

Claim No.....

**IN THE HIGH COURT OF JUSTICE**

**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

**INSOLVENCY AND COMPANIES LIST (Ch. D)**

**DERIVATIVE CLAIM**

**B E T W E E N:**

**CLIENTEARTH**

**(on behalf of the First Defendant  
SHELL PLC)**

**Claimant**

**and**

**(1) SHELL PLC**

**(2)-(12) THE DIRECTORS OF SHELL PLC**

**(as named in Part 1 of the Schedule to these Particulars of Claim)**

**Defendants**

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**PARTICULARS OF CLAIM**

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**I. INTRODUCTION AND PARTIES**

1. These are the Particulars of a derivative claim brought under Chapter 1 of Part 11 of the Companies Act 2006 (“**the Act**”).
2. The Claimant (“**ClientEarth**”) is: (a) a private company limited by guarantee registered in the UK with company number 02863827 and having its registered office at First Floor, 10 Queen Street Place, London, England, EC4R 1BE; (b) a charity registered in the UK with charity number 1053988; and (c) an international non-profit environmental law organisation.

3. The First Defendant (“**Shell**”) is a public limited company registered in the UK with company number 04366849 and having its registered office at Shell Centre, London, SE1 7NA. Shell is the parent company of a group of energy and petrochemical companies with operations in at least 70 countries (“**Shell Group**”).
4. The Second to Twelfth Defendants are statutory directors of Shell (“**the Directors**”). Their names and dates of appointment are set out in Part 1 of the Schedule to these Particulars of Claim (“**Schedule**”).
5. ClientEarth is the registered shareholder of 27 ordinary shares in Shell. ClientEarth claims against the Directors on behalf of Shell by way of a derivative claim under Chapter 1 of Part 11 of the Act.

## **II. FACTUAL BACKGROUND**

### **A. Climate risk**

6. The term ‘climate change’ refers to changes in the Earth’s natural climatic systems, since preindustrial times, caused by the accumulation of greenhouse gas (“**GHG**”) emissions in the atmosphere.
7. Climate change presents material financial risks to companies and the wider economy. These risks include:
  - 7.1. Physical risks, which arise from both (i) acute catastrophic impacts of climate change, such as adverse weather events (floods, heatwaves, wildfires, droughts, storms), and (ii) gradual onset impacts of climate change, such as those resulting from changes in rain patterns and average temperatures, as well as sea level rise;
  - 7.2. Economic transition risks, which arise from the transition towards a net zero emissions economy, e.g. policy and regulatory reform, technological developments, stranded asset risk, shifting market forces, consumer preferences and expectations including increased competition from low-carbon energy and/or products, and reputational risks;
  - 7.3. Litigation risks, which arise from (without limitation) management of the company’s response to climate change impacts, or the attribution of the impacts of climate change to a company’s activities;

7.4. GDP and productivity losses, impacts on global supply chains and associated impacts on financial stability;

(together, “**climate risk**”).

8. The combustion of hydrocarbon-based fuels (or ‘fossil fuels’), including oil and gas, is the most significant source of GHG emissions, making up c. 86% of emissions over the past decade. As a consequence, companies, such as Shell, whose business is centred upon the exploration, extraction and sale of oil and gas, face heightened exposure to climate risk. Such exposure, as Shell recognises, can only be mitigated by an efficient transition to a business model which is not dependent upon hydrocarbon extraction and sales.

## **B. The Paris Agreement and the Global Temperature Objective**

9. In December 2015, 196 states (now 197, together “**the Parties**”) adopted the Paris Agreement on Climate Change 2015 (“**the Paris Agreement**”). The “*objective*” of the Paris Agreement is stated in Article 2 and constitutes a global temperature objective (“**GTO**”) intended to limit the worst risks and impacts of climate change, while also prioritising resilience and adaptation to climate change and making finance flows consistent with these objectives.

10. The GTO is particularised further by Article 2 and Article 4 as follows:

10.1. Article 2(1)(a): “*Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change*”;

10.2. Article 2(1)(b): “*Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production*”;

10.3. Article 2(1)(c): “*Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development*”; and

10.4. Article 4(1): “*In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country*

*Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.”*

11. The Paris Agreement accordingly established a legal obligation upon Parties to pursue efforts to reach the GTO. References to a climate transition strategy being “*Paris Agreement-aligned*” refer to alignment with the GTO.
12. The Paris Agreement creates a governance framework to facilitate the achievement of the GTO through the following provisions:
  - 12.1. Articles 3 and 4(3) establish obligations to undertake and communicate nationally determined contributions with a view to achieving the GTO, reflecting each Parties’ “*highest possible ambition*” as progressed over time;
  - 12.2. Article 4(2) provides that “*Parties shall pursue domestic mitigation measures with the aim of achieving the objectives of such contributions*”;
  - 12.3. Article 4(4) provides that “*developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances.*”
  - 12.4. Article 4(3), 4(9) and Article 14 provide for the communication of more ambitious nationally determined contributions every 5 years, at which time a “*global stocktake*” of collective progress towards the GTO will be conducted.
13. The Parties affirmed their commitment to achieving the GTO in the Glasgow Climate Pact agreed at the COP26 summit in November 2021. The Glasgow Climate Pact contains the following:
  - 13.1. Paragraph 22: “*Recognizes that limiting global warming to 1.5 °C requires rapid, deep and sustained reductions in global greenhouse gas emissions, including reducing global carbon dioxide emissions by 45 per cent by 2030 relative to the*

*2010 level and to net zero around mid-century as well as deep reductions in other greenhouse gases”;*

- 13.2. Paragraph 23: *“Also recognizes that this requires accelerated action in this critical decade, on the basis of the best available scientific knowledge and equity, reflecting common but differentiated responsibilities and respective capabilities in the light of different national circumstances and in the context of sustainable development and efforts to eradicate poverty”;* and
- 13.3. Paragraph 24: *“Welcomes efforts by Parties to communicate new or updated nationally determined contributions, long-term low greenhouse gas emission development strategies and other actions that demonstrate progress towards achievement of the Paris Agreement temperature goal”.*
14. Examples of nationally determined contributions and their implementation in national law and policy include the following:
  - 14.1. Whole of economy emission reduction targets, many of which have been passed into national legislation, including binding interim emissions reduction targets and/or net zero targets;
  - 14.2. Legal restrictions on the exploration and/or production of new oil and gas fields, such as recent bans adopted by France, Denmark and Spain;
  - 14.3. Carbon pricing mechanisms which impose direct and/or indirect costs on high-emitting industries and facilities, such as those in place in the European Union and China;
  - 14.4. New low-carbon building and product standards;
  - 14.5. Mandating lower emission industrial facilities;
  - 14.6. Policy frameworks to end fossil fuel electricity generation; and
  - 14.7. Commitments to phase out the sale of internal combustion engine vehicles (e.g. in the US, China, the United Kingdom and European Union).
15. Moreover, national states, and stakeholders, have adopted soft and/or indirect pressures and incentives to reduce the use of fossil fuels by society through behavioural change.

16. The combination of legislative and regulatory forces, changes in market conditions and consumer trends is expected to result in an exponential reduction in market demand for fossil fuels and high-carbon goods and services.

## **C. Shell's Business**

### **(a) The organisation of Shell's business**

17. Shell's operations are divided into the following business areas:
  - 17.1. "Upstream", which manages the exploration for and extraction of crude oil, natural gas and natural gas liquids. Upstream markets and transports oil and gas, and operates the infrastructure required to deliver to markets.
  - 17.2. "Integrated Gas", which manages Shell's liquefied natural gas ("LNG") activities and the production of gas-to-liquids fuels and other products. It includes natural gas exploration and extraction, and the operation of infrastructure necessary to deliver gas to markets. Integrated Gas markets and trades natural gas, LNG, power and carbon-emission rights. It also markets and sells LNG as a fuel for heavy-duty vehicles and marine vessels.
  - 17.3. "Renewables and Energy Solutions", which manages the production and marketing of hydrogen, "nature and environmental solutions" (including nature based solutions, which are more fully particularised below), and "integrated power". Shell's integrated power business includes low-carbon products and services (such as electricity from renewables, electricity storage and providing electric vehicle and charging services) as well as marketing and trading of gas and power and selling gas to commercial, industrial and retail customers.
  - 17.4. "Downstream", which manages various activities relating to Shell's Chemicals and Oil Products business segments, including the trading and refining of crude oil and other feedstocks into a range of products which are moved and marketed around the world for domestic, industrial and transport use. The products include gasoline, diesel, heating oil aviation fuel, marine fuel, biofuel, lubricants, bitumen and sulphur.
  - 17.5. "Projects & Technology", which provides technical services and technology capability for Shell's Integrated Gas, Upstream and Downstream activities.

## **(b) Shell's GHG emissions**

18. Shell classifies the GHG emissions it produces or which are associated with its products in terms of the following 'scopes' (in accordance with globally recognised standards):
  - 18.1. Scope 1: Direct GHG emissions from sources that are owned or controlled by Shell, that is, emissions which come directly from Shell's operations;
  - 18.2. Scope 2: Indirect GHG emissions from the generation of purchased energy consumed by Shell, that is, emissions that come from the energy that Shell buys to run its operations;
  - 18.3. Scope 3: Other indirect GHG emissions, including: (a) emissions associated with the use of energy products sold by Shell, that is, the emissions which are generated by Shell's customers from their use of energy sold by Shell; and (b) full life cycle emissions from energy produced by others and sold by Shell.
19. Over 90% of Shell's GHG emissions are Scope 3 emissions.

## **D. Shell's management of climate risk**

### **(a) Corporate governance**

20. Shell has a single-tier board of directors chaired by a non-executive chair, Sir Andrew Mackenzie, the Second Defendant. Shell's executive management is led by Mr Wael Sawan, the Third Defendant, as Chief Executive Officer.
21. Amongst other matters, the following matters are reserved to the Directors: the responsibility for establishing the purpose, values and strategy and the overall direction of the Shell Group and satisfying themselves that these and the Shell Group culture are aligned; the approval of the Shell Group's long-term objectives and strategy, policies and annual budgets; oversight of the Shell Group's operations and management; the review of performance in the light of the Shell Group's culture, strategy, objectives, business plans and budgets and ensuring that any necessary corrective action is taken; the extension of the Shell Group's activities into new business areas; and any decision to cease to operate all or any material part of the Shell Group's business.

22. In particular, the Directors have oversight of and are ultimately responsible for the management of the risks associated with climate change which affect Shell and the Shell Group including the setting of Shell's strategy as regards the management of climate risk.

**(b) Climate risk**

23. The Directors have categorised the climate risk facing the company into commercial, regulatory, societal and physical risks. As acknowledged by the Directors, climate risk is a critical and/or material risk to Shell's strategy and business model and has potential material impacts on its business and shareholder value.
24. Impact on business and shareholder value arising from climate risk include the following:
  - 24.1. Changes in national and supranational regulatory obligations in order to meet the GTO have led and will increasingly lead to the imposition of increased regulatory burden restricting GHG emissions;
  - 24.2. Rising climate change concerns, changes in consumer preferences and the commercial effects of energy transition (including progressively lower costs of low-carbon technologies), have led and could lead to a decrease in demand and potentially affect prices for fossil fuels, impacting upon ongoing viability;
  - 24.3. Prolonged periods of low oil and gas prices, or rising costs, have resulted and could continue to result in projects being delayed or cancelled;
  - 24.4. Low oil and gas prices will affect Shell's ability to maintain its long-term capital investment programme and dividend payments;
  - 24.5. Increased regulation and changing preferences of investors and financial institutions could reduce Shell's access to and increase the cost of capital for Shell, and restrict Shell's ability to obtain financing for future fossil fuel projects;
  - 24.6. If Shell is unable to find economically viable solutions that reduce its GHG emissions and/or GHG intensity for new and existing projects and for the products it sells, it could experience financial penalties or extra costs, delayed or cancelled projects, potential impairments of its assets, and/or reduced production and product sales, and this could have a large adverse effect on Shell's earnings, cash flows and financial condition; and



24.7. The above matters may also result in under-utilised or stranded oil and gas assets and a failure to pursue or secure alternative opportunities.

**(c) The Directors' Strategy**

25. The Directors' current strategy as regards the management of climate risk (“**the Directors' Strategy**”) is set out, *inter alia*, in Shell's *Energy Transition Strategy and Our Climate Target* published in April 2021 and October 2021 respectively. The Directors' Strategy is also set out in public announcements and/or disclosures made by Shell from time-to-time. An update on the implementation of the Energy Transition Strategy was set out in the *Energy Transition Progress Report 2021*, published in April 2022.

**(d) Net Zero emissions target**

26. The Directors have set an overall target for Shell to become a ‘net-zero’ energy business by 2050 by reducing absolute emissions to net zero (“**NZ Target**”).

27. In so doing, the Directors have determined (and ClientEarth agrees) that the NZ Target is, amongst other measures, necessary to protect medium- and long-term shareholder value.

28. In order to ensure that Shell achieves the NZ Target, the Directors have set the following targets:

28.1. A target to reduce absolute Scope 1 and Scope 2 emissions by 50% by 2030 compared to baseline levels in 2016 (“**Interim Emissions Target**”).

28.2. Short-, medium-, and long-term targets to reduce the carbon intensity of the energy products sold by Shell (“**Carbon Intensity Targets**”). Carbon intensity is, in summary, the total amount of GHG emissions associated with each unit of energy sold by Shell and used by Shell's customers and is expressed as grams of CO<sub>2</sub> equivalent (gCO<sub>2</sub>e) per megajoule (MJ) of energy delivered to, and consumed by, Shell's customers. The Carbon Intensity Targets entail that Shell will reduce the carbon intensity of its energy products, compared to a baseline level in 2016, as follows:

(a) 2-3% by 2021;

- (b) 3-4% by 2022;
- (c) 6-8% by 2023;
- (d) 9-12% by 2024;
- (e) 20% by 2030;
- (f) 45% by 2035; and
- (g) 100% by 2050.

29. The targets are tabulated as follows:

Emissions covered	Target type	Reduction (from 2016 baseline)			
		Near term	2030	2035	2050
Scope 1+2 (operational emissions)	Absolute net emissions	No target	-50%	No target	-100%
Scope 3 (from energy sold)	Absolute net emissions	No target	No target	No target	-100%
Scopes 1-3 (from energy sold)	Carbon intensity (gCO <sub>2</sub> e/MJ)	-3-4% by 2022 -6-8% by 2023 -9-12% by 2024	-20%	-45%	-100%

**(e) Alignment of Shell’s Strategy with the GTO**

30. The Directors’ Strategy, in summary and as relevant, expressly states that it is:

*“aligned with the more ambitious goal of the Paris Agreement, to limit the increase in the average global temperature to 1.5 degrees Celsius above pre-industrial levels.”*

31. Accordingly, the Directors’ Strategy is stated to be ‘Paris-Aligned’, i.e. aligned with the GTO. The Directors summarise the rationale for this approach as follows:

*“While the energy transition brings risks to the company, it also brings opportunities for us to prosper and to build on our positive contribution to society. Our strategy, as outlined in this report, is designed to minimise those risks while enhancing our ability to profitably lead as the world transitions to an energy system that is aligned with the goal of the Paris Agreement.”*

32. ClientEarth agrees that a strategy which is properly aligned with the GTO is the only reasonably available strategic objective for Shell.

### **III. DUTIES OWED BY THE DIRECTORS**

#### **A. Statutory Duties**

33. Section 172 of the Act provides as follows:

*“172 Duty to promote the success of the company*

*(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to–*

*(a) the likely consequences of any decision in the long term,*

*(b) the interests of the company's employees,*

*(c) the need to foster the company's business relationships with suppliers, customers and others,*

*(d) the impact of the company's operations on the community and the environment,*

*(e) the desirability of the company maintaining a reputation for high standards of business conduct, and*

*(f) the need to act fairly as between members of the company.*

*(2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.*

*(3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.”*

34. Section 174 of the Act provides as follows:

*“174 Duty to exercise reasonable care, skill and diligence*

*(1) A director of a company must exercise reasonable care, skill and diligence.*

*(2) This means the care, skill and diligence that would be exercised by a reasonably diligent person with–*

*(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company, and*

*(b) the general knowledge, skill and experience that the director has.”*

35. The following are necessary incidents of the aforesaid statutory duties when considering climate risk for a company such as Shell:
- 35.1. A duty to make judgements regarding climate risk that are based upon a reasonable consensus of scientific opinion;
  - 35.2. A duty to accord appropriate weight to climate risk;
  - 35.3. A duty to implement reasonable measures to mitigate the risks to the long-term financial profitability and resilience of the company in the transition to a global energy system and economy aligned with the GTO;
  - 35.4. A duty to adopt strategies which are reasonably likely to meet the company’s targets to mitigate climate risk;
  - 35.5. A duty to ensure that the strategies adopted to manage climate risk are reasonably in the control of both existing and future directors; and
  - 35.6. A duty to ensure that the company takes reasonable steps to comply with applicable legal obligations.
36. The relevant statutory duties (including the necessary incidents thereto) are referred to in these Particulars of Claim as “**the Statutory Duties**”.

**B. Further obligations**

37. Further or alternatively:
- 37.1. Pursuant to the common law of England, a director who is aware of a Court order is under a duty to take reasonable steps to ensure that the order is obeyed.
  - 37.2. Pursuant to Dutch law, a director who is aware of a Court order is under a duty to take reasonable steps to ensure that the order is obeyed.
38. The common law and Dutch law obligations are referred to in these Particulars of Claim as “**the Further Obligations**”.

## **IV. THE DIRECTORS' STRATEGY**

### **A. Requirements of the Directors' Strategy**

39. Pursuant to the Statutory Duties and/or Further Obligations:

39.1. The Directors' Strategy must be based upon a proper assessment of climate risk and appropriate scientific evidence. It must therefore include reasonable measures to be aligned with the GTO;

39.2. Appropriate interim emissions targets are a necessary and essential tool in ensuring that the Directors' Strategy will achieve the NZ Target, by (a) measuring ongoing compliance towards those goals; and (b) avoiding the need to take drastic last-minute (and therefore potentially expensive or disruptive) measures to attempt to meet those goals and the GTO; and

39.3. The Directors' Strategy must allow for and anticipate rapid future changes to legal, regulatory and financial conditions so as to ensure that the Strategy is robust.

### **B. The principal means adopted**

40. The Directors' Strategy is primarily based upon six principal means which are intended to ensure that Shell will achieve the NZ Target and be aligned with the GTO. Shell refers to these as: (i) "operational efficiency"; (ii) "natural gas shift"; (iii) "low-carbon power business"; (iv) "low-carbon fuels"; (v) "CCS"; and (vi) "natural sinks".

41. The principal means that are directly relevant this claim are:

41.1. "Natural gas shift", which entails the establishment of a trajectory of new and continued oil and gas exploration, development and extraction, which is asserted to be consistent with the NZ Target and the GTO;

41.2. "Low-carbon power business" which entails, *inter alia*, increased investment in low or zero-carbon energy;

41.3. "CCS" and "natural sinks" which entail the development and use of Carbon Capture and Storage, and carbon offsetting by way of Nature Based Solutions (as

described below), at what are asserted to be a sufficient level to meet, and a viable method of meeting, the NZ Target and the GTO.

### **(a) Shell's Oil and Gas Trajectory**

42. As at January 2023, and alongside its existing oil and gas assets in production, Shell has an interest in:
- 42.1. At least 27 significant oil and gas assets under construction;
  - 42.2. Major discovered oil and gas assets, in respect of which a final investment decision has not yet been made; and
  - 42.3. Undiscovered oil and gas assets under exploration.
43. ClientEarth provides further details of the 27 significant assets under construction, and – illustratively – the 25 largest discovered assets in Part 2 of the Schedule.

### **(b) Carbon Capture Storage and Nature Based Solutions**

44. Carbon Capture Storage (“CCS”) refers to the process of capturing CO<sub>2</sub> from industrial production for permanent storage, most commonly in underground reservoirs. At present, global CCS facilities can capture and store around 40 million tonnes per annum of CO<sub>2</sub>.
45. Nature Based Solutions (“NBS”) refers to the use of ‘offsetting’ through the purchase and retirement (or ‘cancellation’) of carbon credits. Carbon credits are associated with projects that protect, transform or restore land that naturally captures CO<sub>2</sub> from the atmosphere.
46. The Directors intend that Shell should: (a) rely on CCS to reduce the company’s Scope 1 and 2 emissions by 3-6 million tonnes per annum by 2030 and have access to more than 25 million tonnes per annum of CCS by 2035; and (b) rely on NBS to offset the company’s emissions by retiring around 120 million tonnes per annum of carbon credits derived from NBS projects by 2030.

### **(c) Capital expenditure**

47. A summary of Shell’s asserted capital expenditure (“capex”) in 2020, 2021 and 2022, and its asserted projected capex for 2023, is set out in the table below. In respect of capex spent on Integrated Gas in 2020 and 2021, capex is shown both including and excluding

capex spent on Renewables and Energy Solutions, which until 2022 was reported by the company under the Integrated Gas business segment.

Year	Total capex (USD bn)	Capex on Upstream (USD bn)	Capex on Oil Products (USD bn)	Capex on Marketing (USD bn)	Capex on Chemicals and Products (USD bn)	Capex on Integrated Gas (USD bn)	Capex on Renewables and Energy Solutions (RES) (USD bn)	% capex on Renewables and Energy Solutions
2020	17.827	7.296	3.328	N/A	N/A	3.401 <i>(4.301 including RES)</i>	0.9	5.04
2021	19.698	6.269	3.868	N/A	N/A	3.367 <i>(5.767 including RES)</i>	2.4	12.18
2022	24.833	8.143	N/A	4.831	3.838	4.265	3.469	13.97
2023	23 - 27	8	N/A	6	3 - 4	5	2 - 4	N/A

48. The Directors state that:

48.1. The energy transition will generate business opportunities from which Shell may benefit, including in relation to renewables and energy solutions, biofuels, natural gas, and the transformation of refineries into energy and chemicals parks;

48.2. They plan to invest USD 19-22 billion per year across Shell's business, on the basis that Shell's net debt is above USD 65 billion; and

48.3. They plan to decrease capex in relation to Shell's Upstream business and increase capex in relation to its Transition (i.e. its Integrated Gas and Chemicals and Products business segments) and Growth (i.e. its Marketing and Renewables and Energy Solutions business segments) businesses as the energy transition accelerates and Shell sells more low-carbon energy products.

49. In the Energy Transition Progress Report 2021, the Directors set out how they expected capex to evolve over time, as follows:

## 2021 delivery and outlook

Net debt end 2021 \$53 billion	Cash capital expenditure		Operating expenses		Total expenditure		Cash flow from operations (CFFO)		Target internal rate of return (IRR)
	2021	2025-2030	2021 [A]	2025-2030	2021	2025-2030	2021 [B]	2025-2030 [C]	
<b>Marketing</b>									15-25%
<b>Renewables and Energy Solutions</b>	24%	45-50%	28%	40-45%	27%	40-45%	12%	25-30%	>10% [D]
<b>Integrated Gas</b>									14-18% [E]
<b>Chemicals and Products</b>	44%	30-35%	40%	35%-40%	42%	35-40%	38%	40-45%	10-15% [E]
<b>Upstream</b>	32%	20%	32%	20-25%	31%	20-25%	48%	30-35%	20-25%

[A] Including exploration expenses

[B] Excluding 2% CFFO from the Corporate segment.

[C] Assumes Brent price of \$60 per barrel.

[D] The IRR target for Renewables and Energy Solutions covers Integrated Power only – note added on April 22, 2022 for additional clarification.

[E] Corrected on 21 April 2022 because of typographical error.

50. However, the actual capex investment which the Directors in fact intends to invest in low and zero-carbon energy is not clearly stated. The Directors' 2021 Annual Report indicates that between USD 694 million and USD 2.4 billion was spent on low and zero-carbon products and services, i.e. between 3.5-12% of total capex. Projected 2023 capex on 'Renewables and Energy Solutions' represents approximately 12% of total cash capex. Further, the Directors expect that Shell will limit its investments in Upstream business, and that its oil production will reduce by 1-2% per year through to 2030. However, this continues to envisage a level of investment in the Upstream business far in excess of the proposed investment in the low and zero-carbon energy business.

## V. BREACHES OF THE STATUTORY DUTIES IN RESPECT OF THE SETTING OF INADEQUATE TARGETS

### A. Relevant targets

51. In respect of the targets adopted pursuant to the Directors' Strategy:
- 51.1. Notwithstanding that over 90% of Shell's GHG emissions are Scope 3 GHG emissions, the Directors have failed to set any absolute emissions target to be met before 2050 with respect to Shell's Scope 3 GHG emissions;
- 51.2. The Directors have elected to set certain Carbon Intensity Targets. However, there is no direct correlation in principle between the reduction in the carbon intensity of Shell's products and the reduction of Shell's absolute GHG emissions. Accordingly, even if Shell meets the Carbon Intensity Targets, it does not follow (and there is no evidence to suggest) that there will be any, or any proportional,



decrease in its absolute GHG emissions, and the associated risks to the company as disclosed by the Directors; and

51.3. The Directors have failed to set emission reduction targets in line with the GTO.

## **B. Breaches**

52. The failure to set appropriate targets pursuant to the Directors' Strategy constitutes a breach or breaches of the Statutory Duties:

### **Particulars of Breaches**

52.1. The nature of the NZ Target and the GTO is such that adequate interim targets are essential. By failing to set adequate interim targets in respect of Scope 3 GHG emissions, the Statutory Directors have failed to ensure that Shell has a measurable and realistic pathway to meeting the NZ Target, and/or to align with future expected market conditions consistent with the GTO, and/or have unreasonably prejudiced Shell's ability to meet these targets, alternatively of doing so without drastic last-minute (and therefore potentially expensive or disruptive) measures;

52.2. The Carbon Intensity Targets will not cause Shell to achieve the NZ Target and are not aligned with the GTO; and

52.3. The Directors have unreasonably failed to incorporate their own 2035 Carbon Intensity and 2050 NZ Targets into Shell's operating plans, outlooks, budgets and pricing assumptions.

## **VI. BREACHES OF THE STATUTORY DUTIES BY REFERENCE TO THE MEANS ADOPTED TO REACH THE NZ TARGET AND ALIGNMENT WITH THE GTO**

53. The means adopted pursuant to the Directors' Strategy do not establish any reasonable basis for achieving the NZ Target and are not aligned with the GTO. The means adopted therefore constitute a breach of the Statutory Duties:

## **Particulars of Breach**

- 53.1. Alongside the current oil and gas assets in production, the Directors propose to make significant new investment in exploration, development and extraction of fossil fuel projects, which cannot reasonably lead to a sufficient decline in overall production of fossil fuels;
- 53.2. The Directors' reliance on CCS and NBS is misconceived and unreasonable. The use of CCS and carbon offsetting by way of NBS do not mitigate the material economic risks to Shell's underlying business model caused by its continued reliance upon oil and gas as a primary source of revenue generation. There is also a great deal of uncertainty as to whether the use of CCS and NBS at the levels contemplated by the Directors is technologically possible, realistic, or commercially viable;
- 53.3. Shell's proposed capital expenditure (particularised at paragraph 50 above) in respect of renewable energy – which could potentially mitigate, or at least partly mitigate, the climate-related financial risk to Shell – is opaque and insufficient to do so; and
- 53.4. The Directors' Strategy contains no measures sufficient to accommodate the possibility of rapid future changes to legal, regulatory and financial conditions so as to ensure that the Strategy is robust (and therefore capable of achieving the NZ Target and being aligned with the GTO in future years).

## **VII. BREACH OF THE STATUTORY DUTIES AND FURTHER OBLIGATIONS BY REFERENCE TO THE DUTCH PROCEEDINGS**

### **A. The Dutch Proceedings**

54. On 5 April 2019, a group of claimants commenced proceedings against Shell in the Hague District Court (Commerce Team) under case number C/09/571932 / HA ZA 19-379 (“**Dutch Proceedings**”).
55. The claimants in the Dutch Proceedings were comprised of: (i) the Dutch environmental organisation ‘Vereniging Milieudefensie’ acting on its own behalf and as the representative of 17,379 individual claimants; (ii) the Dutch environmental organisation ‘Stichting Greenpeace Nederland’; (iii) the Dutch environmental organisation ‘Stichting

Ter Bevordering Fossielvrij-Beweging’; (iv) the Dutch environmental organisation ‘Landelijke Vereniging Tot Behoud Van De Waddenzee’; (v) the Dutch youth organisation ‘Jongeren Milieu Actief’; and (vi) the Dutch social justice organisation ‘Stichting Actionaid’.

56. In the Dutch Proceedings, the claimants alleged (amongst other things) that:

56.1. Shell has an obligation, ensuing from the standard of care pursuant to Book 6 Section 162 of the Dutch Civil Code, to contribute to the prevention of dangerous climate change through the Shell Group’s corporate policies; and

56.2. Accordingly, Shell has an obligation to ensure that the aggregate annual volume of CO<sub>2</sub> emissions attributable to the Shell Group across all of Scopes 1, 2 and 3 (“**Shell Group Emissions**”) be reduced (on the claimant’s primary case) at year-end 2030 by 45% in absolute or alternatively net terms relative to 2019 levels.

57. In summary, the claimants sought by way of relief:

57.1. Declaratory rulings that: (i) Shell has acted unlawfully towards the claimants as a result of the Shell Group Emissions and must therefore take steps to reduce those emissions; and (ii) Shell will in future act unlawfully towards the claimants if it does not reduce the Shell Group Emissions by certain specified amounts; and

57.2. An order that Shell, both directly and via the companies in the Shell Group, limits the Shell Group Emissions such that, at the year-end 2030, those Emissions will have been reduced by (on the claimants’ primary case) 45% in absolute or alternatively net terms relative to 2019 levels.

58. Shell submitted to the jurisdiction of the Hague District Court and defended the Dutch Proceedings. Shell denied that the claimants were entitled to any part of the relief sought. The parties filed evidence and submissions and an oral hearing was held on 1, 3, 15 and 16 December 2020.

## **B. The Dutch Judgment and the Dutch Order**

59. On 26 May 2021, the Hague District Court handed down its judgment (the “**Dutch Judgment**”). The Hague District Court held (amongst other things) that:

- 59.1. As a result of the standard of care in Book 6 Section 162 of the Dutch Civil Code, Shell was “*obliged to reduce the CO2 emissions of the Shell group’s activities by net 45% at end 2030 relative to 2019 through the Shell group’s corporate policy. This reduction obligation related to the Shell group’s entire portfolio and to the aggregate volume of all emissions (Scope 1 through to 3)*” (the “**Reduction Obligation**”) (Dutch Judgment, paragraphs 4.1.3, 4.1.4 and 4.55);
- 59.2. As regards Scope 1 emissions, the Reduction Obligation was an “*obligation of result*”, i.e. Shell could only comply with the obligation if it achieved the stipulated reduction (Dutch Judgment, paragraph 4.4.55);
- 59.3. As regards Scopes 2 and 3 emissions, the Reduction Obligation was an “*obligation of best efforts*”, as a result of which Shell “*may be expected to take the necessary steps to remove or prevent the serious risks ensuing from the CO2 emissions generated by them, and to use its influence to limit any lasting consequences as much as possible. A consequence of this significant obligation may be that RDS will forgo [sic] new investments in the extraction of fossil fuels and/or will limit its production of fossil resources*” (Dutch Judgment, paragraph 4.4.55);
- 59.4. The Reduction Obligation may require Shell to take drastic measures including by foregoing new investments in the extraction of fossil fuels and/or limiting production of fossil fuels (Dutch Judgment, paragraph 4.4.39 and 4.5.54); and
- 59.5. Shell’s “*policy, policy intentions and ambitions*” were incompatible with, and implied an imminent violation of, the Reduction Obligation. Accordingly, certain claimants were entitled to an order (Dutch Judgment, paragraphs 4.5.3 and 4.5.5).
60. The Hague District Court therefore made an order in the following terms: “*the court orders [Shell], both directly and via the companies and legal entities it commonly includes in its consolidated annual accounts and with which it jointly forms [the Shell Group], to limit or cause to be limited the aggregate annual volume of all CO2 emissions into the atmosphere (Scopes 1, 2 and 3) due to the business operations and sold energy carrying-products of [the Shell Group] to such an extent that this volume will have reduced by at least net 45% at end 2030, relative to 2019 levels*” (“**the Dutch Order**”).

61. The Dutch Order was declared to be “*provisionally enforceable*” (i.e. there was no stay pending appeal and compliance by Shell was required immediately). In making that decision, the Hague District Court recognised that this could have far-reaching consequences for Shell which may be difficult to undo at a later stage (Dutch Judgment, paragraph 4.5.7).
62. Shell has filed an appeal in respect of the Dutch Order with the Hague Court of Appeal.

### **(C) Non-compliance with the Dutch Order**

63. In breach of the Statutory Duties and the Further Obligations, the Directors have failed to comply with the Dutch Order:

#### **Particulars of Breach**

- 63.1. Notwithstanding that the Dutch Order was declared to be provisionally enforceable, such that it required immediate compliance from Shell:

- 63.1.1. The Directors have failed to prepare or execute a plan to ensure timely compliance with the “*best efforts*” obligation in respect of the Shell Group’s Scope 3 CO<sub>2</sub> emissions. Indeed, the Directors have failed to set any year-end 2030 target for the absolute reduction of the Shell Group’s Scope 3 CO<sub>2</sub> emissions;

- 63.1.2. The Directors have indicated that they have no (or no genuine) intention of procuring that Shell complies with the “*best efforts*” obligation in respect of the Shell Group’s Scope 3 CO<sub>2</sub> emissions.

## **VIII. LOSS AND DAMAGE**

### **A. Directors’ Strategy**

64. As a result of the breaches of duty set out above, the Directors have exposed Shell to climate risk to a materially greater extent than would have been the case had they adopted a reasonable and effective strategy to manage such risk.
65. In particular, the Directors have exposed Shell to the effects of the following to a materially greater extent, each of which will have or is likely to have a significant adverse effect on Shell’s financial performance:

- 65.1. A decrease in demand for and price of fossil fuels, resulting in: (a) decreased revenue from its Upstream and Integrated Gas businesses; (b) parts of those businesses becoming less profitable or incurring losses; (c) an adverse effect on Shell's ability to maintain its long-term capex programme and any planned dividend payments; and/or (d) oil and gas assets being under-utilised or stranded;
- 65.2. The reduction of the availability of, and Shell's access to, and in any event the increase of the cost of, financing or capital investment for projects in Shell's businesses;
- 65.3. Shell's failure adequately to identify and exploit opportunities as a result of the energy transition, in particular to generate energy using renewable and low-carbon sources and/or its loss of competitiveness of its Renewables and Energy Solutions business as a result of such failure;
- 65.4. Shell's failure to reduce its GHG emissions, and as a result, litigation or regulatory enforcement in relation thereto, resulting ultimately in financial penalties or extra costs, delayed or cancelled projects, potential impairments of its assets, reputation damage and/or reduced production and product sales; and
- 65.5. Shell's business activities are in turn a significant source of GHG emissions, and climate risk in turn, which the Directors are required to address.
66. The breaches of duty set out above are continuing. The longer that the Directors delay in adopting a reasonable and effective strategy to manage climate risk, the more likely it will be that such a strategy will require measures which have the effect of significantly disrupting Shell's existing operations and business. In any event such strategy will seriously adversely affect its financial performance, if the NZ Target and GTO is to be achieved, and if Shell is to identify and exploit opportunities to produce energy from renewable or low-carbon sources.
67. Accordingly, the breaches of duty set out above will or are likely to have a serious adverse effect on Shell's financial performance.

## **B. The Dutch Order**

68. As a result of the breaches of duty identified in paragraph 63 above:

68.1. Shell's reputation has been and continues to be significantly harmed, as the company has demonstrated that it is unwilling to comply with Court orders; and

68.2. Shell is exposed to significant unknown financial liability.

**IX. FURTHER MATTERS RELEVANT TO CHAPTER 1 OF PART 11 OF THE COMPANIES ACT 2006 AND CPR PART 19**

69. This claim is in respect of a cause or causes of action vested in Shell.

70. The acts, omissions and conduct giving rise to the breaches of duty set out above have not been authorised or ratified by Shell.

71. ClientEarth seeks an order that Shell indemnify it against liability for costs incurred in (a) its application for permission under s.261(1) of the Companies Act 2006; and (b) this claim.

**X. RELIEF**

72. In the above premises, on behalf of Shell, ClientEarth seeks and is entitled to the following relief:

72.1. A declaration that the Directors have breached their duties in the manner described in paragraphs 52, 53, and 63 above;

72.2. An order requiring the Directors:

(a) To adopt and implement a strategy to manage climate risk in compliance with the Statutory Duties.

(b) To comply immediately with the Dutch Order.

**AND ON BEHALF OF THE FIRST DEFENDANT THE CLAIMANT CLAIMS:**

(1) a declaration in the form set out in paragraph 72.1 above;

(2) the order set out in paragraph 72.2 above;

(3) all other necessary and incidental orders, enquiries and directions;

(4) further or other relief;

(5) the costs indemnity referred to in paragraph 73 above; and

(6) costs.

**DANIEL SAOUL K.C.**

**EDWARD BROWN K.C.**

**SAM GOODMAN**

**JUDY FU**

**Statement of Truth**

The Claimant believes that the facts stated in these Particulars of Claim are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth. I am duly authorised by the Claimant to sign this Statement

Signed



.....

Date

8 February 2023

Name

William Alexander Hooker

Position

Partner, Pallas Partners LLP



**SCHEDULE TO PARTICULARS OF CLAIM**

**PART 1**

**DIRECTORS OF SHELL**

<b>Defendant</b>	<b>Name</b>	<b>Date appointed</b>
2.	Sir Andrew Stewart Mackenzie	1 October 2020
3.	Wael Sawan	1 January 2023
4.	Euleen Yiu Kiang Goh	1 September 2014
5.	Sinead Gorman	1 April 2022
6.	Arie Dirk (Dick) Boer	20 May 2020
7.	Neil Andrew Patrick Carson OBE	1 June 2019
8.	Ann Frances Godbehere	23 May 2018
9.	Catherine Jeanne Hughes	1 June 2017
10.	Jane Holl Lute	19 May 2021
11.	Martina Therese Sophie Hund-Mejean	20 May 2020
12.	Abraham (Bram) Schot	1 October 2020

## PART 2

In Part 2 of this Schedule, ClientEarth relies on information from the Rystad database dated January 2023, as summarised and published by Oil Change International in its February 2023 report *Data Update: Shell's Oil and Gas Project Pipeline*. Bolded assets were listed as part of the company's development pipeline in its first, second, third and fourth quarter 2022 presentations.

### Assets under Construction

Project number	Asset number	Project	Asset	Country	Shell's share <sup>1</sup> *operator	Estimated resources, million <sup>2</sup> BOE	Approval year
<b>Oil and gas (non-shale) assets under construction</b>							
1.	1.	<b>Prelude FLNG</b>	<b>Crux</b>	<b>Australia</b>	<b>82*</b>	<b>298</b>	<b>2022</b>
2.	2.	<b>Whale</b>	<b>Whale (AC772)</b>	<b>United States</b>	<b>60*</b>	<b>214</b>	<b>2021</b>
3.	3.	<b>QatarGas LNG T8-T11 (NFE-East)</b>	<b>QatarGas T10 (North Field)</b>	<b>Qatar</b>	<b>6</b>	<b>193</b>	<b>2021</b>
	4.		<b>QatarGas T11 (North Field)</b>	<b>Qatar</b>	<b>6</b>	<b>193</b>	<b>2021</b>
	5.		<b>QatarGas T9 (North Field)</b>	<b>Qatar</b>	<b>6</b>	<b>193</b>	<b>2021</b>
	6.		<b>QatarGas T8 (North Field)</b>	<b>Qatar</b>	<b>6</b>	<b>173</b>	<b>2021</b>
4.	7.	<b>Vito</b>	<b>Vito (MC940)</b>	<b>United States</b>	<b>63*</b>	<b>163</b>	<b>2018</b>
5.	8.	<b>Mero (Libra NW)</b>	<b>Mero 4 (x-Libra NW)(Alexandre de Gusmao)</b>	<b>Brazil</b>	<b>20</b>	<b>115</b>	<b>2021</b>
	9.		<b>Mero 3 (x-Libra NW) (Marechal Duque de Caxias)</b>	<b>Brazil</b>	<b>20</b>	<b>113</b>	<b>2020</b>
	10.		<b>Mero 2 (x-Libra NW)(Sepetiba)</b>	<b>Brazil</b>	<b>20</b>	<b>111</b>	<b>2019</b>

<sup>1</sup> Rounded to the nearest whole value.

<sup>2</sup> BOE = barrels of oil equivalent

6.	11.	MLNG Satu	Timi	Malaysia	75*	72	2021
	12.		Rosmari	Malaysia	75*	68	2022
	13.		Marjoram	Malaysia	75*	68	2022
	14.		Jerun	Malaysia	30	66	2021
7.	15.	Penguins	Penguins (redevelop)	United Kingdom	50*	57	2018
8.	16.	Jackdaw	Jackdaw (30/2a- 6)	United Kingdom	100*	57	2022
9.	17.	Pierce	Pierce (gas blowdown)	United Kingdom	93*	55	2019
10.	18.	Mabrouk North East	Mabrouk North East (FFD Phase 1)	Oman	53*	50	2019
11.	19.	Ohaji South 2	Assa North/Ohaji South (Phase 1)	Nigeria	15*	40	2018
12.	20.	Ormen Lange	Ormen Lange Subsea Compression	Norway	18*	37	2022
13.	21.	Appomattox (FPS)	Rydberg (MC525)	United States	86*	35	2022
14.	22.	Gumusut-Kakap Semi	Jagus East	Brunei	73*	28	2022
15.	23.	Karachaganak	Karachaganak Expansion 1A	Kazakhstan	29	27	2020
	24.		Karachaganak Expansion 1B	Kazakhstan	29	26	2022
16.	25.	Marmul EOR	Marmul EOR Phase 3	Oman	34	23	2017
17.	26.	Geronggong	Geronggong	Brunei	11*	6	2022
18.	27.	Tiko Marine	Tiko Marine	Cameroon	25*	2	2020
-	-	-	Other <sup>3</sup>	-	-	2	-
<b>Estimated total resources of under construction oil and gas (non-shale) assets</b>						<b>2482</b>	
<b>Shale Projects with Under Development Wells</b>							
1.	1.	Montney Play		Canada	100*	71	-

<sup>3</sup> Combined upstream assets with fewer than 1 million BOE in estimated resources

2.	2.	Vaca Muerta Shale	Argentina	various (30-90*)	20	-
3.	3.	Bowen Gas Project	Australia	50	5	-
<b>Estimated total resources of under construction shale assets</b>					<b>96</b>	
<b>Estimated total resources of all under construction assets</b>					<b>2578</b>	

### Development Assets

Project number	Asset number	Project	Asset	Country	Shell's share <sup>4</sup> *operator	Estimated resources, million BOE	Estimated approval year
<b>Oil and gas (non-shale) discovered (pre-FID) assets</b>							
<b>Assets projected for approval in the 2020s</b>							
1.	1.	<b>Tanzania LNG T1 (Block 1 and 4)</b>	<b>Mzia-1</b>	<b>Tanzania</b>	<b>60*</b>	<b>376</b>	<b>2026</b>
2.	2.	Mabrouk North East	Mabrouk North East (FFD Phase 2)	Oman	53*	312	2023
3.	3.	<b>Kashagan</b>	<b>Kashagan Phase 2B</b>	<b>Kazakhstan</b>	<b>17</b>	<b>300</b>	<b>2027</b>
4.	4.	<b>QatarGas LNG T12-T13 (NFE-South)</b>	<b>QatarGas T13 (North Field)</b>	<b>Qatar</b>	<b>9</b>	<b>294</b>	<b>2023</b>
	5.		<b>QatarGas T12 (North Field)</b>	<b>Qatar</b>	<b>9</b>	<b>294</b>	<b>2023</b>
5.	6.	<b>Loran-Manatee</b>	<b>Manatee</b>	<b>Trinidad and Tobago</b>	<b>100*</b>	<b>264</b>	<b>2024</b>
6.	7.	Iara	Berbigao/ Sururu II (x-Iara)	Brazil	25	210	2026
7.	8.	Tupi (x-Lula)	Tupi (x-Lula) RF/Oeste	Brazil	23	180	2024
8.	9.	Graff	Graff	Namibia	45*	149	2027

<sup>4</sup> Rounded to the nearest whole value.

9.	10.	North Platte	Sparta (GB958)(x-N Platte)	United States	51*	148	2023
10.	11.	Tanzania LNG T1 (Block 1 and 4)	Chewa	Tanzania	60*	145	2029
11.	12.	Surplus Volumes - Transfer of Rights	Atapu (Surplus Volumes) II	Brazil	50	133	2027
12.	13.	Idku LNG T1	Aphrodite	Cyprus	35	122	2025
<b>13.</b>	<b>14.</b>	<b>Appomattox (FPS)</b>	<b>Dover (MC612)</b>	<b>United States</b>	<b>100*</b>	<b>104</b>	<b>2025</b>
14.	15.	North West Shelf LNG T3	Brecknock (Browse)	Australia	27	99	2027
15.	16.	Gato do Mato	Gato do Mato	Brazil	50*	97	2025
16.	17.	Clair	Clair South	United Kingdom	28	82	2024
17.	18.	QCLNG	Cecil Plains - SGP Phase 3	Australia	50*	78	2024
18.	19.	Val d'Agri	Val D'Agri Phase 2	Italy	39	77	2026
-	-	-	<i>Other (2020s)</i> <sup>5</sup>	-	-	1150	-
<i>Estimated total resources of discovered (pre-FID) oil and gas (non-shale) assets projected for approval in the 2020s</i>						4614	
<b>Assets projected for approval in the 2030s</b>							
19.	20.	North Field	North Field B (domestic)	Qatar	9	1288	2038
20.	21.	Oil shale Jordan	Oil shale Jordan	Jordan	100*	751	2031
21.	22.	Tanzania LNG T2 (Block 1 and 4)	Jodari-1	Tanzania	60*	271	2034
	23.		Pweza	Tanzania	60*	113	2034
22.	24.	Athabasca Oil Sands Project	Jackpine Extension	Canada	10	101	2035
23.	25.	Prelude FLNG	Bratwurst	Australia	100*	95	2032
-	-		<i>Other (2030s)</i> <sup>4</sup>	-	-	598	-

<sup>5</sup> Combined assets with fewer than 75 million BOE in estimated resources projected for approval in the given decade.

<i>Estimated total resources of discovered (pre-FID) oil and gas (non-shale) assets projected for approval in the 2030s</i>						3217	
<b>All other discovered assets<sup>6</sup></b>							
-	-	-	<i>All other discovered assets</i>	-	-	1905	-
<i>Estimated total resources of all other discovered (pre-FID) oil and gas (non-shale) assets</i>						1905	
<b>Discovered (pre-FID) shale assets</b>							
1	1.	Montney Play	Canada	100*		591	-
2.	2.	Vaca Muerta Shale	Argentina	various (30-90*)		378	-
<i>Estimated total resources of discovered (pre-FID) shale assets</i>						969	
<b>Estimated total resources of all discovered (pre-FID) assets</b>						<b>10705</b>	

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<sup>6</sup> All other discovered assets with an estimated approval date of 2040 or later.