any time during the Offer Period. If you accept the Offer, you will be taken to have accepted the Offer for all your E33 Shares (despite any difference between that number and the number of E33 Shares specified on your Acceptance Form when you accept this Offer).

(b) E33 Shares held in your name on E33's issuer sponsored subregister (your SRN starts with an "I")

To accept this Offer:

(i) Paper:

- (A) complete and sign the Acceptance Form enclosed with this Bidder's Statement in accordance with the terms of this Offer and the instructions on the Acceptance Form; and
- (B) ensure that the Acceptance Form (including any documents required by the terms of this Offer and the instructions on the Acceptance Form) is sent so that it is received before the end of the Offer Period at the address shown on the Acceptance Form.

(c) E33 Shares held in your name in a CHES Holding (your HIN starts with an "X")

To accept this Offer you must:

(i) Initiating acceptance in CHES – either:

- (A) If you are not a Participant, you should instruct your Controlling Participant (this is normally your broker) to initiate acceptance of this Offer on your behalf in accordance with Rule 14.14 of the ASX Settlement Operating Rules in sufficient time for this Offer to be accepted before the end of the Offer Period.
- (B) If you are a Participant, you should initiate acceptance of this Offer in accordance with Rule 14.14 of the ASX Settlement Operating Rules before the end of the Offer Period; or

- (ii) **Accepting by paper:** complete and sign the Acceptance Form enclosed with this Bidder's Statement in accordance with the instructions on the form and send it with all other documents required by those instructions on it if by post, to the address shown on the Acceptance Form,

in each case sent and received in sufficient time for BoardRoom to give instructions to your Controlling Participant and for your Controlling Participant to carry out those instructions before the end of the Offer Period. This will authorise the Bidder to initiate, or alternatively to instruct your Controlling Participant to initiate, acceptance of the Offer on your behalf, so as to be effective before the end of the Offer Period. You must ensure that the relevant Acceptance Forms (and other required documents) are received in sufficient time for the Bidder to give instructions to your Controlling Participant, and for your Controlling Participant to carry out those instructions, before the end of the Offer Period. If you do return your completed Acceptance Form to BoardRoom instead of your Controlling Participant, BoardRoom will endeavour to contact your Controlling Participant on your behalf and relay your instructions but makes no guarantee that it will do so. It is your Controlling Participant's responsibility to acknowledge and accept these instructions so please ensure you allow sufficient time to do so. Neither the Bidder nor BoardRoom will be responsible should your Controlling Participant not acknowledge and accept your instructions.

12.7 Effect of acceptance

Once you have accepted the Offer, you will be unable to revoke your acceptance, the contract resulting from your acceptance will be binding on you and you will be unable to withdraw your accepted E33 Shares from the Offer or otherwise dispose of your accepted E33 Shares, except as follows:

- (a) if, by the relevant times specified below, the conditions in Section 12.2 have not been fulfilled or freed, this Offer will automatically terminate and your accepted E33 Shares will be released to you. The relevant times are:
 - (i) in relation to the condition in Section 12.2(b), the end of the third Business Day after the end of the Offer Period; and
 - (ii) in relation to all other conditions in Section 12.2, the end of the Offer Period.
- (b) if the Offer Period is varied in a way that postpones for more than one month the time when the Bidder must pay the consideration under the Offer and, at the time, this Offer is subject to one or more of the conditions in Section 12.2, you may be able to withdraw your acceptance in accordance with section 650E of the Corporations Act. A notice will be sent to you at the time explaining your rights in this regard.
- (c) By completing, signing and returning the Acceptance Form, or otherwise accepting this Offer pursuant to Section 12.6, you will be deemed to have:
 - (i) accepted this Offer (and any variation of it) in respect of, and, subject to all the conditions to this Offer in Section 12.2 being fulfilled or freed, agreed to transfer to the Bidder, all of your accepted E33 Shares;
 - (ii) represented and warranted to the Bidder that at the time of acceptance, and the time the transfer of your accepted E33 Shares to the Bidder is registered, that all your accepted E33 Shares are and will be free from all mortgages, charges, liens, encumbrances and adverse interests of any nature (whether legal or otherwise) and free from restrictions on transfer of any nature (whether legal or otherwise), that you have full power and capacity to accept this Offer and to sell and transfer the legal and beneficial ownership in your accepted E33 Shares to the Bidder, and that you have paid to E33 all amounts which at the time of acceptance have fallen due for payment to E33 in respect of your accepted E33 Shares;

- (iii) irrevocably authorised the Bidder (and any director, secretary, nominee or agent of the Bidder) to alter the Acceptance Form on your behalf by inserting correct details relating to your accepted E33 Shares, filling in any blanks remaining on the form and rectifying any errors or omissions as may be considered necessary by the Bidder to make it an effective acceptance of this Offer or to enable registration of your accepted E33 Shares in the name of the Bidder;
- (iv) if you signed the Acceptance Form in respect of E33 Shares which are held in a CHESS Holding, irrevocably authorised the Bidder (or any director, secretary, nominee or agent of the Bidder) to instruct your Controlling Participant to initiate acceptance of this Offer in respect of your accepted E33 Shares in accordance with Rule 14.14 of the ASX Settlement Operating Rules;
- (v) if you signed the Acceptance Form in respect of E33 Shares which are held in a CHESS Holding, irrevocably authorised the Bidder (or any director, secretary, nominee or agent of Bidder) to give any other instructions in relation to your accepted E33 Shares to your Controlling Participant on your behalf under the sponsorship agreement between you and the Controlling Participant, as determined by the Bidder acting in its own interests as a beneficial owner and intended registered holder of those E33 Shares;
- (vi) irrevocably authorised the Bidder to notify E33 on your behalf that your place of address for the purpose of serving notices upon you in respect of your accepted E33 Shares is the address specified by the Bidder in the notification;
- (vii) with effect from the time and date on which all the conditions to this Offer in section 12.2 have been fulfilled or freed, to have irrevocably appointed the Bidder (and any director, secretary or nominee of the Bidder) severally from time to time as your true and lawful attorney to exercise all your powers and rights in relation to your accepted E33 Shares, including (without limitation) powers and rights to requisition, convene, attend and vote in person, by proxy or by body corporate representative, at all general meetings and all court-convened meetings of E33 and to request E33 to register, in the name of the Bidder or its nominee, your accepted E33 Shares, as appropriate, with full power of substitution (such power of attorney, being coupled with an interest, being irrevocable);
- (viii) with effect from the date on which all the conditions to this Offer in section 12.2 have been fulfilled or freed, to have agreed not to attend or vote in person, by proxy or by body corporate representative at any general meeting or any court-convened meeting of E33 or to exercise or purport to exercise any of the powers and rights conferred on the Bidder (and its directors, secretaries and nominees);
- (ix) agreed that in exercising the powers and rights conferred by the powers of attorney granted under Section 12.7(c)(viii), the attorney will be entitled to act in the interests of the Bidder as the beneficial owner and intended registered holder of your accepted E33 Shares;
- (x) agreed to do all such acts, matters and things that the Bidder may require to give effect to the matters the subject of this Section 12.7 (including the execution of a written form of proxy to the same effect as this section 12.7(c) which complies in all respects with the requirements of the constitution of E33) if requested by the Bidder;
- (xi) where, at that time, you have a right to be registered as a holder of the E33 Shares the subject of your acceptance as the result of an on-market purchase:
 - (A) agreed to use best endeavours to procure the delivery of the E33 Shares the subject of your acceptance to the Bidder in accordance with your acceptance (including giving the Bidder all documents necessary to vest

those E33 Shares in the Bidder or otherwise to give the Bidder the benefit or value of those E33 Shares);

- (B) agreed not to do or omit to do anything which may frustrate your acceptance of this Offer, or otherwise obstruct registration of the transfer of the E33 Shares the subject of your acceptance to the Bidder;
- (C) irrevocably assigned to the Bidder all contractual rights and recourse against the vendor in respect of your on-market purchase which contractual rights and recourse may arise by reason of that person's failure to complete the trade;
- (D) agreed to assign to the Bidder (without any further action being required) all rights in respect of your on-market purchase immediately on any failure by you to complete that trade, including irrevocably assigning to the Bidder all right to (at the Bidder's ultimate discretion) complete that trade on your behalf, and agreed that the Bidder may deduct from the consideration otherwise payable to you (pursuant to a valid acceptance of this Offer and the delivery of the E33 Shares the subject of that acceptance) any amount paid by the Bidder in order to settle that on-market purchase on your behalf. If the Bidder does not, or cannot, make such a deduction, you must pay such amount to the Bidder; and
- (E) agreed that if you are unable to assign to the Bidder any of the rights and recourse specified under sections 12.7(c)(xi)(C) and 12.7(c)(xi)(D), you will assign such rights and recourse as soon as you are legally able to;
- (F) agreed to indemnify the Bidder in respect of any claim or action against it or any loss, damage or liability whatsoever incurred by it as a result of you not producing your Holder Identification Number or SRN or in consequence of the transfer of your accepted E33 Shares to the Bidder being registered by E33 without production of your Holder Identification Number or your SRN for your accepted E33 Shares;
- (G) represented and warranted to the Bidder that your accepted E33 Shares do not consist of separate parcels of E33 Shares;
- (H) irrevocably authorised the Bidder (and any nominee) to transmit a message in accordance with Rule 14.17 of the ASX Settlement Operating Rules to transfer your accepted E33 Shares to the Takeover Transferee Holding of the Bidder, regardless of whether it has paid the consideration due to you under this Offer; and
- (I) agreed, subject to the conditions of this Offer in section 12.2 being fulfilled or freed, to execute all such documents, transfers and assurances, and do all such acts, matters and things that the Bidder may consider necessary or desirable to convey your accepted E33 Shares registered in your name and Rights to the Bidder.

The undertakings and authorities referred to in section 12.7(c) will remain in force after you receive the consideration for your accepted E33 Shares and after the Bidder becomes registered as the holder of your accepted E33 Shares.

By accepting this Offer, you will be deemed to have agreed to the matters set out in section 12.7 above, notwithstanding where this Offer has been caused to be accepted in accordance with the ASX Settlement Operating Rules.

12.8 Payment by the Bidder

In accordance with the usual rules for settlement of transactions which occur off-market on ASX, if you accept the Offer to sell your E33 Shares in accordance with Section 4, you will be paid following the close of the Offer Period and before the earlier of:

- (a) one month after the Offer is validly accepted or the contract resulting from its acceptance becomes unconditional (whichever is the later); and
- (b) 21 days after the Offer closes.

12.9 Withdrawal of Offer

- (a) The Bidder may withdraw the Offer in respect of unaccepted Offers in accordance with the relevant provisions of the Corporations Act (as modified by ASIC Corporations (Takeover Bids) Instrument 2023/683) only with the written consent of ASIC and subject to the conditions (if any) specified in such consent.
- (b) If, at the time this Offer is withdrawn, the Offer remains subject to one or more of the Bid Conditions, all contracts arising from its acceptance will become void (whether or not the events referred to in the relevant conditions have occurred).
- (c) Notice of withdrawal of the Offer must be given by the Bidder to ASX.
- (d) A withdrawal pursuant to this Section 12.9 will be deemed to take effect:
 - (i) if the withdrawal is not subject to conditions imposed by ASIC, on and after the date on which that consent in writing is given by ASIC; or
 - (ii) if the withdrawal is subject to conditions imposed by ASIC, on and after the date on which those conditions are satisfied.

12.10 Variation

The Bidder may vary this Offer in accordance with the Corporations Act. If the Bidder varies the Offer during the last 7 days of the Offer Period, the Offer Period will be extended for a further 14 days.

12.11 Brokerage, stamp duty and other costs

If your E33 Shares are registered in an Issuer Sponsored Holding in your name, the relevant broker you instruct to initiate acceptance on your behalf may charge transactional fees or service charges in connection with acceptance of the Offer.

If your E33 Shares are registered in a CHESS Holding or if you are a beneficial holder and your E33 Shares are registered in the name of a broker, bank, custodian or other nominee (i.e. the Controlling Participant), the Controlling Participant may charge transactional fees or service charges in connection with acceptance of the Offer.

Accordingly, you should ask your broker or Controlling Participant (as applicable) in relation to brokerage which may be charged in connection with your acceptance of the Offer.

All costs and expenses of the preparation, dispatch and circulation of this Offer and all stamp duty payable (if any) on the transfer of your E33 Shares in respect of which the Offer is accepted will be paid by the Bidder.

12.12 Notice and return of documents

Subject to the Corporations Act, a notice or other communication given by the Bidder to you in connection with the Offer will be deemed to be duly given if it is in writing and is signed or purports to be signed on behalf of the Bidder by any director of the Bidder and:

- (a) is delivered at your address as recorded in the register of E33 Shareholders; or
- (b) is sent by prepaid ordinary post, or in the case of any address outside Australia, by prepaid airmail, to you at your address as recorded in the register of E33 Shareholders.

A notice to be given to the Bidder by you in connection with the Offer will be deemed to be duly given to the Bidder if it is in writing and is delivered or sent by post to the Bidder (or other means provided for in this Bidder's Statement) to the following address:

Yumbah Aquaculture Ltd
c/o- Boardroom Pty Ltd
GPO Box 3993
Sydney NSW 2001

12.13 Governing Law

- (a) This Offer and any contract that results from your acceptance of this Offer are governed by the laws in force in New South Wales.
- (b) This Offer is not registered in any jurisdiction outside Australia (unless an applicable foreign law treats it as registered as a result of the Bidder's Statement being lodged with ASIC). It is your sole responsibility to satisfy yourself that you are permitted by any foreign law applicable to you to accept this Offer.

13. Definitions and Interpretation

13.1 Definitions

Words and phrases used in this Bidder's Statement have the same meaning (if any) as given to them by the Corporations Act, the Listing Rules or the ASX Settlement Operating Rules unless that meaning is inconsistent with the context in which the term is used.

In this Bidder's Statement, unless the context otherwise requires:

Acceptance Form means the acceptance form enclosed with this Bidder's Statement;

AFSL means Australian financial services licence number;

Aggregate Amount means as defined in Section 9.2 of this Bidder's Statement;

Amended Convertible Note Subscription Agreement means the Amended and Restated Convertible Note Subscription Agreement between E33 and Yumbah Finance Pty Ltd dated 28 February 2024;

Amended Facility Agreement means Amended and Restated Facility Agreement between E33 and Yumbah Finance Pty Ltd dated 28 February 2024;

Announcement means the announcement of the Offer;

Announcement Date means 5 August 2024;

ASIC means the Australian Securities and Investments Commission;

Associate has the meaning given in section 12 of the Corporations Act;

ASX means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it;

ASX Settlement means ASX Settlement Pty Ltd ACN 008 504 532;

ASX Settlement Operating Rules means the operating rules of ASX Settlement, as amended from time to time;

BID means the Bid Implementation Deed entered by the Bidder and E33 on or around the Announcement Date;

Bid Conditions means the conditions contained in Section 12.2 of this Bidder's Statement;

Bidder means Yumbah Aquaculture Ltd ACN 082 219 636;

Bidder IBC means the independent board committee of directors of the Bidder being all E33 Directors other than Ben Cameron and Gary Higgins.

Bidder's Statement means this Bidder's Statement, being the statement of the Bidder, under Part 6.5 Division 2 of the Corporations Act relating to the Offer;

Board Endorsed Budget means the budget of E33 endorsed by the board on 21 June 2024;

BoardRoom means Boardroom Pty Ltd;

Business Day has the meaning given to that term in the Listing Rules;

CGT means capital gains tax;

CHESS means the Clearing House Electronic Sub-register System which provides for electronic transfer, settlement and registration of securities in Australia;

CHESS Holding has the meaning given to it in the ASX Settlement Operating Rules;

Competing Proposal means any proposal, agreement, arrangement or transaction (or expression of interest therefor), which, if entered into or completed, would result in a Third Party (either alone or together with any Associate):

- (a) directly or indirectly acquiring a Relevant Interest in, or having a right to acquire, a legal, beneficial or economic interest in, or Control of, 10% or more of the E33 Shares or any member of the E33 Group;
- (b) acquiring Control of E33 or any member of the E33 Group;
- (c) directly or indirectly acquiring or become the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or Control of, all or a substantial part of E33's business or assets or the business or assets of the E33 Group;
- (d) otherwise directly or indirectly acquiring or merging with E33 or a member of the E33 Group; or
- (e) requiring E33 to abandon, or otherwise fail to proceed with, the Offer,

whether by way of takeover bid, members' or creditors' scheme of arrangement, shareholder approved acquisition, capital reduction, buy-back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), agreement of company arrangement, any debt for equity arrangement or other transaction or arrangement.

Each successive material modification or variation of any proposal, agreement, arrangement or transaction in relation to a Competing Proposal will constitute a new Competing Proposal;

Control means as defined in section 50AA of the Corporations Act, disregarding subsection 50AA(4);

Controlling Participant means the person who is designated as the controlling participant for shares in a CHESS Holding in accordance with the ASX Settlement Operating Rules;

Corporations Act means the Corporations Act 2001 (Cth);

E33 means East 33 Limited ACN 636 173 281;

E33 Board or **E33 Directors** means the board of directors of E33;

E33 Group means E33 and each Subsidiary;

E33 IBC means the independent board committee of directors of the E33 Board being all E33 Directors other than Ben Cameron and Gary Higgins.

E33 Options means the options over shares issued to Ms Sarah Courtney expiring on 27 November 2026;

E33 Share means a fully paid ordinary share in E33, and all Rights attaching to that share;

E33 Shareholder means a holder of E33 Shares who is able to accept the Offer;

Entitlement Offer means the placement and rights issue undertaken by E33 in October 2022;

Exclusivity Period means the period from and including the date of the BID until the earlier of:

- (a) the date of termination of the BID; and
- (b) the expiry of the Offer Period;

Financial Adviser means any financial adviser retained by the Bidder or E33 in relation to the Offer or a Competing Proposal from time to time;

First Executing on ASX Trade means the automatic matching of the buy order with such sell orders as at that time exist on market;

Forward Financial Information means as defined in Section 7.5;

Government Agency means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian;

GST means goods and services tax, imposed under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the related imposition acts of the Commonwealth of Australia;

HIN means holder identification number;

Insolvency Event means any of the events set out in section 652C(2) of the Corporations Act, being:

- (a) a liquidator or provisional liquidator of any E33 Group member being appointed;
- (b) a court makes an order for the winding up of any E33 Group member;
- (c) an administrator of any E33 Group member is appointed under section 436A, 436B or 436C of the Corporations Act;
- (d) any E33 Group member executes a deed of company arrangement; or
- (e) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of any E33 Group member

Issuer Sponsored Holding means a holding of E33 Shares on E33's issuer sponsored sub-register;

Listing Rules means the official listing rules of ASX, as amended from time to time;

Minimum Acceptance Condition means as defined in Section 12.2(a);

Offer means the offer by the Bidder to acquire E33 Shares on the terms set out in Section 12 and pursuant to this Bidder's Statement;

Offer Information Line means 1300 737 760 (within Australia) or +61 2 9290 9600 (outside Australia);

Offer Period means the period commencing on [#] 2024 and ending at 5:00 pm (Sydney time) on [#] 2024;

Offer Price means A\$0.022 per E33 Share;

On Market Purchases means as defined in Section 11.4;

Performance Rights means the performance rights on issue in E33;

Prescribed Occurrence means as described in section 12.2(b);

Recapitalisation Documents means the Amended Convertible Note Subscription Agreement and the Amended Facility Agreement each dated 28 February 2024;

Recapitalisation Transaction means the transaction approved by shareholders on 25 April 2024 related to the Recapitalisation Documents entered on 28 February 2024 and announced on ASX on 29 February 2024;

Register Date means [#], being the date set by the Bidder under section 633(2) of the Corporations Act;

Regulated Event means as described in Section 12.2(c);

Reimbursement Fee means \$50,000;

Related Bodies Corporate has the meaning given to it in the Corporations Act;

Related Person means in respect of a party or its Related Bodies Corporate, each director, officer, employee, Financial Adviser (and each director, officer, employee or contractor of that Financial Adviser), agent or representative of that party or Related Body Corporate;

Relevant Interest has the meaning given to it in section 9 of the Corporations Act;

Rights means all accretions to and rights attaching to the relevant E33 Shares at or after the date of this Bidder's Statement (including, but not limited to, all dividends and all rights to receive dividends and to receive and subscribe for shares, stock units, notes or options declared, paid or issued by E33);

SRN means security reference number;

Strategic Review means as defined in Section 7.5;

Subsidiary has the meaning given to it in section 9 of the Corporations Act;

Superior Proposal means a bona fide Competing Proposal received by E33 from a Third Party:

- (a) which, if entered into or completed, would result in a Third Party acquiring Control of E33;
- (b) not resulting from a breach by E33 of any of its obligations under the BID; and
- (c) which the E33 IBC, acting in good faith, and after consultation with its external legal adviser, determines:
 - (i) is reasonably capable of being valued and completed within a reasonable timeframe; and
 - (ii) would, if completed substantially in accordance with its terms, likely be more favourable to E33 Shareholders (as a whole) than the Offer (as the terms of the Offer may be amended or varied following the application of the matching right),

in each case, taking into account all terms and conditions and other aspects of the Competing Proposal (including any timing considerations, any conditions precedent or other matters affecting the probability of the Competing Proposal being completed);

Sydney time means the time observed in Sydney, New South Wales;

Target's Statement means the target's statement to be issued by E33 in response to this Bidder's Statement in accordance with the Corporations Act;

Third Party means a person other than Yumbah, E33 or their respective Related Bodies Corporate;

Trading Days has the meaning given to it in the Listing Rules;

Unified Capital Partners means Unified Capital Partners Pty Ltd (AFSL 554658);

Voting Power has the meaning given to it in section 610 of the Corporations Act;

VWAP means the volume weighted average price;

Written Proposal means as defined in Section 11.1(e)(i);

Yumbah Counterproposal means as defined in Section 11.1(f); and

Yumbah Finance means Yumbah Finance Pty Ltd.

13.2 Interpretation

In this Bidder's Statement (including the Offer), the following principles of interpretation apply unless the context otherwise requires:

- (a) Words importing one gender include other genders;
- (b) Words (including defined terms) importing the plural include the singular and vice versa;
- (c) A reference to a person includes a reference to a corporation;
- (d) Headings are for convenience only and do not affect the interpretation of this Bidder's Statement;
- (e) Reference to Sections and Appendices are to Sections and Appendices of this Bidder's Statement and Appendices to this Bidder's Statement form part of this Bidder's Statement;
- (f) All references to time in this Bidder's Statement are to Sydney, New South Wales, time unless expressly specified otherwise; and
- (g) References to "Australian dollars", "AUD", "\$", "dollar" "A\$", or cents are references to Australian currency unless expressly specified otherwise.

14. Approval of Bidder's Statement

The copy of this Bidder's Statement to be lodged with ASIC has been approved by a resolution of the independent directors of the Bidder.

Dated: 23 August 2024

Signed on behalf of Yumbah Aquaculture Ltd ACN 082 219 636



Jonathan Lillie
Yumbah Aquaculture Ltd ACN 082 219 636

Corporate directory

Bidder

Yumbah Aquaculture Ltd
ACN 082 219 636
Level 2, 69 Fullarton Road
Kent Town SA 5067

Legal Adviser

K&L Gates
Level 25, 525 Collins Street
Melbourne VIC 3000

Financial advisor

Unified Capital Partners Pty Ltd
ACN 666 560 050
Level 15, 74 Castlereagh Street
Sydney NSW 2000

Registry services provider

Boardroom Pty Ltd
Level 8, 210 George Street
Sydney NSW 2000

ACCEPTANCE AND TRANSFER FORM

in respect of the Offer by Yumbah Aquaculture Ltd ("Bidder") to acquire all of your ordinary shares in East 33 Limited ("E33")

THIS IS AN IMPORTANT DOCUMENT

IF YOU DO NOT UNDERSTAND IT PLEASE CONSULT YOUR FINANCIAL, LEGAL OR OTHER PROFESSIONAL ADVISER IMMEDIATELY

STEP 1 – Check your details below (see overleaf for instructions)

DPID
Name and address
Name and address
Name and address
Name and address
Name and address
Name and address

The number of E33 shares you hold

HIN/SRN *

(*A new SRN may be allocated to you solely for the purpose of this Offer)

Subregister

Barcode

Use this Acceptance Form to accept the Offer by the Bidder for all of your E33 shares on the terms of the Bidder's Statement. You should read the Bidder's Statement which accompanies this Acceptance Form. Capitalised terms used in this Acceptance Form have the same meaning as in the Bidder's Statement unless otherwise defined. Enter the number of E33 Shares you wish to accept into the Offer in the box above.

If you need help completing this Acceptance Form or have any enquires in relation to the Offer, please contact the Offer Information Line on 1300 737 760 (within Australia) or +61 2 9290 9600 (for callers from outside Australia) between 8.30am to 5.30pm AEST.

STEP 2 – For Issuer Sponsored Holdings only

If your E33 Shares are held on the Issuer Sponsored Subregister (see "Subregister" box above) you may accept the Offer by completing and returning this Acceptance Form. A reply-paid envelope is enclosed for your convenience.

STEP 3 – For CHESSE Holdings only

If your E33 Shares are held on the CHESSE Subregister (see "Subregister" box above), to accept the Offer you can either:

- contact your Controlling Participant (normally your Broker) and instruct them to accept the Offer on your behalf (If you do this and your Controlling Participant follows those instructions, you do not need to complete and return this Acceptance Form); OR
- authorise the Bidder to contact your Controlling Participant on your behalf – to do this you write their details below and sign and return this form. By doing so you authorise the Bidder to instruct your Controlling Participant to initiate acceptance of the Offer and to take all other steps necessary to cause acceptance of the Offer in accordance with the ASX Settlement Operating Rules.

Your Broker's Name	Your Broker's Address	Your Broker's Telephone Number
<input type="text"/>	<input type="text"/>	<input type="text"/>

STEP 4 – Acceptance

By signing and returning this Acceptance Form, you are deemed to have accepted the Offer to sell all your E33 Shares on the terms and conditions of the Offer as set out in the Bidder's Statement.

STEP 5 – Sign as indicated below

I/We, the securityholder(s) named above, being the holder(s) of E33 Shares:

- (1) ACCEPT the Offer in respect of the number of E33 Shares shown in the box at the top of this Acceptance Form;
- (2) AGREE TO TRANSFER the number of E33 Shares shown in the box at the top of this Acceptance Form to the Bidder for the consideration specified in the Offer, and in accordance with the terms of the Offer as set out in the Bidder's Statement;
- (3) AUTHORISE, the Bidder, its officers and agents to correct any errors in or omissions from this Acceptance Form to make it an effective acceptance of the Offer and enable registration of the transfer of the number of E33 Shares shown in the box at the top of this Acceptance Form to the Bidder;
- (4) AGREE to be bound by the terms of the Offer.

STEP 6 – Payment by Electronic Funds Transfer (EFT)

You may elect to receive the cash payment due to you by electronic funds transfer to a nominated financial institution account in Australia held in your name (Your Nominated Account) by completing the details at Step 6 overleaf.

If this form is signed under power of attorney, the attorney declares that they have no notice of the revocation of the power of attorney.

Individual or Securityholder 1	Securityholder 2	Securityholder 3
<input type="text"/>	<input type="text"/>	<input type="text"/>

Sole Director and Sole Company Secretary

Director

Director/Company Secretary (delete one)

Please enter your telephone number where you may be contacted during business hours

Dated ___/___/2024

Contact name: _____ Telephone number: _____

Your acceptance must be received before the Offer Period ends. If the Acceptance Form is sent by mail, you may use the enclosed reply-paid envelope. The postal acceptance rule does not apply to this offer

How to complete this Acceptance Form and ACCEPT the Offer

1. Your Name & Address details

Your pre-printed name and address is as it appears on the register of members provided by E33. If you hold your E33 Shares on the Issuer Sponsored Subregister and this information is incorrect, please make the correction on this form and initial the correction. E33 Shareholders sponsored by a Broker on the CHESSE Subregister should advise their Broker of any changes.

2. Issuer Sponsored Holdings

(as indicated by "Issuer Sponsored" appearing next to "Subregister" on this Acceptance Form)

If your E33 Shares are in an Issuer Sponsored Holding, you may accept the Offer by completing and returning this Acceptance Form.

3. CHESSE Holdings

(as indicated by "CHESSE" appearing next to "Subregister" on this Acceptance Form)

If your E33 Shares are in a CHESSE Holding, you do not need to complete and return this Acceptance Form to accept the Offer. You can contact your Controlling Participant (normally your Broker) and instruct them to accept the Offer on your behalf. If you decide to use this Acceptance Form to authorise us to contact your Controlling Participant on your behalf, follow the instructions below.

It is the responsibility of the E33 Shareholder to allow sufficient time for their Controlling Participant to initiate acceptance of the Offer on their behalf in accordance with ASX Settlement Operating Rule 14.14. You must ensure that this Acceptance Form is received in sufficient time before the end of the Offer Period to enable the Bidder to instruct your Controlling Participant to effect acceptance on CHESSE during business hours.

If your holding is CHESSE sponsored and you send your Acceptance Form to Boardroom Pty Limited, we will send the relevant acceptance message to CHESSE for forwarding to your Controlling Participant for acknowledgement. Neither the Bidder or Boardroom Pty Limited will be responsible for any delays incurred by this process.

If you sign and return this Acceptance Form to one of the below addresses either in respect of an Issuer Sponsored Holding or so that contact may be made with your Controlling Participant on your behalf, you warrant to the Bidder (and authorise the Bidder to warrant on your behalf) that you have full legal and beneficial ownership of the E33 Shares and that the Bidder will acquire them free from all mortgages, charges, liens, encumbrances (whether legal or equitable), restrictions on transfer and free from any third party rights.

4. Acceptance

By signing and returning this Acceptance Form, you are deemed to have accepted the Offer to sell all your E33 Shares shown in the box overleaf to which this Offer relates.

5. Signature(s)

You must sign the form as follows in the space provided overleaf:

Individual: Where the holding is in one name, the securityholder must sign

Joint Holding: Where the holding is in more than one name, all of the securityholders must sign.

Power of Attorney: Where signing as Power of Attorney ("POA"), you must attach an original certified copy of the POA.

Companies: Where the holding is in the name of a company, this form must be signed in accordance with the Corporations Act, either as (a) a sole director and sole company secretary OR a sole director; OR (b) two directors; OR (c) a director and company secretary.

Overseas Companies (incorporated outside Australia): Signed as above or documentation to show that the company can sign in another manner.

Deceased Estate: All executors must sign and an original certified copy of Probate or Letters of Administration must accompany this form

6. Payment by Electronic Funds Transfer (EFT)

You may elect to receive the cash consideration due to you under the Offer by electronic funds transfer to a nominated financial institution in Australia held in your name by completing the details below. E33 shareholders provide electronic payment details at their own risk. If the payment details are incorrect and payment is misdirected as a result neither the Bidder or Boardroom will bear any responsibility.

Name of Financial Institution	Account Name	BSB / Bank & Branch	Account Number

Additional Notes

- Sold all your E33 Shares** – if you have sold all of your E33 Shares, please send this form and your Bidder's Statement to the Broker who acted on your behalf.
- Recently bought or sold E33 Shares** – if you have recently bought or sold any E33 Shares, your holding may differ from that shown on the front of this form. If so, please alter the number of E33 Shares shown as your registered holding on the front of this form to all of the number of E33 Shares you now hold (including any E33 Shares of which you are entitled to become registered as holder), initial the alteration and indicate the name of the Broker who acted for you.
- Information you supply on this Acceptance Form will be used by the Bidder and Boardroom Pty Limited for the primary purpose of processing your acceptance of the Offer and to provide you with the consideration payable under the Offer. This information may be disclosed to the Bidder's professional advisers, securities brokers, printing and mailing providers and other third parties in connection with the Offer. If you do not supply this information, your acceptance may not be processed and you may not receive the consideration payable. You may have rights to access the personal information you have supplied. Please see Boardroom Pty Limited's privacy policy on its website <https://boardroomlimited.com.au/corp/privacy-policy>.
- This Acceptance Form must be received at the delivery address shown below before the end of the Offer Period, which is 5:00pm (Sydney time) on # 2024 (unless the Offer is withdrawn or extended).**

Postal address

Boardroom Pty Limited
E33 Takeover Offer
GPO BOX 3993
SYDNEY NSW 2000

Delivery address

Boardroom Pty Limited
E33 Takeover Offer
Level 8, 210 George Street
SYDNEY NSW 2000

If the Acceptance Form is sent by mail, you may also use the enclosed reply-paid envelope. Neither the Bidder nor Boardroom Pty Limited takes any responsibility if you lodge this Acceptance Form at any other address or by any other means. The postal acceptance rule does not apply to this Offer.

Bidder's Statement

ACCEPT

CONDITIONAL OFF-MARKET OFFER

by

Yumbah Aquaculture Ltd (Bidder)

(ACN 082 219 636)

to acquire all of your shares in

East 33 Limited (E33)

(ACN 636 173 281)

for A\$0.022 (2.2 cents) cash per share.

The Offer Period officially closes at 5:00 pm (Sydney time) on [#] 2024 unless extended.

Offer Information Line: 1300 737 760 (within Australia) or +61 2 9290 9600 (outside Australia).

This is an important document and requires your immediate attention. If you are in doubt as to how to deal with this document, you should consult your financial or other professional advisers as soon as possible.

Financial advisor



Legal Adviser

The logo for K&L Gates, featuring the words "K&L GATES" in a white, bold, sans-serif font, centered within an orange rectangular box.

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Important information

Replacement Bidder's Statement

This document is ~~the~~ replacement Bidder's Statement issued by Yumbah Aquaculture Ltd ACN 082 219 636 (**Bidder**) under Part 6.5 of the Corporations Act, as modified by Corporations (Replacement Bidder's and Target's Statements) Instrument 2023/688 (Replacement Bidder's Statement).

This Replacement Bidder's Statement is dated 23 August 2024 and replaces the Bidder's Statement lodged with ASIC on 8 August 2024 and (Original Bidder's Statement). All references to "this Bidder's Statement" in this document are to this Replacement Bidder's Statement.

This Bidder's Statement includes an Offer by the Bidder to acquire all E33 Shares as described in Section 12 (**Offer**).

A copy of this Bidder's Statement was lodged with ASIC and the ASX on 8 23 August 2024. Neither ASIC, the ASX nor any of their officers takes any responsibility for the content of this Bidder's Statement or the merits of the Offer.

No account of personal circumstances

The information provided in this Bidder's Statement is not investment advice and does not take into account the individual investment objectives, financial situation and particular needs of each shareholder of East 33 Limited (**E33**). You should consider the contents of this Bidder's Statement in light of your personal circumstances (including financial and taxation issues) and seek independent professional advice from an accountant, stockbroker, lawyer or other professional advisor before making a decision as to whether or not to accept the Offer.

Maps and diagrams

Any diagrams and maps appearing in this Bidder's Statement are illustrative only and may not be drawn to scale. Unless stated otherwise, all data contained in charts, maps, graphs and tables is based on information available at the date of this Bidder's Statement.

Disclaimer as to forward looking statements

Some of the statements appearing in this Bidder's Statement may be in the nature of forward-looking statements, including as set out

in section 7.5. You should be aware that such statements are only predictions and are subject to inherent risks and uncertainties. Those risks and uncertainties include factors and risks specific to the industry in which E33 operates, as well as general economic conditions, prevailing exchange rates, interest rates and conditions in the financial markets in Australia and globally. Actual events or results may differ materially from the events or results expressed or implied in any forward-looking statement. Matters as yet not known to the Bidder or not currently considered material by the Bidder may cause actual results or events to be materially different from those expressed, implied or projected in any forward-looking statements. Any forward-looking statement contained in this document is qualified by this cautionary statement.

None of the Bidder, its Related Bodies Corporate or any of the officers or employees of any of them, nor any persons named in this Bidder's Statement or any person involved in the preparation of this Bidder's Statement makes any representation or warranty (express or implied) as to the accuracy or likelihood of fulfilment of any forward-looking statement, or any events or results expressed or implied in any forward-looking statement, except to the extent required by law. You are cautioned not to place undue reliance on any forward-looking statement. The forward-looking statements in this Bidder's Statement reflect views held only as at the date of this Bidder's Statement.

Disclaimer as to information on E33

The information concerning E33 contained in this Bidder's Statement has been obtained from publicly available sources, except as set out in this Bidder's Statement, including in section 7.5. The information in this Bidder's Statement concerning E33's financial position, assets and liabilities and performance, profits and losses and prospects of the E33 Group has not been independently verified by the Bidder, its Related Bodies Corporate or any of their respective officers or employees. Neither the Bidder, its Related Bodies Corporate nor any of their respective directors, officers or advisers assume any responsibility for the accuracy or completeness of this information. Accordingly, subject to the Corporations Act, the Bidder, its Related Bodies Corporate or any of their respective officers or employees do not make any representation or warranty, express or implied, as to the accuracy or completeness of

the information. The information concerning E33 contained in this Bidder's Statement should not be deemed to be comprehensive.

Further information on E33's business will likely be included in the Target's Statement which E33 is required to provide to E33 Shareholders in response to this Bidder's Statement.

Foreign shareholders

The Offer is being proposed and will be conducted in accordance with the laws in force in Australia and the Listing Rules. The disclosure requirements in relation to the Offer in Australia will differ from those applying in other jurisdictions.

The distribution of this Bidder's Statement may be restricted in some countries. Therefore, persons who come into possession of this Bidder's Statement should make themselves aware of, and comply with, those restrictions.

This document does not constitute an Offer to acquire E33 Shares in any jurisdiction in which such an offer would be illegal.

Privacy

The Bidder has collected your information from the register of E33 Shareholders for the purpose of making the Offer and, if accepted, administering acceptances over, your shareholding in E33. The Corporations Act requires the name and address of E33 Shareholders to be held in a public register. Your information may be disclosed on a confidential basis to the Bidder, and their respective officers, employees, advisers and other external service providers, and may be required to be disclosed to regulators such as ASIC. If you would like details of information about you held by the Bidder, please call the Offer Information Line on 1300 737 760 (within Australia) or +61 2 9290 9600 (outside Australia) between 8:30 am to 5:30 pm (Sydney time) on Business Days, or contact your legal, financial or other professional adviser.

Effect of rounding

Figures, amounts, percentages, prices, estimates, calculations of value and fractions in this Bidder's Statement may be subject to the effect of rounding. Accordingly, the actual figures may vary from those included in this Bidder's Statement. Any discrepancies between totals in tables or financial statements

or in calculations graphs or charts are due to rounding.

Estimates and assumptions

Unless otherwise indicated, all references to estimates, assumptions and derivations of the same in this Bidder's Statement are references to estimates, assumptions and derivations of the same by the Bidder and its management. Management estimates reflect, and are based on, views as at the date of this Bidder's Statement, and actual facts or outcomes may materially differ from those estimates or assumptions.

Websites

References in this Bidder's Statement to the Bidder's website (<https://yumbah.com/>) or to E33's website (<https://east33.sydney/>) are for your reference only. Information contained in or otherwise accessible from these websites are not part of this Bidder's Statement.

How to accept

To accept the Offer, follow the instructions set out in Section 4 of this Bidder's Statement.

Defined terms

A number of defined terms are used in this Bidder's Statement. Unless the context otherwise requires, capitalised terms have the meaning given in Section 13. A reference to "**Unified Capital Partners**" in this document is a reference to Unified Capital Partners Pty Ltd ACN 666 560 050 financial advisor to the Bidder.

Further information

This is an important document and should be read in its entirety before you decide whether to accept the Offer. If you are in any doubt as to how to deal with this document or whether to accept the Offer, you should consult your financial or other professional advisers.

If you have any questions or require any further information in relation to the Offer, please contact the Offer Information Line on 1300 737 760 (within Australia) or +61 2 9290 9600 (outside Australia) between 8:30 am to 5:30 pm (Sydney time) on Business Days, or contact your legal, financial or other professional adviser.

1. Key dates

Event	Date [#]
Announcement of Offer	5 August 2024
Original Bidder's Statement lodged with ASIC, ASX and E33	8 August 2024
Replacement Bidder's Statement lodged with ASIC, ASX and E33	23 August 2024
Offer Period officially opens	[#]
Offer Period closes* (unless extended)	5:00pm on [#]

**This date is indicative only and may be extended as permitted by the Corporations Act.*

#All dates and times are references to the date and/or time in Sydney, New South Wales, unless otherwise stated.

2. Letter from the Bidder

Dear Shareholder

Offer to acquire 100% of your E33 Shares for \$0.022 (2.2 cents) per E33 Share

We are pleased to present this conditional Offer by Yumbah Aquaculture Ltd (the **Bidder**) to acquire all your shares in East 33 Limited (ASX: E33) (**E33**) for A\$0.022 (2.2 cents) per E33 Share in cash (the **Offer Price**).

Accepting the Offer provides you with a simple, attractive, certain and immediate exit for your E33 Shares.

Background

As you would be aware, the Bidder currently has a Relevant Interest of approximately 37.42% and, together with its Associates, collectively own the largest holding of E33 Shares with a combined interest and Voting Power of approximately 55.82% in E33 Shares.

In August 2023, E33 reached agreement with Yumbah Finance, an Associate of the Bidder, to provide a \$15 million loan facility. E33's Chair Ms Sarah Courtney has previously stated that this refinancing provides E33 the certainty to continue its recovery and rebuilding of biological assets. In April 2024, E33 reached agreement with Yumbah Finance to convert \$5 million of the debt facility into shares in E33.

Further, as illustrated in recent public disclosures, the capital provided by Yumbah Finance through its loan facility has fundamentally been applied to restructure the balance sheet and for working capital to stabilise the business rather than for growth investment, with \$12.2 million being applied to balance sheet restructure and only \$5.2 million remaining for working capital and ongoing commitments in the short term.

Accordingly, while the Bidder recognises the existing loan facility with Yumbah Finance, including the recent debt-to-equity conversion, improves the way E33 can operate in the short term, the Bidder believes that additional focus is required and that this would be best achieved by delisting E33 so that management can focus on the immediate need to turnaround the operational performance without the burden of the time and cost pressure necessitated by being listed.

Why E33 Shareholders should ACCEPT the Offer

The Bidder believes that for a successful recovery of E33's operations, its board and executive team must operate in a more simple, lower-cost environment with complete focus on rebuilding the company's biological assets.

The key reasons why E33 Shareholders should **ACCEPT** this Offer are:

- The Offer Price represents a significant premium to E33 Shares' historical trading prices which have been trading consistently between \$0.01 and \$0.018 over the last 3 month period, including a 83.3% premium to the closing price of E33 Shares on the Trading Day immediately preceding the Announcement Date of \$0.012 (1.2 cents) per share;
- E33 Shareholders will receive certain and immediate value for your E33 Shares through a 100% cash consideration payable following the close of the Offer Period;
- E33 Shareholders will no longer be exposed to the risks and uncertainties associated with E33's business including the 10 per cent increase in operating expenses year-on-year as reported in the FY23 annual report that E33 has delivered, and the historical losses in E33 of approximately \$9m per year across the last two financial years, with \$30.19m of accumulated losses reported in the interim financial statements to 31

December 2023 and only 4.4 quarters of estimated available funds due to operating costs exceeding expected earnings as disclosed on 19 July 2024;

- E33 incurs the costs of being listed but is unable to effectively realise the benefits, including access to capital and liquidity for shareholders, as demonstrated by just 0.5% of the register turning over per [day/month](#) on average (based on the last 6-month trading) and 39 out of the last 100 trading days on which not a single share traded;
- There is no current superior or alternative proposal in relation to the E33 Shares, and if E33 Shareholders do not accept the Offer and the Offer lapses, the trading price of E33 Shares may continue to fall; and
- The likelihood of a Superior Proposal is low given the Bidder's level of interest in E33.

The Bidder believes E33 would be better placed to operate as an unlisted company to allow it to focus entirely on the urgent and significant task of turning around operational performance.

Bid Conditions

The Offer is conditional on the following:

- **(Minimum acceptance)** During, or at the end of, the Offer Period, the number of E33 Shares in which the Bidder has a Relevant Interest is at least 90% of all E33 Shares;
- **(Prescribed Occurrences)** No Prescribed Occurrence (as defined in Section 12.2(b) of the Bidder's Statement) occurs between the Announcement Date or during the Offer Period;
- **(Regulated Events)** No Regulated Event (as defined in Section 12.2(c) of the Bidder's Statement) occurs between (and including) the Announcement Date and the end of the Offer Period (inclusive);
- **(No restraint)** Between the Announcement Date and the end of the Offer Period (each inclusive), nothing restrains, prohibits or impedes, or otherwise materially adversely impacts the Offers and the completion of the Offer or which requires the divestiture by the Bidder of any E33 Shares or any material assets of E33 or any Subsidiary of E33; and
- **(No termination of BID)** Between the Announcement Date and the end of the Offer Period (each inclusive), the Bidder does not become entitled to terminate the BID as a result of any of the representations and warranties given by E33 under the BID becoming untrue or incorrect in any material respect.

What are the risks associated with accepting the Offer?

The risks associated with accepting the Offer include:

- **(Conditional)** The Offer is subject to conditions. If the conditions are not satisfied or waived by the applicable date, the Bidder may allow the Offer to lapse with unsatisfied conditions, in which case the Offer will not proceed.
- **(Superior Proposal)** If a Superior Proposal emerges or is announced, and an E33 Shareholder has already accepted the Offer at that time, the E33 Shareholder may not be able to withdraw acceptance and accept the Superior Proposal except in limited circumstances as set out in the Corporations Act.
- **(Withdrawal rights)** E33 Shareholders that accept the Offer will only be able to withdraw acceptance in very limited circumstances as set out in the Corporations Act.
- **(Possibility of future East 33 Share price appreciation)** E33 Shareholders that accept the Offer will forego the opportunity to benefit from price appreciation of E33 Shares and

will be unable to sell their E33 Shares for more valuable consideration than that offered under the Offer. However, this risk should be balanced against the risk of the E33 Share price depreciating, which has been the case in recent times.

- (No interest in upside) E33 Shareholders that accept the Offer will lose their interest and exposure in the future profits and dividends (if any) associated with E33.

Next Steps

We encourage you to carefully read this Bidder's Statement and follow the instructions on the accompanying Acceptance Form to **ACCEPT** this Offer, which delivers you certain value for your E33 Shares and an opportunity for E33 Shareholders to sell their E33 Shares at an attractive price that is significantly above the current trading prices.

If you have any questions about the Offer, please call the Offer Information Line on 1300 737 760 (within Australia) or +61 2 9290 9600 (outside Australia).

We appreciate your consideration of this Offer.

Yours faithfully,



Jonathan Lillie
Director, Yumbah Aquaculture Ltd

3. Why you should ACCEPT the Offer

3.1 The Offer provides You with certainty of receiving value for your E33 Shares and provides an opportunity for minority shareholders to receive liquidity

The Bidder is offering all E33 Shareholders 100% cash consideration of A\$0.022 per E33 Share, which provides You with certainty of receiving value for your E33 Shares regardless of future market conditions or the future operating performance of E33. There is no guarantee that the share price will not fall below the Offer Price after the Offer closes.

3.2 The Offer Price represents a significant premium to E33's historical trading prices

The Offer represents a significant premium to E33's last closing share price and VWAP of E33 Shares as follows:

- 83.3% premium to the closing price of E33 Shares on the Trading Day immediately preceding the Announcement Date of \$0.012.
- 57.8% premium to the VWAP for the 10 Trading Days immediately preceding the Announcement Date of \$0.0139; and
- 66.6% premium to the VWAP for the 3 trading months immediately preceding the Announcement Date of \$0.0132.

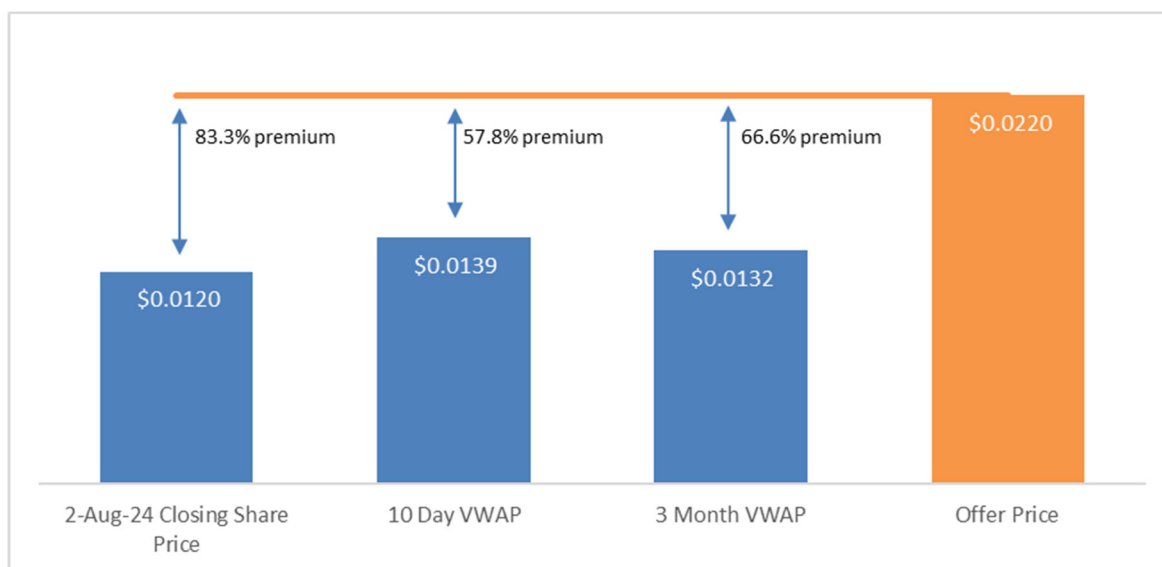


Figure 1: Offer premium relative to recent trading prices

The Offer represents a particularly attractive value to E33 Shareholders given the current risks and uncertainties associated with remaining an E33 Shareholder in the face of prevailing economic and equity market risks. The Bidder believes these risks appear to be weighing on E33's valuation, as demonstrated by the 66.7% decline in its share price over the last 12 months and 70.0% decline in its share price over the last 18 months.

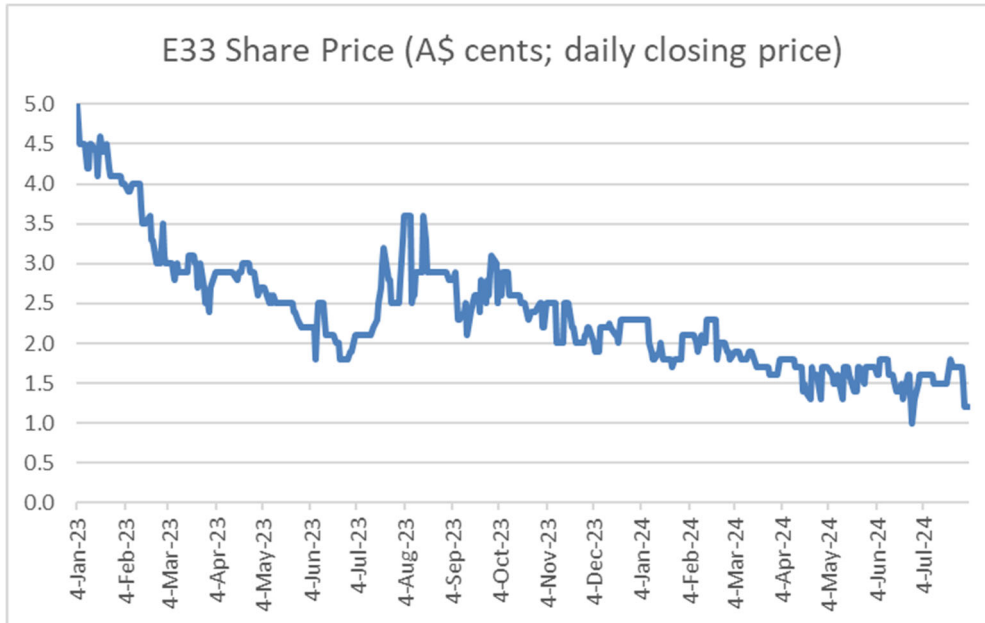


Figure 2: E33 historical share price performance

For information relating to the source of the above information, please refer to section 11.7.

3.3 The Offer Price represents a significant premium to E33's net tangible asset value per Share and the net tangible asset value per Share has been declining over the last 6 and 12 months.

The Offer represents a significant premium to the net tangible asset value of E33 Shares of \$0.0048 or 0.48 cents per E33 Share as disclosed in E33's latest balance sheet as at 31 December 2023 (as announced to ASX on 29 February 2024).

The net tangible asset value per Share has been steadily declining over the last 12 months to 18 months:

- The net tangible asset value per Share of E33 as disclosed in E33's latest balance sheet as at 31 December 2023 is \$0.0048 or 0.48 cents per E33 Share as announced to ASX on 29 February 2024.
- The net tangible asset value per Share of E33 as at 30 June 2023 was \$0.008 or 0.8 cents per E33 Share as announced in its preliminary final report announced to ASX on 30 August 2023 and corrected on 1 September 2023.
- The net tangible asset value per Share of E33 as at 31 December 2022 was \$0.0156 or 1.56 cents per E33 Share as announced to ASX on 27 February 2023.

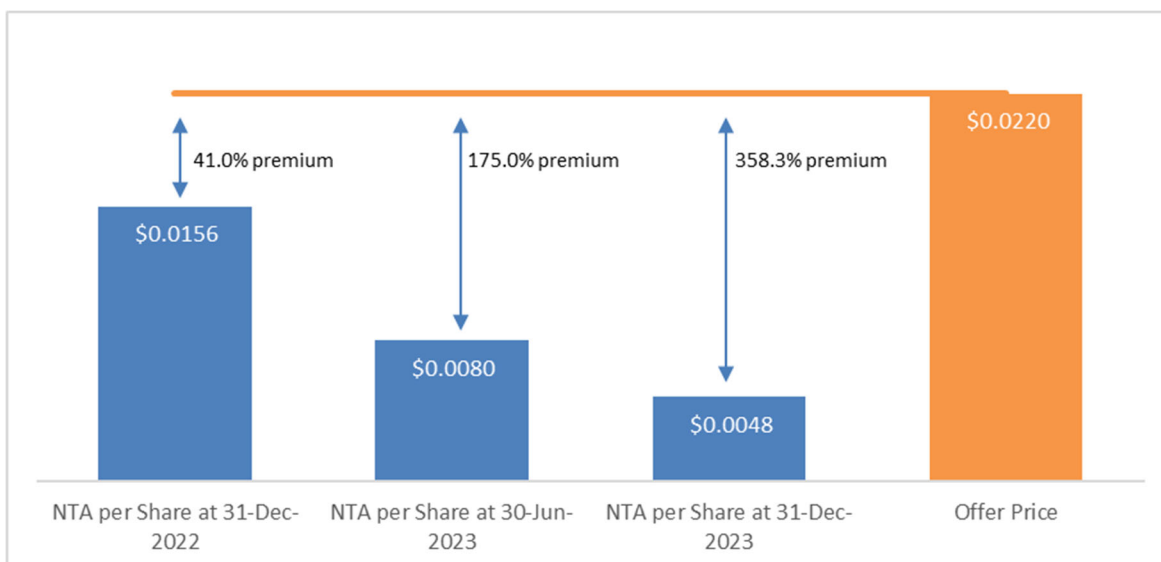


Figure 3: net tangible asset value per Share of E33

3.4 You will receive certain value for your E33 Shares through cash consideration after the Offer Period

The Offer is fully funded at A\$0.022 per E33 Share for all E33 Shares, enabling E33 Shareholders to dispose of large parcels of shares for certain and attractive value without any liquidity concerns. The cash consideration will be paid to you following the Offer Period.

3.5 You will no longer be exposed to the risks and uncertainties associated with E33's business

The certainty of this receipt of the all-cash Offer should be compared against the uncertainties of, and risks associated with, remaining an E33 Shareholder in the current uncertain economic environment. Some key risks associated with not accepting the Offer and remaining an E33 Shareholder include, but are not limited to:

- **uncertainty about E33 as a standalone business** – the Offer allows you to receive immediate value for your investment in E33 and removes uncertainty about the future of E33's business and operations, including but not limited to:
 - potential further adverse weather events and/or disease events which E33 has experienced in the past;
 - the historical losses in E33 of approximately \$9m per year across the last two financial years, with \$30.19m of accumulated losses reported in the HY24 interim financial statements reported on 29 February 2024 (an increase of \$4.6m from its 2023 annual report);
 - the historical negative cash flow from operating activities in E33 of approximately \$926,000 for the last quarter ended 30 June 2024 and \$4.30 million for the financial year ended 30 June 2024 as reported in the 30 June 2024 Quarterly cash flow report lodged by E33 on 19 July 2024, and a negative cash flow from operating activities of approximately \$4.2 million for the year ended 30 June 2023 as reported in the FY23 annual report, which has required E33 to draw down \$8.3 million of funding over the last 12 months;
 - the increasing operating expenses of E33's business, including the 10 per cent increase in operating expenses year-on-year as reported in the FY23 annual report; and

- uncertainty around the strength of the global and the Australian economy and any potential recession, and the impact that an economic slowdown or a recession could have on the demand for oysters which are considered a luxury food product;
- **liquidity risk – E33 becomes unlisted** – if you do not accept the Offer and the Bidder acquires additional E33 Shares, ASX may permit a de-listing of E33, in circumstances where the Bidder does not obtain a Relevant Interest of 90% or otherwise waives the Minimum Acceptance Condition and does not move to compulsory acquisition, in which case, you may not be able to sell your E33 Shares and realise any value for them;
- **liquidity risk – E33 remains listed** - depending on the level of acceptances the Bidder receives under the Offer, the market for E33 Shares may become even less liquid than at present, in circumstances where the Bidder does not obtain a Relevant Interest of 90% or otherwise waives the Minimum Acceptance Condition and does not move to compulsory acquisition. This could make it more difficult for you to sell your E33 Shares at an attractive price in the future;
- **market risks** – recent global economic events have contributed to greater uncertainty, volatility and a general 'risk-off' sentiment in financial markets. There continues to be speculation surrounding movement in the global economy; and
- **share price volatility** – the potential risk of share price falls due to a number of factors including those mentioned in this Section 3.5.

You can choose, in effect, between the Offer of certain value in cash by the Bidder which is available now, or future uncertain value by retaining your E33 Shares.

3.6 **E33 is incurring the costs of being listed but cannot realise the benefits, including access to capital and liquidity for shareholders**

As at the Trading Day immediately prior to the Announcement Date, the market capitalisation of E33 was \$9.3 million and the share price has declined by 63.6% since the Entitlement Offer completed in October 2022, which raised capital at \$0.033 per share.

The Bidder believes that E33 would be better placed to operate as an unlisted company, given that E33 is incurring all the costs of being listed but is unable to realise the benefits of being listed. ~~Less than~~ Just 0.5 per cent of the register turns over ~~daily~~ monthly, and for 39 of the previous 100 Trading Days immediately prior to the Announcement Date no E33 Shares traded at all, making it very difficult for any E33 Shareholders to realise the value of their E33 Shares without negatively impacting the share price.

3.7 **Consequences of not accepting**

The Bidder believes that the Offer for E33 Shares is attractive and represents fair value. However, if you choose not to accept the Offer, there are certain risks of which you should be aware, including:

- **A lower Share price with limited liquidity:** following the close of the Offer, the E33 Share price may drop to pre-Offer levels with a reduced level of trading liquidity;
- **Being a minority shareholder in an unlisted company:** if the Bidder does not achieve compulsory acquisition at the end of the Offer Period but elects to waive the Minimum Acceptance Condition, subject to meeting the eligibility requirements of the Listing Rules, the Bidder will seek to have E33 removed from the official list of the ASX. Should a delisting occur, remaining as a minority shareholder in E33 as an unlisted company presents additional risks including significant difficulty in selling your E33 Shares at the current price levels in the future or at all; and
- **Delay in receiving cash for your E33 Shares:** if the Bidder becomes entitled to acquire your E33 Shares compulsorily, it intends to exercise those rights. If your E33 Shares are compulsorily acquired by the Bidder, you will be paid the Offer consideration of A\$0.022

cash for each of your E33 Shares. However, you will receive the money later than the E33 Shareholders who choose to accept the Offer.

You should consult with your broker or financial or other professional advisers to ascertain the impact of the risks outlined above on the value of your E33 Shares.

3.8 There is no superior or alternative proposal for your E33 Shares

The Bidder's Offer is the only offer to acquire your E33 Shares at the date of this Bidder's Statement.

If no other offers are made for your E33 Shares, E33's share price may fall below the Offer Price after the Offer closes and no other alternative offer or proposal emerges.

3.9 The likelihood of a Superior Proposal is low as the Bidder and its Associates currently have Voting Power of approximately 55.82% of E33 Shares

The Bidder currently has a Relevant Interest of approximately 37.42% and, together with its Associates, currently have aggregate Voting Power in approximately 55.82% of E33 Shares. Further, through its Associates, the Bidder has provided all of the primary first ranking secured facility to E33 of \$15 million plus interest, of which \$12.5 million has been drawn down and a further \$2.5 million to be drawn down on 12 August 2024. For any alternate proposal to be successful, it would likely require the support of the Bidder and its Associates. As such, the Bidder believes that the likelihood of a Superior Proposal emerging for E33 is low.

3.10 No stamp duty or GST in accepting the Offer

You will not pay stamp duty or GST on the disposal of your E33 Shares if you accept the Offer (other than GST payable by your broker in respect of brokerage fees, if any, charged to you). The Bidder will pay the stamp duty (if any) payable in Australia on the transfer of E33 Shares under the Offer.

4. How to accept the Offer

The Offer be accepted in the following ways:

(a) **Issuer Sponsored Holding (your SRN starts with an "I")**

If your E33 Shares are held on E33's issuer-sponsored subregister, then to accept this Offer in respect of those E33 Shares, you must:

- (i) **Paper acceptance:** Complete and sign the Acceptance Form, which accompanies this Bidder's Statement in accordance with the terms of the Offer and the instructions on the Acceptance Form and return the Acceptance Form together with all other documents required by the terms of this Offer and the instructions on the Acceptance Form to the address specified on the Acceptance Form, so that they are received before the close of the Offer Period. A reply paid is enclosed for your convenience.

(b) **CHESS Holding (your HIN starts with an "X")**

If your E33 Shares are held in a CHESS Holding, then to accept this Offer:

- (i) **Acceptance through your broker or Controlling Participant:** contact your broker and instruct your Controlling Participant (for E33 Shareholders who are not institutions this is normally the stockbroker either through whom you bought the relevant E33 Shares or through whom you ordinarily acquire shares on the ASX) to accept the Offer on your behalf, before the Offer closes; or
- (ii) **Paper acceptance:** complete and sign the Acceptance Form enclosed with this Bidder's Statement in accordance with the instructions on the form and send it with all other documents required by those instructions on it to the address shown on the Acceptance Form,

in each case sent and received in sufficient time for BoardRoom to give instructions to your Controlling Participant and for your Controlling Participant to carry out those instructions before the end of the Offer Period. Neither the Bidder or Boardroom Pty Limited will be responsible for any delays incurred by this process.

(c) **Participants**

If you are a Participant, acceptance of this Offer must be initiated in accordance with Rule 14.14 of the ASX Settlement Operating Rules before the Offer closes. If completing the Acceptance Form physically, ensure you complete and sign the Acceptance Form which accompanies this Bidder's Statement in accordance with the terms of the Offer and the instructions on the Acceptance Form and return the Acceptance Form together with all other documents required by the terms of this Offer and the instructions on the Acceptance Form to the address specified on the Acceptance Form, so that they are received before the close of the Offer Period.

If you have any questions about the Offer, please call the Offer Information Line on 1300 737 760 (within Australia) or +61 2 9290 9600 (outside Australia) between 8:30 am to 5:30 pm (Sydney time) on Business Days, or contact your legal, financial or other professional advisers.

5. Summary of the Offer

This Section 5 provides summary answers to some questions you may have in relation to the Offer and is intended to assist in your understanding of the Offer. The information in this section is qualified by the information contained in the rest of this Bidder's Statement. It is not intended to address all relevant issues for E33 Shareholders. Section 12 of this Bidder's Statement contains the full terms of the Offer and Bid Conditions. You should read this Bidder's Statement in full before deciding how to deal with your E33 Shares.

Question	Answer
What is the Offer?	The Bidder is offering to acquire all your E33 Shares for A\$0.022 per E33 Share on the terms and Bid Conditions set out in this Bidder's Statement. You may only accept this Offer in respect of all your E33 Shares.
Who is making the Offer?	The Bidder is an Australian owned and registered public unlisted company. Further information on the Bidder is set out in Section 6.
How do I accept the Offer?	<p>Depending on the nature of your holding, you may accept the Offer in the following ways:</p> <p>Issuer Sponsored Holding (your SRN starts with an "I")</p> <p>If your E33 Shares are held on E33's issuer-sponsored subregister, then to accept this Offer in respect of those E33 Shares, you must:</p> <ul style="list-style-type: none"> • Paper acceptance: complete and sign the Acceptance Form which accompanies this Bidder's Statement in accordance with the terms of the Offer and the instructions on the Acceptance Form and return the Acceptance Form together with all other documents required by the terms of this Offer and the instructions on the Acceptance Form to the address specified on the Acceptance Form, so that they are received before the close of the Offer Period. <p>CHESS Holding (your HIN starts with an "X")</p> <p>If your E33 Shares are held in a CHESS Holding, then to accept this Offer:</p> <ul style="list-style-type: none"> • Acceptance through your broker or Controlling Participant: contact your broker and instruct your Controlling Participant (for E33 Shareholders who are not institutions this is normally the stockbroker either through whom you bought the relevant E33 Shares or through whom you ordinarily acquire shares on the ASX) to accept the Offer on your behalf, before the Offer closes; or • Paper acceptance: complete and sign the Acceptance Form enclosed with this Bidder's Statement in accordance with the instructions on the form and send it with all other documents required by those instructions on it to the address shown on the Acceptance Form, <p>in each case sent and received in sufficient time for BoardRoom to give instructions to your Controlling Participant and for your</p>

Question	Answer
	<p>Controlling Participant to carry out those instructions before the end of the Offer Period.</p> <p>Participants</p> <p>If you are a Participant, acceptance of this Offer must be initiated in accordance with Rule 14.14 of the ASX Settlement Operating Rules before the Offer closes. If completing the Acceptance Form physically, ensure you complete and sign the Acceptance Form which accompanies this Bidder's Statement in accordance with the terms of the Offer and the instructions on the Acceptance Form and return the Acceptance Form together with all other documents required by the terms of this Offer and the instructions on the Acceptance Form to the address specified on the Acceptance Form, so that they are received before the close of the Offer Period.</p> <p>If you have any questions about the Offer, please call the Offer Information Line on 1300 737 760 (within Australia) or +61 2 9290 9600 (outside Australia) between 8:30 am to 5:30 pm (Sydney time) on Business Days, or contact your legal, financial or other professional advisers.</p> <p>Section 4 provides more detailed instructions on how to accept the Offer.</p>
Can I sell part of my shareholding?	You may only accept this Offer in respect of all your E33 Shares.
When can I accept the Offer?	<p>The Offer opens on [#]</p> <p>The Offer closedcloses on [#]</p> <p>You may accept the Offer any time before the Offer closes.</p>
If I accept the Offer, when will I be paid for my shares?	<p>If you accept the Offer, and subject to satisfaction of the Bid Conditions, the Bidder will pay any cash to which you are entitled on or before the earlier of:</p> <ul style="list-style-type: none"> • one month after the Offer is validly accepted or the contract resulting from its acceptance becomes unconditional (whichever is the later); and • 21 days after the Offer closes.
Can the Offer Period be extended?	Yes, the Offer Period can be extended in accordance with section 624(2) and/or section 650C of the Corporations Act. In certain circumstances, the Corporations Act imposes a mandatory extension of the Offer Period.
Does the Offer apply to Performance Rights and E33 Options?	The Offer will not extend to the acquisition of any Performance Rights or E33 Options currently on issue. See sections 7.4(b) and 7.4(c) for further details in relation to the Performance Rights and E33 Options.
What will the tax consequences be?	You should consult your financial, tax or other professional advisor regarding the tax implications of acceptance. However, please refer to Section 10 for a general description of some of the potential tax implications for E33 Shareholders who accept the Offer.

Question	Answer
<p>Do I pay brokerage or stamp duty if I accept?</p>	<p>If your E33 Shares are registered in an Issuer Sponsored Holding in your name, the relevant broker you instruct to initiate acceptance on your behalf may charge transactional fees or service charges in connection with acceptance of the Offer.</p> <p>If your E33 Shares are registered in a CHESS Holding or if you are a beneficial holder and your E33 Shares are registered in the name of a broker, bank, custodian or other nominee (i.e. your Controlling Participant), the Controlling Participant may charge transactional fees or service charges in connection with acceptance of the Offer.</p> <p>Accordingly, you should ask your broker or Controlling Participant (as applicable) in relation to brokerage.</p> <p>The Bidder will bear the cost of its own brokerage (if any) on the transfer of E33 Shares acquired through acceptance of the Offer.</p> <p>You will not pay stamp duty or GST on the disposal of your E33 Shares if you accept the Offer (other than GST payable by your broker in respect of brokerage fees charged to you).</p>
<p>What are the conditions to the Offer?</p>	<p>The Offer is subject to several Bid Conditions, including:</p> <ul style="list-style-type: none"> • (Minimum acceptance) the Bidder has a Relevant Interest is at least 90% of all E33 Shares during or at the end of the Offer Period; • (Prescribed Occurrences) No Prescribed Occurrences (as defined in Section 12.2(b)) has occurred between the Announcement Date and the end of the Offer Period; • (Regulated Events) No Regulated Events (as defined in Section 12.2(c)) has occurred between the Announcement Date and the end of the Offer Period; • (No restraint) Between the Announcement Date and the end of the Offer Period (each inclusive), nothing restrains, prohibits or impedes, or otherwise materially adversely impacts the Offers and the completion of the Offer or which requires the divestiture by the Bidder of any E33 Shares or any material assets of E33 or any Subsidiary of E33; and • (No termination of BID) Between the Announcement Date and the end of the Offer Period (each inclusive), the Bidder does not become entitled to terminate the BID as a result of any of the representations and warranties given by E33 under the BID becoming untrue or incorrect in any material respect. <p>More details regarding the Bid Conditions are set out in full in Section 12.2.</p>
<p>What happens if the Offer conditions are not satisfied/waived?</p>	<p>If the conditions of the Offer are not satisfied or waived before the Offer closes, the Offer will lapse. The Bidder will make an announcement to the ASX if the conditions of the Offer are satisfied or waived during the Offer Period.</p>

Question	Answer
<p>Can the Offer be withdrawn?</p>	<p>The Bidder may withdraw the Offer in respect of any Offers that are unaccepted in accordance with any requirements of section 652B of the Corporations Act, including at any time with the written consent of ASIC and subject to the conditions (if any) specified in such consent; or</p> <p>Notice of withdrawal of the Offer must be given by the Bidder to ASX.</p>
<p>Can You withdraw Your acceptance</p>	<p>Under the Offer, you can withdraw your acceptance if a withdrawal right arises under section 650E of the Corporations Act.</p>
<p>What happens if I do not accept?</p>	<p>If you do not accept the Offer, you will remain an E33 Shareholder and will not receive the consideration offered by the Bidder.</p> <p>If the Bidder becomes entitled to compulsorily acquire your E33 Shares, it intends to do so. If your E33 Shares are compulsorily acquired by the Bidder, you will be paid the Offer consideration of A\$0.022 cash for each of your E33 Shares. However, you will receive the money later than the E33 Shareholders who choose to accept the Offer.</p> <p>Further information on the intentions of the Bidder is set out in Section 8.</p>
<p><u>What are the risks associated with accepting the Offer?</u></p>	<p><u>The risks associated with accepting the Offer include:</u></p> <ul style="list-style-type: none"> • <u>(Conditional) The Offer is subject to conditions. If the conditions are not satisfied or waived by the applicable date, the Bidder may allow the Offer to lapse with unsatisfied conditions, in which case the Offer will not proceed.</u> • <u>(Superior Proposal) If a Superior Proposal emerges or is announced, and an E33 Shareholder has already accepted the Offer, the E33 Shareholder may not be able to withdraw acceptance and accept the Superior Proposal except in limited circumstances as set out in the Corporations Act.</u> • <u>(Withdrawal rights) E33 Shareholders that accept the Offer will only be able to withdraw acceptance in very limited circumstances as set out in the Corporations Act.</u> • <u>(Possibility of future East 33 Share price appreciation) E33 Shareholders that accept the Offer will forego the opportunity to benefit from price appreciation of E33 Shares and will be unable to sell their E33 Shares for more valuable consideration than that offered under the Offer. However, this risk should be balanced against the risk of the E33 Share price depreciating, which has been the case in recent times.</u> • <u>(No interest in upside) E33 Shareholders that accept the Offer will lose their interest and exposure in the future profits and dividends (if any) associated with E33.</u>
<p>What if I require further information?</p>	<p>If you have any questions about the Offer, please call the Offer Information Line on 1300 737 760 (within Australia) or +61 2 9290 9600 (outside Australia) between 8:30 am to 5:30 pm (Sydney time) on Business Days, or contact your legal, financial or other professional adviser.</p>

6. Overview of the Bidder

6.1 About the Bidder

The Bidder is a public unlisted company owned and registered in Australia which manages a diverse portfolio of aquaculture projects and aims to invest in and develop projects in the aquaculture sector.

6.2 The Bidder's board directors and public officers

Details of the directors of the Bidder are set out below:

Director	Position	Appointed
Gary Higgins	Non-Executive Chairman	31 March 2008
Anthony Hall	Non-Executive Director	08 June 2016
Jonathan Lillie	Non-Executive Director	31 March 2008
Ben Cameron	Executive Director	15 October 2021
Richard Davey	CFO and Company Secretary	21 December 2022

*Note: Gary Higgins and Ben Cameron also hold nominee directorships on the board of directors of E33. Accordingly, Messrs Higgins and Cameron have been excluded from decision making in relation to the Offer by the Bidder, and are excluded from the E33 Independent Board Committee. Anthony Hall also indirectly holds 7,333 shares in Yumbah Finance Pty Ltd (**Yumbah Finance**) representing 73.33% of its shares on issue, which are held through Research Corporation Pty Ltd, an entity which Mr Hall controls.*

6.3 Holdings of common directors

Ben Cameron and Gary Higgins are directors of both the Bidder and E33 and have the following beneficial holdings in the Bidder:

Director	Bidder Share	Ownership %
Gary Higgins ¹	863,160	0.388%
Ben Cameron ²	2,911,592	1.309%
Total	3,774,752	1.697%

Note (1) Held directly by Gary Higgins and indirect interest through shares held by Elary Nominees Pty Ltd (2) Held directly by Ben Cameron and indirect interest through shares held by NBC Personal Pty Ltd <B N Cameron Investment A/C>.

6.4 Holdings of common directors

As Ben Cameron and Gary Higgins are directors of both the Bidder and E33, the board of the Bidder decided to convene an independent board committee to approve matters relating to the Offer. The Bidder IBC excludes Ben Cameron and Gary Higgins from all decisions that relate to the Offer and E33.

7. Overview of E33

7.1 Disclaimer

The information in this Section 7 concerning E33 has been prepared based on a review of publicly available information (which has not been independently verified), other than as set out in section 7.5. Neither the Bidder, nor any of their respective directors, officers, employees or advisers, subject to the Corporations Act, make any representation or warranty, express or implied, as to the accuracy or completeness of such information.

The information on E33 in this Bidder's Statement should not be considered comprehensive.

In addition, the Corporations Act requires the E33 Directors to provide a Target's Statement to E33 Shareholders in response to this Bidder's Statement, setting out material information concerning E33. Further information relating to E33 may be included in its Target's Statement in relation to the Offer, which will be sent to you directly by E33.

7.2 Overview of E33 and its principal activities

E33 is an ASX listed Australian company involved in oyster farming and sales.

As at the date of this Bidder's Statement, E33's Subsidiaries are as follows:

Name of entity	Country of incorporation	Holding (%)
Hamilton Supervisory Pty Ltd	Australia	100%
MS Verdich & Sons Pty Ltd	Australia	100%
HR Browne & Sons Pty Ltd	Australia	100%
East 33 Farming Pty Ltd (incorporated Aug 2020)	Australia	100%
East 33 Deliveries Pty Ltd (incorporated Jul 2020)	Australia	100%
Mid Coast Exco Pty Ltd	Australia	100%
CMB Seafoods Pty Ltd	Australia	100%

7.3 Directors and senior managers

(a) As at the date of this Bidder's Statement, the E33 Directors are as follows:

- (i) Ms Sarah Courtney – Independent Non-Executive Chair;
- (ii) Mr Gary Higgins – Non-Executive Director;
- (iii) Mr Ben Cameron – Non-Executive Director;
- (iv) Mr Michael Ryan – Independent Non-Executive Director, and
- (v) Ms Veronica Papacosta – Independent Non-Executive Director.

- (b) As at the date of this Bidder's Statement, E33's executive leadership team is as follows:
 - (i) Ms Amy Knoll – Chief Financial Officer;
 - (ii) Mr Mathew Watkins – Company Secretary; and
 - (iii) Dr Justin Welsh – Chief Executive Officer.

7.4 E33 securities on issue

- (a) Based on documents provided by E33 to ASX as at the date immediately before the Announcement Date:
 - (i) there were a total of 775,183,937 E33 Shares on issue;
 - (ii) there were a total of 91,268,000 Performance Rights on issue;
 - (iii) there is 1 convertible note on issue; and
 - (iv) there were a total of 1,000,000 E33 Options on issue.
- (b) On 5 August 2024, the Bidder entered a proposal with Dr Justin Welsh and Ms Amy Knoll whereby the Bidder will conditionally acquire Dr Justin Welsh's and Ms Amy Knoll's Performance Rights in consideration for like-for-like performance rights in the Bidder, which will become effective only if the Offer becomes unconditional. [It is also anticipated that 775,183 Performance Rights held by Dr Welsh may be converted into E33 Shares prior to the end of the Offer Period on the basis of satisfaction of KPI hurdles. Dr Welsh has indicated that he will then accept the Offer.](#)
- (c) On 5 August 2024, the Bidder entered a proposal with Ms Sarah Courtney whereby Ms Courtney agreed to exercise the E33 Options no later than immediately following the satisfaction of the Bid Conditions. Ms Courtney also advised that she intends to, in the absence of a superior proposal, accept into the Offer. This proposal has no effect until after the date on which the Bid Conditions are either satisfied or waived.
- (d) [The convertible note is issued to Yumbah Finance Pty Ltd, an Associate and related body corporate of the Bidder. The convertible note does not form part of the Offer. The Bidder is comfortable for the convertible note to remain on foot following completion of the Offer](#)

7.5 Other information about E33

(a) Background and informational disclaimers

On 25 April 2024, Yumbah Finance Pty Ltd (**Yumbah Finance**), an Associate of the Bidder, and the financier of E33, was provided with special purpose management forward numbers and supporting information prepared by E33 to support the strategic review (**Strategic Review**) completed by E33 and announced on 29 February 2024 (**Forward Financial Information**). The Forward Financial Information was provided to Yumbah Finance as part of the final due diligence information to satisfy the requirements for the further debt financing of E33 in April 2024.

The Forward Financial Information was prepared to reflect the anticipated financial position of E33 assuming the continued implementation of the Strategic Review.

[Important Notice in relation to the Forward Financial Information](#)

The relevant information set out in this Section 7.5 was provided by E33 on the basis that it represents 'management best estimates' and was not independently verified or

prepared in accordance with ASIC Regulatory Guide 170 at the time. On the basis of its preparation, it was provided on the basis that it was not considered reasonable for investors and their professional advisers to expect to find the Forward Financial Information in a disclosure document. —There is a considerable degree of subjective judgement involved in preparing forecasted financial information as they relate to event(s) and transaction(s) that have not yet occurred and may not occur, particularly in an industry as susceptible to environmental and trading conditions as the aquaculture industry. Actual results are likely to be different from the Forward Financial Information since anticipated event(s) or transaction(s) frequently do not occur as expected and the variation between actual results and those forecasts may be material. Accordingly, subject to the Corporations Act, E33, its Related Bodies Corporate or any of their respective officers or employees do not make any representation or warranty, express or implied, as to the accuracy or completeness of this Forward Financial Information.

The Forward Financial Information is therefore inherently unreliable and consequently insufficiently definitive. Economic and environmental changes could have significant impact on the decision-making for this information. Risks and uncertainties include factors and risks specific to the industry in which E33 operates and general economic conditions. Actual events or results may differ materially from the events or results expressed or implied in any forward-looking statement. Shareholders should not place undue reliance on any forward-looking statement.

Notwithstanding the above, it is the view of the Bidder that certain information in the Forward Financial Information may be considered material to the value of the E33 Shares and may reasonably influence E33 Shareholders in making a fully informed decision regarding the Offer and for this reason, has been provided in this Bidders' Statement.

The information in this section 7.5 has not been independently verified by the Bidder, its Related Bodies Corporate or any of their respective officers or employees. Neither the Bidder, its Related Bodies Corporate nor any of their respective directors, officers or advisers assume any responsibility for the accuracy or completeness of this information. Accordingly, subject to the Corporations Act, the Bidder, its Related Bodies Corporate or any of their respective officers or employees do not make any representation or warranty, express or implied, as to the accuracy or completeness of the information.

(b) Strategic production and supply chain stabilisation initiatives

As set out in the Forward Financial Information, E33 anticipates that:

- (i) farming strategies will increase the forecasted indicative harvest targets;
- (ii) steady state volumes harvested from the farm will be achieved in FY27 through farm-restocking initiatives aimed at maximising gear utilisation; and
- (iii) increasing on-farm volumes using improved operational efficiency will decrease the cost of production without impacting quality.

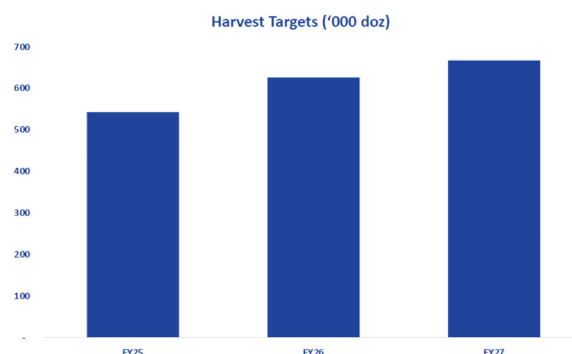


Figure 4: E33 harvest targets from FY25 to FY27 based on E33's best estimates only and provided to Yumbah Finance on 25 April 2024.

(c) **Cash flow and EBITDA adjustments**

E33 provided the following information in the Forward Financial Information:

Matter	FY25	FY26	FY27
Revenue (\$'000)	28,400	29,800	30,600
EBITDA (\$'000)	3,900	2,400	2,000
EBITDA excl bio value (\$'000)	200	2,100	2,600
Cash min (\$'000)	800	(1,000)	(1,600)
Cash max (\$'000)	2,900	1,800	1,300

Figure 5: E33's anticipated financial performance for FY25 to FY27 based on E33's best estimates only and provided to Yumbah Finance on 25 April 2024.

The above financial information is summarised as follows:

- Cashflow and EBITDA may improve under the revised strategic approach to the business as internal oyster supply stabilises and business opportunities captured in the Strategic Review are expected by management to be realised.
- Despite the anticipated improvements, intervention is expected to be required as overhead costs create a material burden on the business' cashflow and create material negative cash minimums in FY26 and FY27.

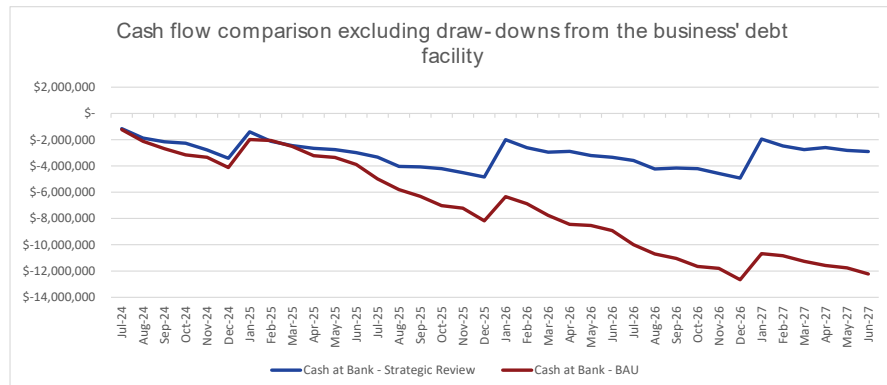


Figure 6: E33's cash flow comparisons excluding draw-downs from the business' debt facility based on E33's best estimates only provided to Yumbah Finance on 25 April 2024. The cash projection based on the Strategic Review represents management's best estimates following the Strategic Review. The BAU scenario represents the business' position preceding the Strategic Review.

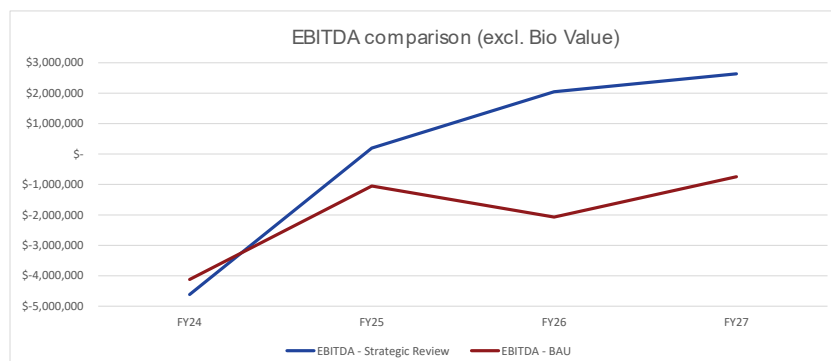


Figure 7: E33's EBITDA over FY25 to FY27 based on E33's best estimates only provided to Yumbah Finance on 25 April 2024. The cash projection based on the Strategic Review represents management's best estimates following the Strategic Review. The BAU scenario represents the business' position preceding the Strategic Review.

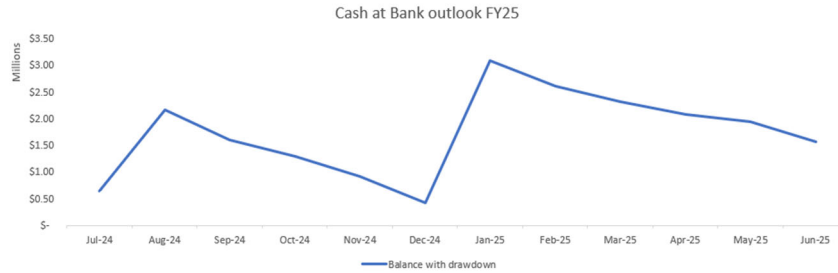


Figure 8: E33's cash at bank outlook through to FY25 based on E33's best estimates only provided to Yumbah Finance on 25 April 2024.

E33 will have the opportunity to disclose in its Target's Statement any other information about the E33 Group it considers E33 Shareholders would reasonably require to make an informed assessment as to whether to accept the Offer.

(d) Key Assumptions of the Forward Financial Information

The key assumptions on which the Forward Financial Information are based are as follows:

(i) **(Projected revenue)** In relation to the revenue forecast set out in the Forward Financial Information, E33 notes:

- (A) Revenue projections for the farming segment are derived from anticipated oyster harvest volumes, which are aligned with both planned production targets and market demand. These projections also take into account the expected pricing, which varies according to the oyster's type, size, and quality;
- (B) Revenue predictions for the distribution segment are based on the expected availability of oysters for sale, sourced both from E33's farming operations and from third-party suppliers. These projections incorporate anticipated sales prices, which are determined by the oysters' type, size, and quality;
- (C) Restaurant revenue predictions consider seasonality and apply an increase factor from the last period; and
- (D) Movements in the fair value of biological assets are determined based on their assessed valuations considering expected changes in market conditions and biological growth patterns.

(ii) **(Cost of Goods Sold (COGS))** Regarding the COGS assumptions in the Forward Financial Information, it is noted that:

- (A) COGS projections for the farming segment are based on estimated harvest volumes, calculated from historical yields, anticipated advancements in aquaculture practices, and environmental influences on oyster growth. These projections are adjusted for expected sales prices, which vary with the oysters' type, size, and quality;
- (B) COGS projections for the distribution segment are determined by the expected volume of oysters available for sale, sourced from both East 33's farming operations and third-party suppliers. These estimates account for the procurement cost, which is influenced by the type, size, and quality of the oysters;
- (C) COGS for the restaurant segment are based on an increase factor from the last period, adjusted for seasonality; and

(D) COGS are projected to align proportionally with revenue expansion across all the business segments, reflecting a consistent cost-to-income ratio as the business scales.

(iii) (Expenses) The main expenses in Forward Financial Information are employment expenses, rent and outgoings expenses, general expenses, consulting, lease expenses, depreciation and finance costs.

7.6 Publicly available information

E33 is listed on ASX and is obliged to comply with the periodic and continuous disclosure requirements of the Corporations Act and the Listing Rules. For more information concerning the financial position and affairs of E33, you should refer to the full range of information that has been disclosed by E33 pursuant to those obligations. Further publicly available information about E33 is available on E33's website at <https://east33.sydney/> or the ASX website at <https://www2.asx.com.au/markets/company/e33>.

E33's annual report for the year ended 30 June 2023 was lodged with ASIC and given to ASX on 18 September 2023.

E33's half-yearly financial report for the half year ended 31 December 2023 was lodged with ASIC and given to ASX on 29 February 2024.

E33's quarterly cash flow report & appendix 4C for the quarter ended 30 June 2024 was lodged with ASIC and given to ASX on 19 July 2024.

7.7 Interests of the Bidder in E33's issued securities

(a) **Prices paid for E33 Shares by the Bidder or its Associates:** On 26 April 2024, Yumbah Finance Pty Ltd (**Yumbah Finance**), an Associate of the Bidder, was issued 238,095,238 E33 Shares at \$0.021 per E33 Share pursuant to the Recapitalisation Transaction entered on 28 February 2024 (and announced on 29 February 2024) in which Yumbah Finance agreed to convert \$5.0 million of the face value of a convertible note into E33 Shares. This transaction was approved by shareholders at E33's general meeting held on 23 April 2024.

Other than as described above, neither the Bidder, nor any of its respective Associates provided, or agreed to provide, consideration for an E33 Share under a purchase or agreement during the last four (4) months before the date of the Announcement.

(b) **No Escalation Agreements:** Neither the Bidder, nor any of their respective Associates has entered into any escalation agreement that is prohibited by section 622 of the Corporations Act.

(c) **No Collateral Benefits:** During the four (4) months before the date of the Announcement, neither the Bidder, nor any of their respective Associates gave, or agreed to give, a benefit to another person which was likely to induce the other person, or an Associate of the other person to:

- (i) accept the Offer; or
- (ii) dispose of E33 Shares,

and which is not offered to all E33 Shareholders under the Offer.

8. Bidder's intentions

This Section 8 sets out the intentions of the Bidder on the basis of the facts and information concerning E33 and the existing circumstances affecting the business of E33 which are known to the Bidder at the time of preparation of this Bidder's Statement, in relation to the following:

- (a) the continuation of the business of E33;
- (b) any major changes to be made to the business of E33, including any redeployment of fixed assets of E33; and
- (c) the future employment of the present employees of E33.

The Bidder has nominee directors on the board of E33 but are otherwise not privy to any non-public information in relation to E33 as E33 have established an independent board committee that excludes those nominee directors of the Bidder.

The statements set out in this Section 8 are statements of current intentions only which may vary as new information becomes available or circumstances change.

8.2 Intentions upon ownership of less than 90% of E33

The Offer is subject to a Minimum Acceptance Condition. The Bidder reserves its rights to declare the Offer free from the Minimum Acceptance Condition (or any other condition). However, it has made no decision as at the date of this Bidder's Statement as to whether it will do so.

This Section 8.2 sets out the Bidder's current intentions if it were to declare the Offer free of the Bid Conditions, including the Minimum Acceptance Condition, and the Bidder and its Associates continue to hold more than 50.1% of the E33 Shares, but the Bidder is not entitled to compulsorily acquire the remaining E33 Shares under the Corporations Act.

In that circumstance, the Bidder's intentions are as follows:

(a) **Directors**

The Bidder intends to reduce the size and make changes to the composition of the E33 Board to streamline cost efficiencies.

(b) **Review**

The Bidder will propose that a review of E33, of the type referred to in Section 8.3(d) below, be undertaken with the aim of pursuing, to the maximum extent possible and appropriate, the types of strategies and intentions, as described in Section 8.3(d), which might have been pursued if the Bidder held 100% of E33. However, the Bidder does not presently envisage that such a review will result in any substantive changes to the nature of the business of E33. Rather, the Bidder will endeavour to explore, identify and implement further opportunities for the Bidder and E33 to collaborate to accelerate the turnaround of the operations of E33.

(c) **Capital structure**

The Bidder intends that a review of E33's capital structure would be undertaken as part of the operational review discussed at Section 8.3(d). That review will consider E33's need to retain sufficient funds to meet its ongoing activities and requirements for additional capital, as well as whether E33's capital structure is efficient and maximises shareholder value.

(d) **Quotation on ASX – Removal**

In relation to the removal of E33 from the official list of the ASX, ASX guidance indicates that the usual conditions that the ASX would expect to be satisfied in order for it to approve the removal of E33 from the official list in the context of a successful takeover bid include:

- (i) at the end of the Offer, the Bidder owns or Controls at least 75% of the E33 Shares and the Offer has remained open for at least two weeks after the Bidder attained ownership or Control of at least 75% of the E33 Shares; and
- (ii) the number of E33 Shareholders (other than the Bidder) having holdings with a value of at least \$500 is fewer than 150,

and in such case, the ASX will not usually require the Bidder to obtain E33 Shareholder approval for E33's removal from the official list of the ASX.

In addition, ASX may approve an application for E33 to be removed from the official list of the ASX with shareholder approval and, where such removal is sought later than 12 months after the close of the Offer, the Bidder would be entitled to vote on the resolution approving the removal.

After the end of the Offer Period the Bidder intends to seek the removal of E33 from the official list of the ASX in accordance with the above as soon as practicable and will consider its ability to do so subject to its Relevant Interest following the Offer Period.

If E33 is removed from the official list of the ASX, the Bidder intends to convert E33 to a proprietary company. In that case, there may be risks related to remaining as a minority shareholder in E33. These include significantly reduced liquidity, remaining a minority shareholder with only statutory rights under the Corporations Act and no automatic rights to dividends or financial reports.

(e) **Further acquisitions of E33 Shares**

The Bidder may acquire additional E33 Shares under the "creep" provisions of the Corporations Act. In summary, those provisions would permit the Bidder and its Associates to acquire up to 3% of E33 Shares every 6 months. The Bidder has not yet determined whether it will acquire further E33 Shares under the "creep" provisions in the future, as that will be dependent upon (among other things) the extent of Voting Power of the Bidder in E33 and market conditions at the time.

If the Bidder becomes entitled to give notices to compulsorily acquire any outstanding E33 Shares in accordance with section 664C of the Corporations Act (general compulsory acquisition power) because of acquisitions of additional E33 Shares, the Bidder intends to give such notices depending on the circumstances at the time.

(f) **Limitations on intentions**

The implementation of the Bidder's intentions in the event of less than 100% ownership of E33 will be subject to the Corporations Act, the Listing Rules and the E33 constitution, and to the obligations of the E33 Directors to act in the best interests of E33 and all E33 Shareholders.

If the Bidder has Control (but not 100%) of E33, the "related party" provisions of Chapter 2E of the Corporations Act (and the Listing Rules) will apply.

The Bidder would only decide on its courses of action in these circumstances after it receives appropriate legal and financial advice on such matters, including in relation to any requirements for E33 Shareholder approval.

8.3 Intentions upon becoming able to compulsorily acquire E33 Shares

This Section 8.3 sets out the Bidder's current intentions if it has a Relevant Interest in 90% or more of all E33 Shares and are entitled to proceed to compulsory acquisition of the outstanding E33 Shares on issue.

(a) **Compulsory acquisition**

If it becomes entitled to do so under the Corporations Act, the Bidder will:

- (i) pursuant to section 661A of Corporations Act (compulsory acquisition power following takeover bid), give notices to compulsorily acquire any outstanding E33 Shares in accordance with section 661B of the Corporations Act, including any E33 Shares which are issued as a result of the vesting and exercise of Performance Rights after the end of the Offer Period and in the 6 weeks after the Bidder gives the compulsory acquisition notices; and
- (ii) if necessary, give notices to compulsorily acquire any outstanding E33 Shares in accordance with section 664C of the Corporations Act (general compulsory acquisition power), depending on the relevant circumstances at the time.

If it is required to do so under section 662A and section 663A of the Corporations Act, the Bidder intends to give notices to E33 Shareholders offering to acquire their E33 Shares, in accordance with section 662B and section 663C of the Corporations Act.

(b) **Directors**

The Bidder would make changes to the composition of the E33 Board to streamline cost efficiencies.

(c) **Quotation on ASX – Removal**

Upon acquiring ownership of 100% of E33, the Bidder will seek to have E33 removed from the official list of ASX. The Bidder may also seek to change the status of E33 from a public company limited by shares to a proprietary company limited by shares.

(d) **Operational review**

Following the close of the Offer, if the Bidder is entitled to acquire 100% Control of E33, the Bidder intends to conduct a review of the operations, assets, structure and employees of E33 in light of that information to identify:

- (i) business opportunities and areas of revenue generation which may provide overall strategic operational benefit;
- (ii) areas of costs saving which may provide overall strategic and operational benefit; and
- (iii) any business or businesses which do not fit into the strategic plan for E33 and to evaluate the best and most appropriate way of organising such business or businesses.

Final decisions will only be reached after that review and in light of all material facts and circumstances.

While the Bidder does not currently have any specific intentions in relation to this review or its outcomes, its current expectation is that the review will focus on identifying the most effective means of utilising E33's assets and maximising the investment the Bidder has made in E33.

(e) **Management and other employees**

The Bidder believes that E33's current management have appropriate skills and experience. The Bidder would review the future employment of the management of E33 after the close of the Offer, having regard to its plans for E33 and upon completing the review referred to above at Section 8.3(d).

It is the current intention of the Bidder that the employment of most of E33's employees will not be adversely affected. The Bidder intends those employees made redundant because of any changes to E33's business would receive payments and other benefits to which they are legally entitled.

(f) **Limitations on intentions**

The intentions and statements of future conduct set out in this Section 8 must be read as being subject to:

- (i) the law (including the Corporations Act) and the Listing Rules, including, in particular, the requirements of the Corporations Act and the Listing Rules in relation to conflicts of interest and "related party" transactions given that, if the Bidder obtain Control of E33 but the Bidder does not acquire all of the E33 Shares, it will be treated as a related party of E33 for these purposes;
- (ii) the legal obligation of the E33 Directors at the time, including any nominees of the Bidder, to act in good faith, in the best interest of E33 and for the proper purposes and to have regard to the interests of E33 Shareholders; and
- (iii) the outcome of reviews referred to in Sections 8.2(b) and 8.3(d).

Accordingly, this Section 8 must be read and understood on this basis.

9. Funding of cash consideration

9.1 Cash consideration under the Offer

The cash consideration for the acquisition of E33 Shares to which the Offer relates will be satisfied by the payment of cash (in Australian dollars).

Based on the number of E33 Shares on issue as at the date of the Announcement, and noting that the Bidder already has 52,000,000 E33 Shares as at the date of the Announcement, the maximum amount of cash consideration that would be payable by the Bidder under the Offer if all acceptances were received for all E33 Shares which the Bidder does not already directly own, ~~is approximately A\$15,910,047~~ (including any additional E33 Shares which become part of the bid class during the Offer Period as a result of exercising of any other securities), is approximately A\$16 million at the Offer Price of \$0.022 (2.2c) per E33 Share, not including transaction costs.

9.2 Overview of the Bidder funding arrangements

The Bidder has immediate access to sufficient funds to pay for all the bid class securities and will fund the maximum possible cash consideration (Maximum Consideration Amount) including associated transaction costs under the Offer **(Aggregate Amount)** from ~~existing cash reserves held by the Bidder and~~ a financing arrangement between the Bidder and Research Corporation Pty Ltd. (Research Corporation). Research Corporation has agreed to provide 100% of the funds required to pay for all the bid class securities under a limited recourse loan agreement with the Bidder (Funding Agreement). At this stage, the amount under the Funding Agreement is \$17 million (which may be varied if the Offer is varied).

Research Corporation Pty Ltd, an entity controlled by Mr Anthony Hall has agreed to provide the Bidder with financing to pay the Aggregate Amount, being the expected total amount to pay for all the bid class securities. Mr Hall also holds 53.625% of the shares in the Bidder.

There is no restriction on the availability of the funds under the Funding Agreement. The funds are being held in an at-call interest-bearing bank account for use by the Bidder to pay the consideration for any acceptances under the Offer, subject to the Offer becoming unconditional.

The terms of the Funding Agreement are summarised as follows:

<u>Matter</u>	<u>Detail</u>
<u>Loan Amount</u>	<u>\$17 million (which may be varied if the Offer is varied)</u>
<u>Interest rate</u>	<u>BBSW + 5.0% per annum</u>
<u>Final repayment date</u>	<u>Earlier of 30 June 2025 and 3 business days after the Bidder completes its next equity capital raising</u>
<u>Prepayment available</u>	<u>Yes</u>

The funds available to the Bidder under the Funding Agreement is more than sufficient to fund the Aggregate Amount payable by the Bidder pursuant to the Offer and all other transaction costs.

Based on the arrangements described above, the Bidder is of the opinion that it has a reasonable basis for forming the view, and it holds the view, that it will have sufficient funds available to meet its payment obligations to the E33 Shareholders under the Offer.

9.3 Payment of cash consideration

Having regard to the matters set out above, the Bidder is of the opinion that it has a reasonable basis for forming, and it holds, the view that it will be able to pay cash consideration including any relevant transaction cost pursuant to the Offer. The Offer is not subject to any financing conditions.

10. Taxation information

The following is a general description of Australian income and capital gains tax consequences for E33 Shareholders of the acceptance of the Offer and does not take into account the specific circumstances of any particular E33 Shareholder. It does not constitute tax advice and should not be relied upon as such. All E33 Shareholders should seek independent professional advice on the consequences of their disposal of E33 Shares, based on their particular circumstances.

The outline reflects the current provisions of the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth) (collectively, **the ITAA**) and the regulations made under those Acts. The outline does not otherwise take into account or anticipate any changes in the law, whether by way of judicial decision or legislative action, nor does it take into account tax legislation from countries apart from Australia.

The comments below are not exhaustive of all possible Australian tax considerations that could apply to E33 Shareholders. In particular, the comments are relevant to those E33 Shareholders who are individuals, complying superannuation entities, trusts and companies that hold their investments on capital account. The tax treatment for E33 Shareholders who hold their investments on revenue account or as trading stock, such as banks and other trading entities, has not been addressed. In addition, these comments do not take into account the circumstances of E33 Shareholders who acquired their E33 Shares in respect of their, or an Associate's employment with E33 or any member of the E33 Group.

For E33 Shareholders who are non-residents of Australia for tax purposes, it is assumed that the E33 Shares are not held, and never have been held or used at any time, as an asset in carrying on a business through a permanent establishment of that E33 Shareholder in Australia.

It is further noted that these comments do not address the position for E33 Shareholders who are partnerships, tax exempt organisations, temporary residents, have a functional currency for Australian tax purposes other than an Australian functional currency, who are subject to the taxation of financial arrangements rules in Division 230 of the ITAA in relation to gains and losses on their E33 Shares, or are subject to the Investment Manager Regime under Subdivision 842-I of the ITAA in respect of their E33 Shares.

10.1 Australian tax resident E33 Shareholders

The acceptance of the Offer in respect of an E33 Share gives rise to a disposal for CGT purposes of that E33 Share by the relevant E33 Shareholder. The disposal gives rise to CGT Event A1. An Australian tax resident E33 Shareholder should make a capital gain at the time of that CGT Event if the capital proceeds received on disposal exceed their cost base in the E33 Share. An Australian resident E33 Shareholder should make a capital loss at the time of that CGT Event if the capital proceeds received on disposal are less than their reduced cost base in the E33 Share.

In broad terms, the capital proceeds should constitute the Offer Price (being A\$0.022 per E33 Share) an E33 Shareholder receives by accepting the Offer.

The cost base and reduced cost base (in the case of a capital loss) of an E33 Share is generally the amount the Australian resident E33 Shareholder paid for the E33 Share (including incidental costs of acquisition and disposal that have not otherwise been deducted). In some cases, there may be financing costs of ownership that will form part of the cost base of the E33 Share.

The taxable amount of any capital gain may be reduced if the CGT discount applies. If an Australian resident E33 Shareholder is an individual, a complying superannuation entity or a trust or a specified life insurance company, the amount of the Australian resident E33 Shareholder's capital gain may be reduced by the relevant CGT discount. If an Australian resident E33 Shareholder who is an individual or trust applies the CGT discount, the shareholder's capital gain (after offsetting any current year capital losses or carry forward net capital losses from previous income years) will be reduced by one half (or one third if the

Australian tax resident E33 Shareholder is a complying superannuation entity or specified life insurance company). The CGT discount rules are not available for capital gains made on an E33 Share where indexation applies to the relevant E33 Share.

The CGT discount is only available to an Australian tax resident E33 Shareholder that is an individual, a complying superannuation entity trust or specified life insurance company where the disposal occurs at least 12 months and one day after the acquisition (for CGT purposes) of the relevant E33 Share. That is, the E33 Share must have been held for at least 12 months (for CGT purposes) prior to accepting the Offer for the CGT discount to be available for that E33 Share.

If the Australian resident E33 Shareholder is a company, the CGT discount is not available at any time.

The above comments do not apply to E33 Shareholders who buy and sell shares in the ordinary course of business, or those who acquired the shares for resale at a profit. In those cases, any gain will generally be taxed as ordinary income. All E33 Shareholders should seek their own advice.

10.2 Non-resident E33 Shareholders

An E33 Shareholder who is not a resident of Australia for tax purposes and who has never used their shares in carrying on a business through a permanent establishment in Australia will generally not have to pay Australian tax on any capital gain made when disposing of E33 Shares.

This is unless the shares in E33 are 'indirect Australian real property interests'. E33 Shares will be 'indirect Australian real property interests' where both of the following requirements are satisfied:

- (a) the interest held in E33 is a "non-portfolio" interest; and
- (b) the E33 Shares pass the "principal asset test" at the time of disposal.

If either of these tests are not satisfied, any capital gain made on the disposal of the E33 Shares should not be subject to income tax in Australia.

A non-resident E33 Shareholder will hold a "non-portfolio interest" in E33 if (together with Associates) they own at the time of the disposal for CGT purposes, or owned, throughout a 12 month period that begins no earlier than 24 months before that time and ends no later than that time, 10% or more of all of the shares in E33.

The E33 Shares would pass the "principal asset test" if the market value of E33's direct and indirect interests in Australian real property (including leases of land, if the land is situated in Australia, and Australian mining, quarrying or prospecting rights) is more than the market value of its other assets at the time a non-resident E33 Shareholder accepts the Offer. There are tracing rules that will take into account any real property interests held by Subsidiaries of E33.

Detailed calculations are required to determine the results of the "principal asset test" and to determine the amount of Australian tax that is payable (to the extent tax is payable).

If a non-resident E33 Shareholder buys and sells shares in the ordinary course of business, or acquired the shares for resale at a profit, any gain could be taxed in Australia as ordinary income and not as a capital gain, subject to the provisions of any applicable Double Taxation Agreement. Again, non-resident E33 Shareholders should seek their own advice.

Non-resident E33 Shareholders should seek advice from their taxation advisor as to the taxation implications of accepting the Offer in their country of residence (as well as any Australian taxation implications).

10.3 Foreign resident capital gains withholding

Broadly, under the 'foreign resident capital gains withholding' (**FRCGTW**) regime, a purchaser of shares may have an obligation to withhold and remit to the Australian Taxation Office an amount equal to 12.5% of the purchase price for each share under section 14-200 of Schedule 1 of the *Taxation Administration Act 1953* (Cth) (**TAA**) where the vendor is a non-resident.

The Bidder does not expect to withhold any amount from the Offer Price on account of FRCGTW on the basis that the acquisition of each E33 Share will occur through acceptance of the Offer which will result in the acquisition occurring on an approved stock exchange (being, the ASX). The acquisition should therefore be an 'excluded transaction' for the purposes of the FRCGTW regime.

10.4 Stamp duty

No stamp duty will be payable by E33 Shareholders in respect of a transfer of their E33 Shares under the Offer. The Bidder will pay the stamp duty (if any) payable in Australia on the transfer of E33 Shares under the Offer.

10.5 Goods & Services Tax

No GST will be payable by E33 Shareholders in respect of a transfer of their E33 Shares under the Offer.

11. Additional information

11.1 Bid Implementation Deed

As announced on the Announcement Date, the Bidder and E33 have entered a Bid Implementation Deed dated 5 August 2024 (**BID**) which sets out the terms for implementation of the Offer.

The key terms of the BID are as follows:

- (a) (**Bid Conditions**) The Offer is subject to several Bid Conditions. These Bid Conditions are detailed in full at section 12.2 of this Bidder's Statement.
- (b) (**Conduct of Business**) During the Exclusivity Period, E33 must conduct its business in the ordinary course, in accordance with all applicable laws and regulations, provided that nothing restricts E33 from engaging in anything required or permitted to be done or not done under the BID or otherwise required to be done in connection with the legal obligations for the implementation of the Offer or matters consented to in writing by the Bidder (acting reasonably).
- (c) (**Variation**) The BID provides that the Bidder may vary the Offer in any manner permitted by the Corporations Act so far as the terms are no less favourable to E33 Shareholders than the Bid Conditions (detailed at Schedule 1 of the BID). Further, the Bidder may declare the bid to be free from any Bid Condition and extend the Offer Period at any time.
- (d) (**Exclusivity**) E33 has agreed to exclusivity obligations. The BID contains no shop, no talk and no due diligence restrictions on E33. During the Exclusivity Period, E33 must not directly or indirectly:
 - (i) (**no shop**) solicit, invite, encourage or initiate (including by the provision of non-public information to any Third Party) any inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or communicate to any person an intention to do anything referred to in this clause;
 - (ii) (**no talk**):
 - (A) participate in or continue any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any person to make, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or participate in or continue any negotiations or discussions with respect to any actual, proposed or potential Competing Proposal;
 - (B) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Competing Proposal;
 - (C) disclose or otherwise provide any non-public information about the business or affairs of the E33 Group to a Third Party (other than a Government Agency) with a view to obtaining, or which would reasonably be expected to encourage or lead to receipt of, an actual, proposed or potential Competing Proposal (including, without limitation, providing such information for the purposes of the conduct of due diligence investigations in respect of the E33 Group whether by that Third Party or another person); or

- (D) communicate to any person an intention to do anything referred to in the preceding paragraphs
- (e) **(Notification of approaches)** Subject to the fiduciary exception noted below, during the Exclusivity Period, E33 must as soon as possible (and in any event within 24 hours) notify the Bidder in writing if it, or any of its Related Persons, becomes aware of any:
 - (i) written proposal (**Written Proposal**) is received by E33 or any of its Related Persons, in connection with, or in respect of any exploration or completion of, an actual, proposed or potential Competing Proposal; or
 - (ii) following a Written Proposal being received by E33, provision by E33 or any of its Related Persons of any non-public information concerning the business or operations of E33 or the E33 Group to any a Third Party (other than a Government Agency) in connection with an actual, proposed or potential Competing Proposal,

whether direct or indirect, solicited or unsolicited, and in writing or otherwise.

- (f) **(Matching right)** Subject to the fiduciary exception noted below, E33:
 - (i) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, E33 or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Proposal; and
 - (ii) must use reasonable endeavours to procure that none of its independent directors change their recommendation of the Offer or publicly recommend an actual, proposed or potential Competing Proposal or recommend against the Offer (provided that a statement that no action should be taken by E33 Shareholders pending the assessment of a Competing Proposal by the E33 IBC and its advisers shall not contravene this clause),

unless:

- (iii) the E33 IBC determines that the Competing Proposal constitutes a Superior Proposal;
- (iv) E33 has provided Yumbah with all known terms and conditions of the actual, proposed or potential Competing Proposal, including price and the identity of the Third Party making the actual, proposed or potential Competing Proposal;
- (v) E33 has given Yumbah no less than 5 Business Days and no more than 10 Business Days after the date of the provision of the information referred to section 11.1(f)(iv) above to provide a counter proposal to the Competing Proposal (**Yumbah Counterproposal**); and
- (vi) either:
 - (A) Yumbah has not announced or otherwise formally proposed to E33 a Counterproposal by the expiry of period referred to above; or
 - (B) Yumbah has announced or provided to E33 a E33 Counterproposal by the expiry of the period referred above, that the E33 IBC, acting reasonably and in good faith, determines would not provide a matching or superior outcome for E33 Shareholders as a whole compared with the Competing Proposal, taking into account all of the terms and conditions of the Yumbah Counterproposal.

- (g) **(Fiduciary exception)** The restrictions detailed above do not apply to the extent that it restricts E33 from responding to an actual, proposed or potential Competing Proposal, provided the E33 IBC has determined in good faith based on the information then available and after consultation from its legal advisers, that:
- (i) the Competing Proposal is, or may reasonably be expected to become a Superior Proposal; and
 - (ii) failing to respond with respect to the Competing Proposal would be reasonably likely to constitute a breach of any of the legal obligations or fiduciary duties of the members of the E33 IBC.
- (h) **(Warranties)** Both the Bidder and E33 have provided standard warranties to one another.
- (i) **(Termination)** Standard termination clauses have been agreed to in the BID including where:
- (i) **(Material breach)** a material breach of the BID occurs;
 - (ii) **(Change of recommendation – Bidder)** the Bidder may terminate the BID if any of the following occurs:
 - (A) any member of the E33 IBC withdraws, adversely revises or adversely modifies his or her recommendation that E33 Shareholders accept the Offer;
 - (B) any member of the E33 IBC makes a public statement indicating that he or she no longer recommends the Offer or recommends, supports or endorses another transaction (including any Competing Proposal but excluding a statement that no action should be taken by E33 Shareholders pending the assessment of a Competing Proposal by the E33 IBC);
 - (iii) **(Superior Proposal)** E33 may terminate the BID by written Notice to the Bidder at any time before the end of the Offer Period if E33 has received a Superior Proposal and the E33 IBC has determined that the proposal is a Superior Proposal, and the Bidder does not exercise its matching right;
 - (iv) **(Change of recommendation – E33)** E33 may terminate the BID by written notice to the Bidder at any time before the end of the Offer Period if the E33 IBC or a majority of the E33 IBC has changed, withdrawn or modified its recommendation; or
 - (v) **(Withdrawal by Bidder)** E33 may terminate the BID by written notice to the Bidder at any time before the end of the Offer Period if the Bidder withdraws the Offer or applies to ASIC for consent to withdraw unaccepted offers under the Corporations Act.
 - (vi) **(Breach of representations and warranties)** Each party may terminate the BID if the other party breaches any representation and warranty made by it and:
 - (A) the other party has given written notice to breaching party setting out the relevant circumstances and stating an intention to terminate the BID;
 - (B) the relevant breach continues to exist 5 Business Days (or any shorter period ending at the end of the Offer Period) after the date on which the notice is given; and

- (C) the relevant breach is material in the context of the Offer taken as a whole.
- (j) **(Reimbursement Fee)** Each party may be liable to pay the other party a Reimbursement Fee if the other party is entitled to terminate the BID.

11.2 Date for determining holders of E33 Shares

For the purposes of section 633(2) of the Corporations Act, the date for determining the people to whom information is to be sent under items 6 and 12 of section 633(1) is the Register Date.

11.3 Recapitalisation Transaction

As announced by E33 on ASX on 16 August 2023, an Associate of the Bidder, Yumbah Finance Pty Ltd (**Yumbah Finance**) and E33 entered into a loan facility for \$15 million and convertible note agreement. Further details are set out in the notice of meeting and independent experts report dated 23 October 2023 prepared for the general meeting held on 24 November 2023 where shareholder approval was obtained.

On 28 February 2024, Yumbah Finance and E33 entered an Amended Convertible Note Subscription Agreement and the Amended Facility Agreement (**Recapitalisation Documents**) as approved at the general meeting held by E33 on 23 April 2024 (**Recapitalisation Transaction**).

As announced on 29 February 2024 and described in E33's notice of general meeting on 22 March 2024, the Recapitalisation Transaction involved:

- » ordinary shares in E33 (**Conversion Shares**), with such number of Conversion Shares being determined by dividing \$5.0 million of the face value by a minimum price of \$0.021 (being the higher of \$0.021 or a 10% discount to the 20-day volume weighted average price calculated to the last trading day prior to the conversion date). The \$5.0 million was deemed to be paid by Yumbah Finance in reduction of the amount owing by E33 under the facility agreement between E33 and Yumbah Finance (**Facility Agreement**), which has a facility limit of \$15.0 million plus capitalised interest and has \$10.0 million drawn down, so bringing the amount owing under the Facility Agreement to \$5.0 million plus capitalised interest; and
- » following the Convertible Note Conversion, allowing E33 to maintain the facility limit under the Facility Agreement at \$15.0 million plus capitalised interest, meaning that, with the facility paid down by \$5.0 million, E33 has access to a further \$10.0 million under the Facility Agreement.

An independent expert's report was prepared in respect of the approval of the Amended Convertible Note Subscription Agreement under ASX Listing Rule 10.11 and Chapter 2E of the Corporations Act, as well as approval for the issue of the Conversion Shares to Yumbah Finance and the consequential increase in the Relevant Interest of Yumbah Finance (and its associated entities), under item 7 of s611 and Chapter 2E of the Corporations Act.

11.4 On Market Purchases

Subject to the Corporations Act, and in accordance with rule 5.13.1 of the ASIC Market Integrity Rules, the Bidder may appoint a broker to acquire E33 Shares on market during normal trading hours on the ASX during the Offer Period (as defined in the ASIC Market Integrity Rules) at prices equal to, below, or higher than, the Offer Price (**On Market Purchases**).

If the Bidder instructs its broker to make on market acquisitions of E33 Shares on its behalf above the then Offer Price, it will instruct its broker that upon the order on market First Executing on ASX Trade (such that it results in any acquisition above the then Offer Price), the broker is to remove any other orders on the Bidder's behalf from the market (if any have been entered)

at that time. On the happening of the order First Executing on ASX Trade, the Bidder will promptly make an announcement on ASX of the purchase or purchases, and the price (or highest price) paid and that the Offer Price is automatically increased accordingly under section 651A of the Corporations Act, before the Bidder (through its broker) makes any further on-market acquisitions other than as ASX trade automatically matches any unfilled balance under the order. As soon as practicable following that announcement on ASX, the Bidder will lodge and serve a supplementary bidder's statement as required by law.

If the Offer Price paid to acquire E33 Shares in an On Market Purchase is higher than the Offer Price, E33 Shareholders who have previously received consideration for accepted E33 Shares shall be entitled to receive the increase in consideration.

11.5 Consents

(a) K&L Gates - Australian legal advisers

K&L Gates LLP has given and has not, before the date of this Bidder's Statement, withdrawn, its written consent to be named in this Bidder's Statement as legal adviser to the Bidder in respect of the Offer.

(b) Unified Capital Partners – Financial advisor

Unified Capital Partners has given and have not, before the date of this Bidder's Statement, withdrawn, their written consent to be named in this Bidder's Statement as financial advisor in respect of the Offer.

(c) BoardRoom – Registry services providers

BoardRoom has given and has not, before the date of this Bidder's Statement, withdrawn, its written consent to be named in this Bidder's Statement as registry services provider to the Bidder in respect of the Offer.

(d) East 33 Limited

E33 has given and has not, before the date of this Bidder's Statement, withdrawn, its written consent for the Bidder to use the statements attributed to it in this Bidder's Statement in respect of the Offer as set out in Section 7.5.

Each person named in this Section 11.5 as having given its consent to the inclusion of a statement or being named in this Bidder's Statement:

- does not make, or purport to make, any statement in this Bidder's Statement or any statement on which a statement in this Bidder's Statement is based other than, in the case of a person referred to above as having given their consent to the inclusion of a statement included in this Bidder's Statement with the consent of that person; and
- to the maximum extent permitted by law, expressly disclaims and takes no responsibility for any part of this Bidder's Statement, other than a reference to its name and, in the case of a person referred to above as having given their consent to the inclusion of a statement, any statement which has been included in this Bidder's Statement with the consent of that party.

11.6 No other material information

Except as set out in this Bidder's Statement, there is no other information that is material to the making of the decision by a holder of E33 Shares whether or not to accept the Offer which is known to the Bidder and has not previously been disclosed to E33 Shareholders.

11.7 ASIC modifications

The Bidder has not obtained from ASIC any modifications to, nor exemptions from, the Corporations Act in relation to the Offer. However, ASIC has published various instruments providing modifications and exemptions that apply generally to all persons, including the Bidder, and on which the Bidder may rely.

This Bidder's Statement includes statements which are made in, or based on statements made in, documents lodged with ASIC or given to ASX. Under the terms of ASIC Corporations (Takeover Bids) Instrument 2023/683, the parties making those statements are not required to consent to, and have not consented to, inclusion of those statements in this Bidder's Statement whether the Bidder's Statement fairly represents the statement or includes, or is accompanied by, a correct and fair copy of the document or the part of the document that contains the statement.

The Bidder will make available a copy of these documents (or of relevant extracts from these documents) free of charge to E33 Shareholders who request it during the Offer Period. If you would like to obtain a copy of these documents (or the relevant extracts), please contact the Offer Information Line on 1300 737 760 (within Australia) or +61 2 9290 9600 (outside Australia) between 8:30 am to 5:30 pm (Sydney time) on Business Days.

As permitted by ASIC Corporations (Consents to Statements) Instrument 2016/72 (**Corporations Instrument 2016/72**), this Bidder's Statement may include or be accompanied by certain statements:

- (a) which fairly represent what purports to be a statement by an official person;
- (b) which are a correct and fair copy of, or extract from, what purports to be a public official document; or
- (c) which are a correct and fair copy of, or extract from, a statement which has already been published in a book, journal or comparable publication.

In addition, as permitted by ASIC Corporations Instrument 2016/72, this Bidder's Statement contains security price trading data sourced from IRESS, who has not consented to the use of the reference in the disclosure document.

11.8 Regulatory and other approvals

There are no regulatory approvals that the Bidder is required to obtain before acquiring E33 Shares under the Offer.

11.9 Risks of accepting the Offer

The risks associated with accepting the Offer include:

- (a) If the Conditions are not satisfied or waived, the Bidder may allow the Offer to lapse.
- (b) If a Superior Proposal emerges, and an E33 Shareholder has already accepted the Offer, the E33 Shareholder may not be able to withdraw acceptance and accept the Superior Proposal except in limited circumstances.
- (c) E33 Shareholders that accept the Offer will only be able to withdraw acceptance in very limited circumstances as set out in the Corporations Act.
- (d) E33 Shareholders that accept the Offer will forego opportunities from price appreciation of E33 Shares and may be unable to sell E33 Shares for more valuable consideration.

12. The Offer

12.1 General Terms

- (a) As announced to the ASX in the Announcement, the Bidder is making an Offer under an off-market takeover bid to acquire all E33 Shares which exist (or will exist) and are listed for quotation on ASX at any time during the Offer Period.
- (b) The Bidder offers to acquire all of your E33 Shares on the terms and conditions set out in this Bidder's Statement.
- (c) The consideration offered for each of your E33 Shares is the equivalency of A\$0.022 in cash consideration.
- (d) The Offer is subject to conditions as set out below.

12.2 Bid Conditions

Subject to Section 12.3, the completion of this Offer and any contract that results from an acceptance of this Offer, are subject to the fulfilment or waiver of the conditions set out below before the end of the Offer Period:

(a) **Minimum acceptance**

During, or at the end of, the Offer Period, the number of E33 Shares in which the Bidder has a Relevant Interest is at least 90% of all E33 Shares.

(b) **Prescribed Occurrences**

None of the following events occur, is announced or otherwise becomes known to the Bidder between the Announcement Date and the end of the Offer Period:

- (i) E33 converting all or any of the E33 Shares into larger or smaller numbers of shares under section 254H of the Corporations Act;
- (ii) any E33 Group member resolving to reduce its share capital in any way;
- (iii) any E33 Group member entering into a buy-back agreement or resolving to approve the terms of a buy-back agreement under section 257C(1) or 257D(1) of the Corporations Act;
- (iv) other than as agreed with Yumbah, any E33 Group member issuing shares, or granting an option over its shares, or agreeing to make such an issue or grant such an option;
- (v) any E33 Group member issuing, or agreeing to issue, convertible notes;
- (vi) any E33 Group member disposing or agreeing to dispose of the whole, or a substantial part, of its business or property;
- (vii) any E33 Group member granting, or agreeing to grant, a security interest in the whole, or a substantial part, of its business or property; and
- (viii) any E33 Group member resolving to be wound up.

(c) **Regulated Events**

None of the following events (each a **Regulated Event**) occurs, is announced or otherwise becomes known to the Bidder between the Announcement Date and the end of the Offer Period:

- (i) **(Issue of securities)** other than as agreed with Yumbah, E33 issues securities, derivatives, options or other rights convertible into, or that may result in the issue of, E33 Shares being issued or granted (or agreed to be issued or granted) or otherwise alters E33's capital structure or rights attaching to E33 securities, derivatives, options or other rights occurring;
- (ii) **(Acceleration of employee incentives)** any E33 Group member agrees to accelerate rights of any person to receive any benefit under any employee incentive plan, vary any employee incentive plan, grant or issue any new rights under any employee incentive plan or introduce a new employee incentive plan, other than acceleration or vesting of any existing E33 convertible securities pursuant to the terms of any employee incentive plan;
- (iii) **(Dividends)** any E33 Group member announces, declares or determines to pay any dividend or announces or makes any other distribution (whether in cash or in specie) to its members;
- (iv) **(Acquisitions and disposals)** any E33 Group member:
 - » acquires or disposes of any shares or other securities in any body corporate or any units in any trust;
 - » acquires substantially all of the assets of any business;
 - » other than as agreed with the Bidder, disposes of, or agrees to dispose of or licences, the whole, or a substantial part of its business or property; or
 - » exercises or waives any pre-emptive rights or rights of first or last refusal in respect of any undertaking, entity, asset or business (or such interest in an undertaking, entity, asset or business) held by another person, the value of which exceeds, or which could reasonably be expected to exceed, A\$300,000 in aggregate;
- (v) **(Licences)** any E33 Group member varies or waives its rights in any materially adverse respect, or terminates, cancels, surrenders, forfeits or allows to lapse or expire (without renewal on terms and conditions that are no less favourable to the E33 Group) any material licence, lease or authorisation (or a number of licences, leases or authorisations which, when taken together, are material to the conduct of the business of the E33 Group as a whole);
- (vi) **(Joint ventures)** any E33 Group member enters into or agrees to enter into any agreement, contract, lease, joint venture, partnership, or other arrangement or instrument (including a commitment to contribute to exploration, appraisal, development or other costs and expenditure if a call or other demand is made upon it), which restricts the ability of any E33 Group member or any person who controls E33 from engaging in or competing with any business in any place;
- (vii) **(Capital expenditure)** any E33 Group member incurs or agrees to incur capital expenditure in excess of the Board Endorsed Budget, with any such excess being subject to agreement between E33 and the Bidder;
- (viii) **(Capital commitments)** any E33 Group member gives or agrees to give:

- (A) any guarantee of, or security for, or financial accommodation, or indemnity in connection with the obligations of any person other than a E33 Group member;
- (B) any encumbrance over any of its assets (or an interest in any of its assets), other than liens in the ordinary and usual course of business;
- (ix) **(Employment terms)** other than as agreed between E33 and the Bidder, any E33 Group member agrees to increase in any material respect the remuneration of, makes or offers to make any bonus payment, retention payment or termination payment to, or otherwise materially change the terms and conditions of employment of any E33 Director or any employee of any E33 Group member, other than (i) in respect of an annual salary review in the ordinary course of business or (ii) in respect of any bonus, retention or termination payments which does not in aggregate exceed A\$100,000;
- (x) **(Disputes)** any E33 Group member commences, comprises or settles any litigation or similar proceeding for an amount exceeding A\$300,000; and
- (xi) **(Compliance with law)** any E33 Group member fails to comply in all material respects with all laws and regulations applicable to its business or does or omits to do anything which might result in the termination, revocation, suspension, modification or non-renewal of any authorisation held by it.
- (d) **(No restraint)** Between the Announcement Date and the end of the Offer Period (each inclusive), nothing restrains, prohibits or impedes, or otherwise materially adversely impacts the Offers and the completion of the Offer or which requires the divestiture by the Bidder of any E33 Shares or any material assets of E33 or any Subsidiary of E33.
- (e) **(No termination of BID)** Between the Announcement Date and the end of the Offer Period (each inclusive), the Bidder does not become entitled to terminate the BID as a result of any of the representations and warranties given by E33 under the BID becoming untrue or incorrect in any material respect.

12.3 Nature and benefit of conditions

- (a) The conditions in Section 12.2 are conditions subsequent. The non-fulfilment of any condition subsequent does not, until the end of the Offer Period, prevent a contract to sell your E33 Shares from arising, but non-fulfilment of any of those conditions will have the consequences set out in Section 12.3.
- (b) Subject to the Corporations Act, the Bidder alone is entitled to the benefit of the conditions in Section 12.2, or to rely on any non-fulfilment of any of them.
- (c) Each condition in Section 12.2 is a separate, several and distinct condition. No condition will be taken to limit the meaning or effect of any other condition.

12.4 Waiver of conditions

- (a) The Bidder may, in its sole discretion, waive this Offer, and any contract resulting from its acceptance, from all or any of the conditions subsequent in Section 12.2, either generally or by reference to a particular fact, matter, event, occurrence or circumstance (or class thereof), by giving a notice to E33 and to ASX declaring this Offer to be free from the relevant condition or conditions specified, in accordance with section 650G(b) and 650F(1) of the Corporations Act (as modified by ASIC Corporations (Takeover Bids) Instrument 2023/683). This notice will be given:
 - (i) in the case of a Bid Condition, no more than three (3) Business Days after the end of the Offer Period; and

- (ii) in any other case, no less than seven (7) days before the end of the Offer Period.
- (b) If, at the end of the Offer Period (or in the case of the Bid Conditions in Section 12.2, at the end of the third Business Day after the end of the Offer Period), the conditions have not been fulfilled and the Bidder has not declared the Offer (or it has not become) free from those conditions, all contracts resulting from the acceptance of the Offer will be automatically void.

12.5 Offer Period

Unless withdrawn, this Offer will remain open for acceptance during the period commencing on the date of this Offer, being [#] 2024, and ending at 5:00 pm (Sydney time) on the later of [#] 2024 and any date to which the Offer Period is extended in accordance with the Corporations Act. The Bidder expressly reserves its rights to extend the Offer Period in accordance with the Corporations Act.

12.6 Accepting this Offer

(a) General information

You may accept this Offer in respect of all of your E33 Shares but for no more or less. You may only accept this Offer at any time during the Offer Period. If you accept the Offer, you will be taken to have accepted the Offer for all your E33 Shares (despite any difference between that number and the number of E33 Shares specified on your Acceptance Form when you accept this Offer).

(b) E33 Shares held in your name on E33's issuer sponsored subregister (your SRN starts with an "I")

To accept this Offer:

(i) Paper:

- (A) complete and sign the Acceptance Form enclosed with this Bidder's Statement in accordance with the terms of this Offer and the instructions on the Acceptance Form; and
- (B) ensure that the Acceptance Form (including any documents required by the terms of this Offer and the instructions on the Acceptance Form) is sent so that it is received before the end of the Offer Period at the address shown on the Acceptance Form.

(c) E33 Shares held in your name in a CHES Holding (your HIN starts with an "X")

To accept this Offer you must:

(i) Initiating acceptance in CHES – either:

- (A) If you are not a Participant, you should instruct your Controlling Participant (this is normally your broker) to initiate acceptance of this Offer on your behalf in accordance with Rule 14.14 of the ASX Settlement Operating Rules in sufficient time for this Offer to be accepted before the end of the Offer Period.
- (B) If you are a Participant, you should initiate acceptance of this Offer in accordance with Rule 14.14 of the ASX Settlement Operating Rules before the end of the Offer Period; or

- (ii) **Accepting by paper:** complete and sign the Acceptance Form enclosed with this Bidder's Statement in accordance with the instructions on the form and send it with all other documents required by those instructions on it if by post, to the address shown on the Acceptance Form,

in each case sent and received in sufficient time for BoardRoom to give instructions to your Controlling Participant and for your Controlling Participant to carry out those instructions before the end of the Offer Period. This will authorise the Bidder to initiate, or alternatively to instruct your Controlling Participant to initiate, acceptance of the Offer on your behalf, so as to be effective before the end of the Offer Period. You must ensure that the relevant Acceptance Forms (and other required documents) are received in sufficient time for the Bidder to give instructions to your Controlling Participant, and for your Controlling Participant to carry out those instructions, before the end of the Offer Period. If you do return your completed Acceptance Form to BoardRoom instead of your Controlling Participant, BoardRoom will endeavour to contact your Controlling Participant on your behalf and relay your instructions but makes no guarantee that it will do so. It is your Controlling Participant's responsibility to acknowledge and accept these instructions so please ensure you allow sufficient time to do so. Neither the Bidder nor BoardRoom will be responsible should your Controlling Participant not acknowledge and accept your instructions.

12.7 Effect of acceptance

Once you have accepted the Offer, you will be unable to revoke your acceptance, the contract resulting from your acceptance will be binding on you and you will be unable to withdraw your accepted E33 Shares from the Offer or otherwise dispose of your accepted E33 Shares, except as follows:

- (a) if, by the relevant times specified below, the conditions in Section 12.2 have not been fulfilled or freed, this Offer will automatically terminate and your accepted E33 Shares will be released to you. The relevant times are:
 - (i) in relation to the condition in Section 12.2(b), the end of the third Business Day after the end of the Offer Period; and
 - (ii) in relation to all other conditions in Section 12.2, the end of the Offer Period.
- (b) if the Offer Period is varied in a way that postpones for more than one month the time when the Bidder must pay the consideration under the Offer and, at the time, this Offer is subject to one or more of the conditions in Section 12.2, you may be able to withdraw your acceptance in accordance with section 650E of the Corporations Act. A notice will be sent to you at the time explaining your rights in this regard.
- (c) By completing, signing and returning the Acceptance Form, or otherwise accepting this Offer pursuant to Section 12.6, you will be deemed to have:
 - (i) accepted this Offer (and any variation of it) in respect of, and, subject to all the conditions to this Offer in Section 12.2 being fulfilled or freed, agreed to transfer to the Bidder, all of your accepted E33 Shares;
 - (ii) represented and warranted to the Bidder that at the time of acceptance, and the time the transfer of your accepted E33 Shares to the Bidder is registered, that all your accepted E33 Shares are and will be free from all mortgages, charges, liens, encumbrances and adverse interests of any nature (whether legal or otherwise) and free from restrictions on transfer of any nature (whether legal or otherwise), that you have full power and capacity to accept this Offer and to sell and transfer the legal and beneficial ownership in your accepted E33 Shares to the Bidder, and that you have paid to E33 all amounts which at the time of acceptance have fallen due for payment to E33 in respect of your accepted E33 Shares;

- (iii) irrevocably authorised the Bidder (and any director, secretary, nominee or agent of the Bidder) to alter the Acceptance Form on your behalf by inserting correct details relating to your accepted E33 Shares, filling in any blanks remaining on the form and rectifying any errors or omissions as may be considered necessary by the Bidder to make it an effective acceptance of this Offer or to enable registration of your accepted E33 Shares in the name of the Bidder;
- (iv) if you signed the Acceptance Form in respect of E33 Shares which are held in a CHESS Holding, irrevocably authorised the Bidder (or any director, secretary, nominee or agent of the Bidder) to instruct your Controlling Participant to initiate acceptance of this Offer in respect of your accepted E33 Shares in accordance with Rule 14.14 of the ASX Settlement Operating Rules;
- (v) if you signed the Acceptance Form in respect of E33 Shares which are held in a CHESS Holding, irrevocably authorised the Bidder (or any director, secretary, nominee or agent of Bidder) to give any other instructions in relation to your accepted E33 Shares to your Controlling Participant on your behalf under the sponsorship agreement between you and the Controlling Participant, as determined by the Bidder acting in its own interests as a beneficial owner and intended registered holder of those E33 Shares;
- (vi) irrevocably authorised the Bidder to notify E33 on your behalf that your place of address for the purpose of serving notices upon you in respect of your accepted E33 Shares is the address specified by the Bidder in the notification;
- (vii) with effect from the time and date on which all the conditions to this Offer in section 12.2 have been fulfilled or freed, to have irrevocably appointed the Bidder (and any director, secretary or nominee of the Bidder) severally from time to time as your true and lawful attorney to exercise all your powers and rights in relation to your accepted E33 Shares, including (without limitation) powers and rights to requisition, convene, attend and vote in person, by proxy or by body corporate representative, at all general meetings and all court-convened meetings of E33 and to request E33 to register, in the name of the Bidder or its nominee, your accepted E33 Shares, as appropriate, with full power of substitution (such power of attorney, being coupled with an interest, being irrevocable);
- (viii) with effect from the date on which all the conditions to this Offer in section 12.2 have been fulfilled or freed, to have agreed not to attend or vote in person, by proxy or by body corporate representative at any general meeting or any court-convened meeting of E33 or to exercise or purport to exercise any of the powers and rights conferred on the Bidder (and its directors, secretaries and nominees);
- (ix) agreed that in exercising the powers and rights conferred by the powers of attorney granted under Section 12.7(c)(viii), the attorney will be entitled to act in the interests of the Bidder as the beneficial owner and intended registered holder of your accepted E33 Shares;
- (x) agreed to do all such acts, matters and things that the Bidder may require to give effect to the matters the subject of this Section 12.7 (including the execution of a written form of proxy to the same effect as this section 12.7(c) which complies in all respects with the requirements of the constitution of E33) if requested by the Bidder;
- (xi) where, at that time, you have a right to be registered as a holder of the E33 Shares the subject of your acceptance as the result of an on-market purchase:
 - (A) agreed to use best endeavours to procure the delivery of the E33 Shares the subject of your acceptance to the Bidder in accordance with your acceptance (including giving the Bidder all documents necessary to vest

those E33 Shares in the Bidder or otherwise to give the Bidder the benefit or value of those E33 Shares);

- (B) agreed not to do or omit to do anything which may frustrate your acceptance of this Offer, or otherwise obstruct registration of the transfer of the E33 Shares the subject of your acceptance to the Bidder;
- (C) irrevocably assigned to the Bidder all contractual rights and recourse against the vendor in respect of your on-market purchase which contractual rights and recourse may arise by reason of that person's failure to complete the trade;
- (D) agreed to assign to the Bidder (without any further action being required) all rights in respect of your on-market purchase immediately on any failure by you to complete that trade, including irrevocably assigning to the Bidder all right to (at the Bidder's ultimate discretion) complete that trade on your behalf, and agreed that the Bidder may deduct from the consideration otherwise payable to you (pursuant to a valid acceptance of this Offer and the delivery of the E33 Shares the subject of that acceptance) any amount paid by the Bidder in order to settle that on-market purchase on your behalf. If the Bidder does not, or cannot, make such a deduction, you must pay such amount to the Bidder; and
- (E) agreed that if you are unable to assign to the Bidder any of the rights and recourse specified under sections 12.7(c)(xi)(C) and 12.7(c)(xi)(D), you will assign such rights and recourse as soon as you are legally able to;
- (F) agreed to indemnify the Bidder in respect of any claim or action against it or any loss, damage or liability whatsoever incurred by it as a result of you not producing your Holder Identification Number or SRN or in consequence of the transfer of your accepted E33 Shares to the Bidder being registered by E33 without production of your Holder Identification Number or your SRN for your accepted E33 Shares;
- (G) represented and warranted to the Bidder that your accepted E33 Shares do not consist of separate parcels of E33 Shares;
- (H) irrevocably authorised the Bidder (and any nominee) to transmit a message in accordance with Rule 14.17 of the ASX Settlement Operating Rules to transfer your accepted E33 Shares to the Takeover Transferee Holding of the Bidder, regardless of whether it has paid the consideration due to you under this Offer; and
- (I) agreed, subject to the conditions of this Offer in section 12.2 being fulfilled or freed, to execute all such documents, transfers and assurances, and do all such acts, matters and things that the Bidder may consider necessary or desirable to convey your accepted E33 Shares registered in your name and Rights to the Bidder.

The undertakings and authorities referred to in section 12.7(c) will remain in force after you receive the consideration for your accepted E33 Shares and after the Bidder becomes registered as the holder of your accepted E33 Shares.

By accepting this Offer, you will be deemed to have agreed to the matters set out in section 12.7 above, notwithstanding where this Offer has been caused to be accepted in accordance with the ASX Settlement Operating Rules.

12.8 Payment by the Bidder

In accordance with the usual rules for settlement of transactions which occur off-market on ASX, if you accept the Offer to sell your E33 Shares in accordance with Section 4, you will be paid following the close of the Offer Period and before the earlier of:

- (a) one month after the Offer is validly accepted or the contract resulting from its acceptance becomes unconditional (whichever is the later); and
- (b) 21 days after the Offer closes.

12.9 Withdrawal of Offer

- (a) The Bidder may withdraw the Offer in respect of unaccepted Offers in accordance with the relevant provisions of the Corporations Act (as modified by ASIC Corporations (Takeover Bids) Instrument 2023/683) only with the written consent of ASIC and subject to the conditions (if any) specified in such consent.
- (b) If, at the time this Offer is withdrawn, the Offer remains subject to one or more of the Bid Conditions, all contracts arising from its acceptance will become void (whether or not the events referred to in the relevant conditions have occurred).
- (c) Notice of withdrawal of the Offer must be given by the Bidder to ASX.
- (d) A withdrawal pursuant to this Section 12.9 will be deemed to take effect:
 - (i) if the withdrawal is not subject to conditions imposed by ASIC, on and after the date on which that consent in writing is given by ASIC; or
 - (ii) if the withdrawal is subject to conditions imposed by ASIC, on and after the date on which those conditions are satisfied.

12.10 Variation

The Bidder may vary this Offer in accordance with the Corporations Act. If the Bidder varies the Offer during the last 7 days of the Offer Period, the Offer Period will be extended for a further 14 days.

12.11 Brokerage, stamp duty and other costs

If your E33 Shares are registered in an Issuer Sponsored Holding in your name, the relevant broker you instruct to initiate acceptance on your behalf may charge transactional fees or service charges in connection with acceptance of the Offer.

If your E33 Shares are registered in a CHESS Holding or if you are a beneficial holder and your E33 Shares are registered in the name of a broker, bank, custodian or other nominee (i.e. the Controlling Participant), the Controlling Participant may charge transactional fees or service charges in connection with acceptance of the Offer.

Accordingly, you should ask your broker or Controlling Participant (as applicable) in relation to brokerage which may be charged in connection with your acceptance of the Offer.

All costs and expenses of the preparation, dispatch and circulation of this Offer and all stamp duty payable (if any) on the transfer of your E33 Shares in respect of which the Offer is accepted will be paid by the Bidder.

12.12 Notice and return of documents

Subject to the Corporations Act, a notice or other communication given by the Bidder to you in connection with the Offer will be deemed to be duly given if it is in writing and is signed or purports to be signed on behalf of the Bidder by any director of the Bidder and:

- (a) is delivered at your address as recorded in the register of E33 Shareholders; or
- (b) is sent by prepaid ordinary post, or in the case of any address outside Australia, by prepaid airmail, to you at your address as recorded in the register of E33 Shareholders.

A notice to be given to the Bidder by you in connection with the Offer will be deemed to be duly given to the Bidder if it is in writing and is delivered or sent by post to the Bidder (or other means provided for in this Bidder's Statement) to the following address:

Yumbah Aquaculture Ltd
c/o- Boardroom Pty Ltd
GPO Box 3993
Sydney NSW 2001

12.13 Governing Law

- (a) This Offer and any contract that results from your acceptance of this Offer are governed by the laws in force in New South Wales.
- (b) This Offer is not registered in any jurisdiction outside Australia (unless an applicable foreign law treats it as registered as a result of the Bidder's Statement being lodged with ASIC). It is your sole responsibility to satisfy yourself that you are permitted by any foreign law applicable to you to accept this Offer.

13. Definitions and Interpretation

13.1 Definitions

Words and phrases used in this Bidder's Statement have the same meaning (if any) as given to them by the Corporations Act, the Listing Rules or the ASX Settlement Operating Rules unless that meaning is inconsistent with the context in which the term is used.

In this Bidder's Statement, unless the context otherwise requires:

Acceptance Form means the acceptance form enclosed with this Bidder's Statement;

AFSL means Australian financial services licence number;

Aggregate Amount means as defined in Section 9.2 of this Bidder's Statement;

Amended Convertible Note Subscription Agreement means the Amended and Restated Convertible Note Subscription Agreement between E33 and Yumbah Finance Pty Ltd dated 28 February 2024;

Amended Facility Agreement means Amended and Restated Facility Agreement between E33 and Yumbah Finance Pty Ltd dated 28 February 2024;

Announcement means the announcement of the Offer;

Announcement Date means 5 August 2024;

ASIC means the Australian Securities and Investments Commission;

Associate has the meaning given in section 12 of the Corporations Act;

ASX means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it;

ASX Settlement means ASX Settlement Pty Ltd ACN 008 504 532;

ASX Settlement Operating Rules means the operating rules of ASX Settlement, as amended from time to time;

BID means the Bid Implementation Deed entered by the Bidder and E33 on or around the Announcement Date;

Bid Conditions means the conditions contained in Section 12.2 of this Bidder's Statement;

Bidder means Yumbah Aquaculture Ltd ACN 082 219 636;

Bidder IBC means the independent board committee of directors of the Bidder being all E33 Directors other than Ben Cameron and Gary Higgins.

Bidder's Statement means this Bidder's Statement, being the statement of the Bidder, under Part 6.5 Division 2 of the Corporations Act relating to the Offer;

Board Endorsed Budget means the budget of E33 endorsed by the board on 21 June 2024;

BoardRoom means Boardroom Pty Ltd;

Business Day has the meaning given to that term in the Listing Rules;

CGT means capital gains tax;

CHESS means the Clearing House Electronic Sub-register System which provides for electronic transfer, settlement and registration of securities in Australia;

CHESS Holding has the meaning given to it in the ASX Settlement Operating Rules;

Competing Proposal means any proposal, agreement, arrangement or transaction (or expression of interest therefor), which, if entered into or completed, would result in a Third Party (either alone or together with any Associate):

- (a) directly or indirectly acquiring a Relevant Interest in, or having a right to acquire, a legal, beneficial or economic interest in, or Control of, 10% or more of the E33 Shares or any member of the E33 Group;
- (b) acquiring Control of E33 or any member of the E33 Group;
- (c) directly or indirectly acquiring or become the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or Control of, all or a substantial part of E33's business or assets or the business or assets of the E33 Group;
- (d) otherwise directly or indirectly acquiring or merging with E33 or a member of the E33 Group; or
- (e) requiring E33 to abandon, or otherwise fail to proceed with, the Offer,

whether by way of takeover bid, members' or creditors' scheme of arrangement, shareholder approved acquisition, capital reduction, buy-back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), agreement of company arrangement, any debt for equity arrangement or other transaction or arrangement.

Each successive material modification or variation of any proposal, agreement, arrangement or transaction in relation to a Competing Proposal will constitute a new Competing Proposal;

Control means as defined in section 50AA of the Corporations Act, disregarding subsection 50AA(4);

Controlling Participant means the person who is designated as the controlling participant for shares in a CHESS Holding in accordance with the ASX Settlement Operating Rules;

Corporations Act means the Corporations Act 2001 (Cth);

E33 means East 33 Limited ACN 636 173 281;

E33 Board or **E33 Directors** means the board of directors of E33;

E33 Group means E33 and each Subsidiary;

E33 IBC means the independent board committee of directors of the E33 Board being all E33 Directors other than Ben Cameron and Gary Higgins.

E33 Options means the options over shares issued to Ms Sarah Courtney expiring on 27 November 2026;

E33 Share means a fully paid ordinary share in E33, and all Rights attaching to that share;

E33 Shareholder means a holder of E33 Shares who is able to accept the Offer;

Entitlement Offer means the placement and rights issue undertaken by E33 in October 2022;

Exclusivity Period means the period from and including the date of the BID until the earlier of:

- (a) the date of termination of the BID; and
- (b) the expiry of the Offer Period;

Financial Adviser means any financial adviser retained by the Bidder or E33 in relation to the Offer or a Competing Proposal from time to time;

First Executing on ASX Trade means the automatic matching of the buy order with such sell orders as at that time exist on market;

Forward Financial Information means as defined in Section 7.5;

Government Agency means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian;

GST means goods and services tax, imposed under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the related imposition acts of the Commonwealth of Australia;

HIN means holder identification number;

Insolvency Event means any of the events set out in section 652C(2) of the Corporations Act, being:

- (a) a liquidator or provisional liquidator of any E33 Group member being appointed;
- (b) a court makes an order for the winding up of any E33 Group member;
- (c) an administrator of any E33 Group member is appointed under section 436A, 436B or 436C of the Corporations Act;
- (d) any E33 Group member executes a deed of company arrangement; or
- (e) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of any E33 Group member

Issuer Sponsored Holding means a holding of E33 Shares on E33's issuer sponsored sub-register;

Listing Rules means the official listing rules of ASX, as amended from time to time;

Minimum Acceptance Condition means as defined in Section 12.2(a);

Offer means the offer by the Bidder to acquire E33 Shares on the terms set out in Section 12 and pursuant to this Bidder's Statement;

Offer Information Line means 1300 737 760 (within Australia) or +61 2 9290 9600 (outside Australia);

Offer Period means the period commencing on [#] 2024 and ending at 5:00 pm (Sydney time) on [#] 2024;

Offer Price means A\$0.022 per E33 Share;

On Market Purchases means as defined in Section 11.4;

Performance Rights means the performance rights on issue in E33;

Prescribed Occurrence means as described in section 12.2(b);

Recapitalisation Documents means the Amended Convertible Note Subscription Agreement and the Amended Facility Agreement each dated 28 February 2024;

Recapitalisation Transaction means the transaction approved by shareholders on 25 April 2024 related to the Recapitalisation Documents entered on 28 February 2024 and announced on ASX on 29 February 2024;

Register Date means [#], being the date set by the Bidder under section 633(2) of the Corporations Act;

Regulated Event means as described in Section 12.2(c);

Reimbursement Fee means \$50,000;

Related Bodies Corporate has the meaning given to it in the Corporations Act;

Related Person means in respect of a party or its Related Bodies Corporate, each director, officer, employee, Financial Adviser (and each director, officer, employee or contractor of that Financial Adviser), agent or representative of that party or Related Body Corporate;

Relevant Interest has the meaning given to it in section 9 of the Corporations Act;

Rights means all accretions to and rights attaching to the relevant E33 Shares at or after the date of this Bidder's Statement (including, but not limited to, all dividends and all rights to receive dividends and to receive and subscribe for shares, stock units, notes or options declared, paid or issued by E33);

SRN means security reference number;

Strategic Review means as defined in Section 7.5;

Subsidiary has the meaning given to it in section 9 of the Corporations Act;

Superior Proposal means a bona fide Competing Proposal received by E33 from a Third Party:

- (a) which, if entered into or completed, would result in a Third Party acquiring Control of E33;
- (b) not resulting from a breach by E33 of any of its obligations under the BID; and
- (c) which the E33 IBC, acting in good faith, and after consultation with its external legal adviser, determines:
 - (i) is reasonably capable of being valued and completed within a reasonable timeframe; and
 - (ii) would, if completed substantially in accordance with its terms, likely be more favourable to E33 Shareholders (as a whole) than the Offer (as the terms of the Offer may be amended or varied following the application of the matching right),

in each case, taking into account all terms and conditions and other aspects of the Competing Proposal (including any timing considerations, any conditions precedent or other matters affecting the probability of the Competing Proposal being completed);

Sydney time means the time observed in Sydney, New South Wales;

Target's Statement means the target's statement to be issued by E33 in response to this Bidder's Statement in accordance with the Corporations Act;

Third Party means a person other than Yumbah, E33 or their respective Related Bodies Corporate;

Trading Days has the meaning given to it in the Listing Rules;

Unified Capital Partners means Unified Capital Partners Pty Ltd (AFSL 554658);

Voting Power has the meaning given to it in section 610 of the Corporations Act;

VWAP means the volume weighted average price;

Written Proposal means as defined in Section 11.1(e)(i);

Yumbah Counterproposal means as defined in Section 11.1(f); and

Yumbah Finance means Yumbah Finance Pty Ltd.

13.2 Interpretation

In this Bidder's Statement (including the Offer), the following principles of interpretation apply unless the context otherwise requires:

- (a) Words importing one gender include other genders;
- (b) Words (including defined terms) importing the plural include the singular and vice versa;
- (c) A reference to a person includes a reference to a corporation;
- (d) Headings are for convenience only and do not affect the interpretation of this Bidder's Statement;
- (e) Reference to Sections and Appendices are to Sections and Appendices of this Bidder's Statement and Appendices to this Bidder's Statement form part of this Bidder's Statement;
- (f) All references to time in this Bidder's Statement are to Sydney, New South Wales, time unless expressly specified otherwise; and
- (g) References to "Australian dollars", "AUD", "\$", "dollar" "A\$", or cents are references to Australian currency unless expressly specified otherwise.

14. Approval of Bidder's Statement

The copy of this Bidder's Statement to be lodged with ASIC has been approved by a resolution of the independent directors of the Bidder.

Dated: 23 August 2024

Signed on behalf of Yumbah Aquaculture Ltd ACN 082 219 636



Jonathan Lillie
Yumbah Aquaculture Ltd ACN 082 219 636

Corporate directory

Bidder

Yumbah Aquaculture Ltd
ACN 082 219 636
Level 2, 69 Fullarton Road
Kent Town SA 5067

Legal Adviser

K&L Gates
Level 25, 525 Collins Street
Melbourne VIC 3000

Financial advisor

Unified Capital Partners Pty Ltd
ACN 666 560 050
Level 15, 74 Castlereagh Street
Sydney NSW 2000

Registry services provider

Boardroom Pty Ltd
Level 8, 210 George Street
Sydney NSW 2000