

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
ADMIRALTY COURT
BETWEEN:

(1) SHELL U.K. LTD
(2) FLUOR LTD

Claimants

– and –

(1) GREENPEACE UK LIMITED
(2) GREENPEACE LIMITED
(3) STICHTING GREENPEACE COUNCIL
(4) IMOGEN MICHEL
(5) CARLOS MARCELO BARIGGI AMARA
(6) YAKUP ÇETINKAYA
(7) USNEA GRANGER
(8) YEB SAÑO
(9) WAYA PESIK MAWERU
(10) MASTER OF M/V “SEA BEAVER”
(11) PASCAL HAVEZ
(12) SILJA ZIMMERMANN

Defendants

SCHEDULE 1 TO THE DEFENCE

A. INTRODUCTION AND SUMMARY

1. This Schedule (“Schedule 1”) accompanies the Defendants’ Defence to the Claimants’ Particulars of Claim (“PoC”), served on 4 December 2023.

2. Schedule 1 principally expands upon Section C of the Defence and addresses the following factual matters:

- (1) Climate change, its causes, trajectory and impacts;
- (2) The role of the fossil fuel industry in contributing to climate change;
- (3) The activities and policies of Shell (as that term is defined in paragraph 11(1) of the Defence) in relation to climate change and, in particular, its emissions, oil and gas extraction plans and activities, redevelopment of the Penguins Field and use of the FPSO; and
- (4) Shell's non-compliance with the District Court of the Hague's judgment in *Vereniging Milieudefensie and other v Shell plc* (2021) C/09/571932 / HA ZA 19-379 ("the Judgment").

3. For the purposes of this case, the aforesaid are primarily relevant to:

- (1) The Defendants' reliance on Articles 10 and 11 ECHR in that Shell's activities relate to the purpose, nature and public importance of the Defendants' protest (Section H of the Defence; which in turn informs the Defendants' position in respect of liability, loss and damage, and relief); and
- (2) The unconscionability and inequity of Shell's activities, which relate to the Defendants' invocation of the clean hands doctrine as a defence to the injunctions sought by the Claimants (paragraph 116(7) of the Defence).

B. CLIMATE CHANGE

4. The assertions of fact hereunder are evidenced by the best available climate science and principally in the reports of the International Panel on Climate Change ("IPCC"), the United Nations Environment Programme ("UNEP") and the International Energy Agency ("IEA").

B1. The Causes, Trajectory and Impacts of Climate Change

5. Climate change refers to changes in the Earth's climatic systems since pre-industrial times that are unequivocally caused by anthropogenic greenhouse gas ("GHG") emissions.

6. The accumulation of GHG emissions in the atmosphere traps heat from the sun causing *inter alia* an increase in the global mean surface temperature (a phenomenon often referred to as “global warming”).
7. The IPCC’s best estimate in its “Sixth Assessment Report” (“AR6”) was that global warming had reached approximately 1.07°C above pre-industrial levels as of 2010-2019. The rate of global warming is only accelerating.
8. The current level of global warming is unsafe, as has been set out with increasing urgency in recent IPCC reports. Climate change has already had significant adverse impacts on human mortality, morbidity, health and development as a result of *inter alia*:
 - (1) Severe storm surges, tropical cyclones, hurricanes, typhoons, flooding and sea level rises, caused by melting ice, warming oceans and/or increased precipitation;
 - (2) Increasingly severe and frequent heatwaves and wildfires, caused by rising temperatures, volatile climatic conditions, and changes in weather patterns and precipitation levels;
 - (3) Increased drought and water shortages in water-stressed regions, affecting crops, ecosystems and food security due to changes in weather patterns and precipitation levels;
 - (4) Increased air pollution and heat, causing cardiovascular and respiratory distress;
 - (5) Spread of infectious diseases; and
 - (6) Loss of biodiversity and ecosystem collapse through warming oceans, ocean acidification, change of climatic conditions and extreme weather events.
9. Those climate impacts will significantly increase in frequency and severity with every additional increment of global warming and, in particular, if global warming surpasses 1.5°C and then 2°C above pre-industrial temperature levels. There is scientific consensus that 1.5°C of global warming is an upper limit that should not be reached, much less exceeded. In that regard:
 - (1) The IPCC outlined in its “Special Report on Global Warming of 1.5°C” (“SR1.5”), published in October 2018, that:

- (a) Society at large would experience significantly greater “climate-related risks to health, livelihoods, food security, water supply, human security, and economic growth with global warming of 1.5°C”, and that the risks would “increase further with 2°C”; and
 - (b) Global warming of 1.5°C was not safe “for most nations, communities, ecosystems and sectors” and posed “significant risks to natural and human systems as compared to the current warming of 1°C (high confidence).”
 - (2) The IPCC’s AR6 outlined that reaching 1.5°C “would cause unavoidable increases in multiple climate hazards and present multiple risks to ecosystems and humans”.
10. Overshooting 1.5°C, even temporarily, could result in large risks to natural and human systems that are potentially irreversible, such as through reaching climatic tipping points. Potential tipping points include irreversible meltdown of the Greenland ice sheet, disruption of monsoon patterns and permafrost collapse. The IPCC warned in 2018 and 2019 that such tipping points could occur between 1–2°C of warming and had a “high probability” of occurring if temperatures rose above 2°C.
11. Having regard to the aforesaid, there is an established political consensus that climate change is occurring, that its impacts are severe, and that global warming must be held to 1.5°C above pre-industrial temperature levels, a target which entails significant risks, but may avoid the most extreme and irreversible consequences of climate change. Key milestones in the formation of that consensus are set out below:
 - (1) The United Nations Framework Convention on Climate Change (“UNFCCC”) was enacted in 1992 and has been ratified by 197 States. The UNFCCC unequivocally recognises the existence of climate change and the necessity of reducing GHG emissions;
 - (2) The Paris Agreement was adopted in 2015 and requires all countries to set emissions-reduction pledges, known as nationally determined contributions (“NDCs”), in order to achieve the long-term temperature goal (“LTTG”) of “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”; and

- (3) States have since affirmed in the Glasgow Declaration in 2022 and in the Sharm el-Sheikh Implementation Plan in 2023 that “the impacts of climate change will be much lower at the temperature increase of 1.5°C compared to 2°C” and have “resolve[d] to pursue further efforts to limit the temperature increases to 1.5°C”.

B2. Emissions Reductions Required to Hold Global Warming To 1.5°C

12. Rapid and deep GHG emissions reductions are essential to achieve the LTTG of 1.5°C.

13. According to the IPCC’s SR1.5:

- (1) The carbon budget (i.e. the total amount of CO₂ that can be emitted over a period without a particular temperature level being exceeded) associated with having a 50% chance of achieving the LTTG of 1.5°C was 580 GtCO₂ at the start of 2018;
- (2) The median of the corresponding emissions pathways (i.e. the global emissions reduction trajectory linked to achieving a particular LTTG) consistent with a 50% chance of achieving the LTTG of 1.5°C with no or limited overshoot (“NLO pathways”) required that:
 - (a) CO₂ emissions be reduced by 45% by 2030 from 2010 levels; and
 - (b) Global CO₂ emissions reach net zero by around 2050.

14. According to the IPCC’s AR6, the final synthesis report of which was published in March 2023:

- (1) The carbon budget associated with having a 50% chance of achieving the LTTG of 1.5°C is now 500 GtCO₂;
- (2) The median of the corresponding NLO pathways consistent with a 50% chance of achieving the LTTG of 1.5°C requires that:
 - (a) By 2030, CO₂ emissions are reduced by 48% and all GHG emissions are reduced by 43% from 2019 levels; and
 - (b) By 2040, CO₂ emissions are reduced by 70% and all GHG emissions are reduced by 69% from 2019 levels; and

(c) Global net zero CO₂ emissions are reached in the early 2050s.

15. The SR1.5 and AR6 make clear that without rapid and deep GHG emissions reductions by 2030 in accordance with the abovementioned emission pathways, the LTTG of 1.5°C will become unachievable. Any further delay in GHG emissions reductions will miss a brief and rapidly closing window of opportunity to avoid the most severe consequences of climate change.

16. Despite the gravity and urgency of these conclusions, insufficient action has been taken to reduce GHG emissions and levels of global warming are projected to increase significantly into the future. According to the UNEP's "Emissions Gap Report 2023":

- (1) Current policies are consistent with a 66% chance of 3°C global warming;
- (2) Global mitigation efforts in countries' unconditional NDCs under the UNFCCC framework are consistent with a 66% chance of 2.9°C global warming; and
- (3) Global mitigation efforts in countries' conditional NDCs under the UNFCCC framework are consistent with a 66% chance of 2.5°C of global warming.

B3. The Fossil Fuel Industry

17. Fossil fuels (i.e. oil, gas and coal) are the largest source of GHG emissions globally and there is no doubt that they have caused and/or significantly contributed to the climate crisis. In this regard:

- (1) Fossil fuel consumption and combustion accounts for around three-quarters of global GHG emissions and 81% of global CO₂ emissions;
- (2) Oil and gas consumption and combustion (excluding coal) account for approximately 48% of global CO₂ emissions; and
- (3) Reducing fossil fuel production holds the key to averting the worst effects of climate change.

18. Current levels of fossil fuel production and reserves (including oil and gas) are manifestly inconsistent with holding global warming to 1.5°C above pre-industrial levels. In particular:

- (1) Current plans envisage production of more than double the amount of fossil fuels in 2030 than would be consistent with limiting global warming to 1.5°C;
- (2) Extraction and use of all existing fossil fuel infrastructure and reserves would result in emissions exceeding by at least 30% the global carbon budget consistent with achieving the LTTG of 1.5°C; and
- (3) Continued investment in fossil fuels risks locking higher emissions into energy systems that are inconsistent with achieving the LTTG of 1.5°C.

19. In the premises, *inter alia* the IEA has found in the reports outlined below that no new oil and gas fields can be developed if the LTTG of 1.5°C is to remain achievable. The necessity of not opening new oil and gas fields follows from their long lifespans and the associated dangers of locking in increased oil and gas supply for decades into the future.

20. Further, steep and sustained reductions in fossil fuel production are required to achieve the LTTG of 1.5°C. In this regard:

- (1) According to the “Production Gap Report 2021” (“PGR 2021”), published by UNEP and others in October 2021, to be consistent with 1.5°C:
 - (a) Global oil production should decrease by approximately 34% by 2030 from 2019 levels (4% each year); and
 - (b) Global gas production should decrease by approximately 28% by 2030 from 2019 levels (3% each year).
- (2) The aforesaid figures were updated in 2023 in the “Production Gap Report 2023” (“PGR 2023”), published by UNEP and others in November 2023, which concluded that to be consistent with the LTTG of 1.5°C:
 - (a) Global oil production should decrease by approximately 10% by 2030 and 67% by 2050 relative to 2020 levels;
 - (b) Global gas production should decrease by approximately 29% by 2030 and 54% by 2050 relative to 2020 levels;
- (3) A separate analysis by the IEA, “Net Zero by 2050: A Roadmap for the Global

Energy Sector” (“IEA NZE 2021”), published in May 2021 and peer reviewed by *inter alia* Peter Wood (Chief Energy Advisor for Shell), concluded that, to be consistent with 1.5°C:

- (a) Global oil production should decrease by approximately 28% by 2030 and 78% by 2050 relative to 2019 levels (average decline of 4% between 2020 and 2050);
 - (b) Global gas production should decrease by approximately 7% by 2030 and 57% by 2050 relative to 2019 levels (average decline of 3% between 2020 and 2050);
 - (c) Emissions from the oil sector should decrease by approximately 35% by 2030 and 92% by 2050 relative to 2019 levels; and
 - (d) Emissions from the gas sector should decrease by approximately 28% by 2030 and 92% by 2050 relative to 2019 levels.
- (4) The analysis was updated by the IEA in “Net Zero Roadmap: A Global Pathway to Keep the 1.5°C Goal in Reach” (“IEA NZE 2023”), published in September 2023. concluded that, to be consistent with the LTTG of 1.5°C:
- (a) Global oil production should decrease by approximately 14% by 2030 and 76% by 2050 relative to 2020 levels;
 - (b) Global gas production should decrease by approximately 15% by 2030 and 77% by 2050 relative to 2020 levels;
 - (c) Emissions from the oil sector should decrease by approximately 31% by 2030 and 93% by 2050 relative to 2019 levels; and
 - (d) Emissions from the gas sector should decrease by approximately 20% by 2030 and 95% by 2050 relative to 2019 levels.

B4. Scope 1, 2 and 3 Emissions

21. Companies’ emissions can be classified into three categories:

- (1) Scope 1 emissions refer to direct GHG emissions from sources that are owned or

controlled by the company;

(2) Scope 2 emissions refer to GHG emissions from the generation of purchased electricity, steam, heat, and cooling consumed by the company; and

(3) Scope 3 emissions refer to indirect GHG emissions that occur as a consequence of the activities of a company but are emitted from sources not owned or under the direct operational control of the company. This includes emissions in the value chain of the reporting company, including upstream and downstream emissions.

22. There is broad consensus in corporate climate protocols and guidance that companies should report and bear responsibility for their Scope 1, 2 and 3 emissions: see, for example, the criteria for compliance with the United Nations Race to Zero initiative under the UNFCCC framework; the GHG emissions reporting standards in the World Business Council for Sustainable Development and the World Resources Institute's "Greenhouse Gas Protocol Corporate Accounting and Reporting Standard" ("the GHG Protocol") (noting that Shell was in the steering committee which drafted this document); the University of Oxford study "Mapping of current practices around net zero targets", published in May 2020; and the practice of oil and gas companies in reporting their Scope 3 emissions to *inter alia* the CDP (an international non-profit organisation formerly known as the Carbon Disclosure Project).

C. SHELL'S EMISSIONS, POLICIES AND ACTIVITIES

23. Shell's principal business involves the exploration, production, refining, distribution, marketing and sale of oil and gas. Approximately 90% of Shell's product sales are comprised of oil products and gas.

24. Shell plc is responsible for establishing Shell's strategy, including the setting, monitoring and implementing of climate change policies, objectives and targets for all companies within the Shell Group.

25. The Shell Group's annual revenue in 2022 was USD \$386.2bn, and its annual profit USD \$42.87bn.

26. Shell UK is a wholly owned subsidiary of Shell plc. The strategic aims of Shell UK, including in relation to climate change, are wholly derived from those of the Shell Group.

C1. Knowledge

27. Shell has known of the occurrence of climate change, the associated risks and the need for GHG emissions reductions since at least as early as 1981. For example:

- (1) In 1981, Shell commissioned a “greenhouse gas effect” study from the Climate Research Unit at University of East Anglia;
- (2) In 1988, the Shell Group published a 1986 internal report titled “The Greenhouse Effect” in which it warned of the dangers of climate change;
- (3) A Shell confidential group planning report produced in October 1989, titled “Scenarios 1989-2010: challenge and response”, recognised that climate change was an area of “especial significance”, “[i]t is directly tied to man’s economic activities by the use of energy”, and that the “combustion of fossil fuels” was a dominant contributor. The report outlined two scenarios, “SUSTAINABLE WORLD” and “GLOBAL MERCANTILISM”: the former would involve a reduction in CO₂ emissions from fossil fuels back to 1972 levels and mitigate the worst effects of climate change; the latter involved a doubling of CO₂ emissions from fossil fuels, and could lead to dramatic changes in temperature and weather patterns, with severe consequences for humanity (for example, “[t]he potential refugee problem in GLOBAL MERCANTILISM could be unprecedented [...] Boundaries would count for little – overwhelmed by the numbers. Conflicts would abound. Civilisation could prove a fragile thing); and
- (4) A brochure produced by Shell in 1998 titled “Climate Change, what does Shell think and do about it” acknowledged that Shell “must play their part in the necessary precautionary measures to limit greenhouse gas emissions” and that Shell companies were expected to “[r]educe emissions of greenhouse gases in their own operations as well as helping their customers do the same”.

C2. Emissions Targets

28. In 2017, as part of its “Net Carbon Footprint Ambition”, Shell announced its first targets for reducing the carbon intensity of its energy products by 20% by 2035 and 50% by 2050 (carbon intensity targets measure how much CO₂ is released per unit of energy produced

by Shell; the distinction between carbon intensity and absolute emissions reduction targets are addressed at paragraph 39(3) below).

29. In its “Shell Energy Transformation Report 2018”, Shell set out that:

- (1) It had no immediate plans to move to a net-zero emissions portfolio over its investment horizon of 10-20 years; and
- (2) Assuming society aligns itself with the Paris Agreement’s goals, it would aim to reduce its Net Carbon Footprint (i.e. carbon intensity) by 20% by 2035, and by 50% by 2050.

30. On 9 October 2018, Shell plc’s then CEO, Ben van Beurden, reaffirmed that “Shell’s core business is, and will be for the foreseeable future, very much in oil and gas” and that “people think we have gone soft on oil and gas. If they did think that, they would be wrong”.

31. In 2020, in its “Responsible Investment Annual Briefing” (“the 2020 Briefing”), Shell adjusted its emissions targets and set out its purported desire to:

- (1) Reduce Scope 1 and 2 CO₂ emissions to net zero by 2050;
- (2) Reduce the carbon intensity of its energy portfolio by 2-3% by 2021, 3-4% by 2022, 30% by 2035 and 65% by 2050; and
- (3) Help its customers to reduce their emissions resulting from the use of Shell energy products to net zero by 2050 or sooner.

32. The 2020 Briefing acknowledged that “Shell’s operating plans and budgets do not reflect Shell’s net-zero emissions ambition. Shell’s aim is that, in the future, its operating plans and budgets will change to reflect this movement towards its new net-zero emissions ambition. However, these plans and budgets need to be in step with the movement towards a net-zero emissions economy within society and among Shell’s customers”.

33. Shell adjusted its carbon intensity targets in February 2021 through its “Powering Progress” strategy, which set out Shell’s purported aims and/or expectations to reduce the carbon intensity of its energy portfolio by 2–3% by 2021, 3–4% by 2022, 6–8% by 2023, 20% by 2030, 45% by 2035 and 100% by 2050, “in step with society”.

34. In its “Energy Transition Progress Report 2021”, Shell announced or restated:

- (1) An additional target to reduce its Scope 1 and 2 emissions by 50% by 2030 compared to 2016 levels. This added an interim target to the Net-Zero Scope 1 and 2 emissions target at paragraph 31(1);
- (2) An expectation that it would reduce oil production by 1–2% per annum through to 2030; and
- (3) A plan to reduce annual spending on exploration to around USD \$1.5bn between 2021 and 2025, and an expectation that there would be no new frontier exploration entries after 2025.

35. In an interview in January 2022, Mr van Beurden confirmed that Shell’s progress in relation to its Scope 3 targets “will remain dependent on society’s progress with the energy transition”.

36. In March 2023, The Times reported that Shell was considering reviewing its commitment to reduce oil production by 1–2% per annum to 2030. Shell plc’s new CEO, Wael Sawan, told The Times: “I am of a firm view that the world will need oil and gas for a long time to come. As such, cutting oil and gas production is not healthy.”

37. On 9 June 2023, Reuters reported that “Shell will keep oil output steady or slightly higher into 2030 as part of CEO Wael Sawan’s efforts to regain investor confidence” and that he “will announce at an investor event next week the scrapping of a target to reduce oil output by 1% to 2% per year”.

38. On 14 June 2023, Mr Sawan and/or Zoë Yujnovich (Integrated Gas and Upstream Director) made commitments to investors at the New York Stock Exchange (“Delivering more value, with less emissions”) that Shell planned to:

- (1) Maintain oil production at current levels of circa 1.4 million barrels of oil per day (“mb/d”) until 2030;
- (2) Expand its liquified natural gas business by 20–30% from 2022 to 2030 in terms of liquefaction and purchased volumes (“mtpa”);
- (3) Invest USD \$40bn over the next three years in order to help it add 500,000 barrels

of oil equivalent a day (“boe/d”) of new oil and gas production by 2025; and

- (4) He commented that “[u]ltimately what we need to do is to be able to generate long-term value for our shareholders, the answer cannot be, ‘I am going to invest [in clean energy projects] and have poor returns and that’s going to vindicate my conscience’. That’s wrong.”

39. The fundamental shortcomings of Shell’s climate change targets are as follows:

- (1) Shell’s targets have not been aligned with its operating plans and budgets;
- (2) Shell only has absolute emissions reduction targets for its Scope 1 and 2 emissions, which represent around 5% of Shell’s total emissions;
- (3) Shell’s Scope 3 emissions targets are limited to carbon intensity. Shell has no target or ambition to reduce its absolute Scope 3 emissions. In this regard:
 - (a) Carbon intensity targets measure how much CO₂ is released per unit of energy produced by Shell. This is to be distinguished from absolute emissions targets, which measure the number of metric tonnes of emissions associated with Shell’s activities; and
 - (b) Owing to this distinction, it is and has been possible for Shell’s absolute emissions to rise as carbon intensity decreases. Under Shell’s climate targets, Shell can reduce the emissions per unit of energy produced (i.e. carbon intensity) within its energy portfolio while in absolute terms increasing its supply of oil and gas to an extent which offsets any emissions reductions achieved by meeting its carbon intensity targets and thereby increasing its overall Scope 1, 2 and 3 emissions;
- (4) Shell’s longer-term and Scope 3 carbon intensity targets are explicitly contingent on the rate of emissions reductions of Shell’s customers and society more broadly;
- (5) In recognition of the uncertainties arising from the lack of absolute emissions targets and the socially contingent nature of Shell’s existing targets:
 - (a) Shell has reported to the CDP in 2021, 2022 and 2023 that its goal of reducing carbon intensity by 20% by 2030 is not expected to result in any

reductions of absolute Scope 1, 2 or 3 emissions;

- (b) In its 2023 submission to the CDP, Shell acknowledged that “there would be a significant risk that Shell may not meet its target”; and
 - (c) During a shareholders’ meeting around 22 October 2021, in response to a question from Follow This – an environmentally conscious shareholder group – regarding the level of absolute emissions reductions that would result from Shell’s policies, Mr van Beurden stated that it was “a guess” where Shell’s emissions would be in 2030;
- (6) Shell’s emissions reduction targets are therefore inconsistent with achieving the LTTG of 1.5°C on the basis that they are inconsistent with the emissions pathways in the IPCC SR1.5, IPCC AR6, IEA NZE 2021 and/or IEA NZE 2023;
 - (7) Shell has no target for reducing gas production, let alone a target which is consistent with achieving the LTTG of 1.5°C;
 - (8) At the time it was announced, Shell’s commitment to reduce oil production by 1–2% was inconsistent with achieving the LTTG of 1.5°C on the basis that it was inconsistent with the oil production pathways in the IEA NZE 2021 and PGR 2021. That insufficient commitment now appears to have been or to be in the process of being reneged upon;
 - (9) Shell has committed to exploring and opening further new oil and gas fields, which is inconsistent with achieving the LTTG of 1.5°C on the basis that it is contrary to the IEA NZE 2021 and IEA NZE 2023; and
 - (10) Shell has scaled back its renewables and low carbon business.

C3. Shell’s Emissions

40. Shell Plc measures and reports the Scope 1, 2 and 3 emissions for the entire Shell Group. Unless expressed in relation to Scope 1, 2 or 3 emissions, references to “emissions” or “absolute emissions” hereafter refer to Shell’s cumulative Scope 1, 2 and 3 emissions.

41. Scope 3 absolute emissions account for approximately 95% of Shell’s overall emissions.

42. Shell is responsible for a significant portion of global GHG emissions:

- (1) “The Carbon Majors Database: CDP Carbon Majors Report 2017”, published in July 2017, found that Shell was responsible for 1.67% of total cumulative GHG emissions from 1988–2015, being the company with the ninth greatest share of GHG emissions;
- (2) A separate study by the Climate Accountability Institute, published on 9 December 2020, found that Shell was responsible for 2.3% of fossil fuel and cement related emissions from 1965–2018; and
- (3) Shell’s absolute emissions in 2022 (1,174 million tonnes of CO₂e) were greater than all but six countries, accounted for approximately 2.2% of global emissions, and were almost three times greater than the emissions of the United Kingdom (426.56 million tonnes of CO₂e).

43. Based on Shell’s policies as of September 2022, Global Climate Insights project that Shell’s absolute emissions will rise by 3% by 2030 relative to 2019 levels (and by 22% relative to 2021 levels). If Carbon Capture and Storage (“CCS”) and carbon credits are factored into the assessment, the same report projects that Shell’s emissions are projected to fall by 6%.

44. The aforesaid emissions trajectory is inconsistent with achieving the LTTG of 1.5°C in that it is inconsistent with the emissions pathways in the IPCC SR1.5, IPCC AR6, IEA NZE 2021 and/or IEA NZE 2023.

C4. New Oil and Gas Fields

45. Despite the recognition by the IEA that there is no room for new oil and gas exploration if the LTTG of 1.5°C is to be achieved, Shell continues to expand its oil and gas portfolio. It is expressly provided for and/or implicit in Shell’s plans that it has and will continue to invest in, search for and/or develop new oil and gas fields through to 2030. In particular:

- (1) Shell set out in its Energy Transition Progress Report 2021 and its Powering Progress Strategy that it expects to invest USD \$1.5bn per annum through to 2025 on new frontier oil and gas exploration. In this regard:
 - (a) It is implicit that Shell will continue to invest significant capital in new

frontier oil and gas exploration until 2025;

- (b) Contrary to the aforesaid commitment, Shell spent USD \$1.7bn on new oil and gas exploration in 2022, a USD \$300,000 increase on the previous year; and
 - (c) In any event, Shell has reserved the right to invest beyond 2025 in new oil and gas fields in regions where it already has significant oil and gas infrastructure, which falls outside its definition of new frontier oil and gas exploration but nonetheless involves an escalation in its oil and gas exploration activities;
- (2) Shell has committed to expanding its liquified natural gas business by 20-30% from 2022 into the 2030s in terms of liquefaction and purchased volumes (“mtpa”), from which it can be inferred that Shell intends to invest in, develop and/or open new gas fields into the 2030s;
 - (3) Mr Sawan stated on 14 June 2023 that Shell intends to invest USD \$40bn over the next three years in order to help it add 500,000 boe/d of new oil and gas production by 2025; and
 - (4) As regards Shell’s commitment to reduce oil production by 1-2% per annum until 2030, the natural decline in Shell’s oil production from existing fields if Shell did not invest in new oil fields would be approximately 5%. It can therefore be inferred that the 1-2% annual reduction commitment envisages further significant investment in new oil fields and production. In any event, Shell appears to have reneged on its commitment to reduce its oil production.

46. Notably, Shell has invested in and/or developed a significant number of new oil and gas fields since 2021:

- (1) Between May 2021 and September 2022, Shell took final investment decisions to develop 10 new oil and gas extraction assets, committing an additional 900 million barrels of oil equivalent (“mboe”) to extraction, which could lock in an additional 350m metric tonnes of CO₂ (roughly 75% of the United Kingdom’s annual GHG emissions);

- (2) Shell increased its oil and gas reserves between 2021 and 2022 from 9,365 mboe to 9,578 mboe;
- (3) Shell's discoveries of new oil and gas resources have increased between 2019 and 2023, and were at their highest in 2023 since 2018;
- (4) Shell reported on 14 June 2023 that its new projects will deliver over 500,000 boe/d by 2025;
- (5) As of September 2022, Shell had 756 undeveloped assets awaiting final investment decisions (accounting for 57% of its total 1,325 assets). If Shell extracts all its potential resources (current assets and those awaiting final investment decisions), the associated emissions from those resources (4.3 Gt CO₂) would exhaust 2.8% of the world's remaining carbon budget for a 50% chance of achieving the LTTG of 1.5°C; and
- (6) Shell is the independent multinational energy company responsible for the third highest level of oil and gas expansion between 2023 and 2025 in terms of cumulative CO₂ emissions from final investment decisions.

47. Shell's decisions and plans to continue investing in, exploring, developing and/or opening new oil and gas fields since 2021 are manifestly inconsistent with achieving the LTTG of 1.5°C on the basis that they are contrary to the pathways in the IEA NZE 2021 and IEA NZE 2023.

C5. Projected Levels of Oil and Gas Production

48. Consistent with Shell's climate targets, emissions and plans for new oil and gas fields, Shell plans and/or is projected to increase its levels of gas production and maintain its levels of oil production until 2030. In particular, according to Rystad (an independent research and business intelligence company):

- (1) Shell's global hydrocarbons production (oil and gas) is projected to increase from 3,457.11 kboe/d in 2023 to 4,020.91 kboe/d in 2030, before falling to 2,782.67 kboe/d in 2040. That is a 16% increase between 2023 and 2030, and a 20% decrease between 2023 and 2040;

- (2) Oil production is projected to increase from 1,635.99 kboe/d in 2023 to 1,830.42 kboe/d in 2030, before falling to 1,090.29 kboe/d in 2040. That is a 12% increase between 2023 and 2030, and a 33% decrease between 2023 and 2040; and
- (3) Gas production is projected to increase from 1,532.39 kboe/d in 2023 to 1,885.73 kboe/d in 2030, before falling to 1,489.67 kboe/d in 2040. That is a 23% increase between 2023 and 2030, and a 3% decrease between 2023 and 2040.

49. Based on this data, of all multinational oil companies, Shell is projected to have the third highest levels of oil and gas production in 2030.

50. Shell's planned and/or projected levels of oil and gas production are manifestly inconsistent with achieving the LTTG of 1.5°C on the basis that the levels of production outlined above are inconsistent with the oil and gas reduction pathways set out the PGR 2021, PGR 2023, IEA NZE 2021 and/or IEA NZE 2023.

C6. Penguins Field

51. Shell's decision to redevelop the Penguins Field and use the FPSO is consistent with and pursuant to Shell's overarching climate targets and oil and gas production plans. It is a prime example of Shell's disregard for the scientific consensus as to what is compatible with holding global warming to 1.5°C. In this regard:

- (1) The redevelopment of the Penguins Field involves a significant expansion of oil and gas extraction from the field, including the drilling of up to eight new wells;
- (2) The FPSO, once operational, is projected to produce 45 kboe/d at peak production (amounting to almost half of Shell's hydrocarbon production in the United Kingdom in 2022 (98.93 kboe/d)); and
- (3) The redevelopment of the Penguins Field is expected to unlock 80 mboe over the lifecycle of the project (which is estimated to be between 21 and 25 years).

52. The redevelopment of the Penguins Field and use of the FPSO therefore marks a significant expansion of oil and gas production, and thus a significant contribution to climate change and the associated harms outlined at paragraph 8 above.

53. Notwithstanding the above, Shell failed and/or chose not to consider the climate change

impacts of the redevelopment of the Penguins Field when conducting its environmental impact assessment for the project in 2016 and has not reconsidered such impacts in the intervening period, despite the developments in scientific consensus including through the publication of the IPCC SR1.5, the IEA NZE 2021, the PGR 2021, the IPCC AR6, the IEA NZE 2023 and the PGR 2023.

C7. Misrepresentations

54. Shell's activities and plans are manifestly incompatible with keeping global warming to 1.5°C. It is beyond dispute that fossil fuel production contributes significantly to catastrophic climate impacts. Shell has known this for many decades. Nonetheless, Shell actively misrepresents that its activities and plans are consistent with the Paris Agreement and/or the LTTG of 1.5°C, and promulgates information regarding the aforesaid that is untrue and/or misleading. For example:

- (1) Shell represented in inter alia its Annual Report 2022, Shell Energy Transition Progress Report 2022 and Sustainability Report 2022 that it is working towards becoming, and/or its target is to become, a “net-zero emissions energy business” and/or that its climate targets are aligned with the Paris Agreement. Those representations are misleading and/or untrue in that:
 - (a) Shell's emissions targets and emissions are manifestly inconsistent with achieving the LTTG of 1.5°C for the reasons set out in Sections C2 and C3;
 - (b) Shell's climate targets are limited to reductions of absolute Scope 1 and 2 emissions and climate intensity targets. Given that over 90% of Shell's emissions are Scope 3 emissions which are not covered by an absolute emissions reduction target, it is not Shell's target to become a net-zero emissions energy business;
 - (c) Shell's investments in new oil and gas fields are manifestly inconsistent with achieving the LTTG of 1.5°C, for the reasons set out in Section C4; and
 - (d) Shell's levels and projected levels of oil and gas production are manifestly inconsistent with achieving the LTTG of 1.5°C, for the reasons set out in Section C5.

- (2) In *inter alia* the Shell Energy Transition Progress Report 2021 and/or the Shell Energy Transition Progress Report 2022, Shell represented that gas will play a key role in the energy transition, is a “Renewable and Energy Solution” and constitutes “low-carbon energy”. Those representations were misleading and/or untrue:
- (a) Gas is a carbon intensive fossil fuel and not a renewable energy source, irrespective of its carbon intensity relative to fossil fuels;
 - (b) The production and combustion of gas has substantially contributed to climate change; and
 - (c) The scientific consensus is that there is an urgent need to reduce emissions from gas and reduce the production of gas.
- (3) In *inter alia* the Shell Energy Transition Progress Report 2021” and “Shell Energy Transition Progress Report 2022”, Shell claimed that it invested 12% and 14% of its cash capital expenditure (“capex”) in “Renewables and Energy Solutions” in 2021 and 2022 respectively. Similarly, in its Sustainability Report 2021, Shell claimed that it had invested capex of USD \$2.4bn in “Renewables and Energy Solutions” in 2021 and would invest USD \$3bn in 2022. Further, Mr Sawan stated on 14 June 2023 that Shell would invest USD “\$10-15bn in low-carbon energy solutions between 2023 and 2025, positioning us for the transition”. Those representations were misleading and/or untrue in that:
- (a) Shell includes the marketing and trading of power and pipeline gas within its definition of Renewable and Energy Solutions;
 - (b) The Defendants repeat paragraph 54(2) on gas not being a renewable or low carbon source of energy; and
 - (c) Shell only invested approximately 1.5% of capex in wind and solar power.
- (4) Under the headings “Investing in net zero”, Shell represented: (i) in the Shell Energy Transition Progress Report 2021 that it “expect[s] around 50% of our total expenditure (capex and operating expenditure) to be on low and zero-carbon products and services”; and (ii) in the Shell Energy Transition Progress Report 2022 that it invested around a third of its capex in “low-carbon energy and non-energy

fuel products”. Those representations were misleading and/or untrue in that:

- (a) A significant portion of that expenditure in relation to low-carbon energy is on gas (see paragraph 54(3) above);
- (b) The Defendants repeat paragraph 54(2) on gas not being a renewable or low carbon source of energy; and
- (c) Almost half of that expenditure is on chemicals, lubricants and convenience retail, which would be produced in any event and are irrelevant to the energy transition.

55. Consistent with the aforesaid, Shell has been found by the advertising regulatory bodies of the United Kingdom and the Netherlands to have breached advertising standards on a number of occasions when its advertisements gave consumers a misleading impression that it was more involved in low-carbon activities than it has been in reality. For example:

- (1) On 8 July 2020, UK’s the Advertising Standards Authority (“ASA”) found that a Shell UK advertising campaign which claimed that customers would “Drive carbon-neutral” when purchasing fuel under the Shell Go+ loyalty scheme (a scheme which was purported to operate so that when Shell Go+ members made fuel purchases, Shell would purchase carbon credits to offset the lifecycle carbon emissions of the fuel purchase) breached rules 3.1, 9.2 and 9.3 of the UK Code of Broadcast Advertising (“BCAP Code”). The ASA considered the advertising campaign to be misleading on the basis that consumers would likely infer that the fuel they purchased was carbon neutral rather than the alleged neutrality relying on the use of a carbon offsetting scheme;
- (2) In 2021, the Dutch Advertising Code Committee (“RCC”) found that several statements on Shell’s website regarding the campaign “Make a difference. Drive CO2 neutral” breached of Articles 2 and 3 of the Code for Environmental Advertising on the basis that consumers would understand this to mean that the harm caused by CO2 emissions was completely compensated by offsetting measures in circumstances when this could not be established;
- (3) In 2021, the RCC found that an advertisement by Shell displaying a Shell truck

with an image of a rainforest in the background and stating “I AM CO2 NEUTRAL. ON THE WAY. ARE YOU?” breached Article 2 of the Code for Environmental Advertising on the basis that the slogan was misleading as it suggested Shell itself was CO2 neutral;

- (4) In 2022, the RCC found that several statements on Shell’s website regarding the campaign “Make a difference. Compensate Co2 emissions” breached Articles 2 and 3 of the Code for Environmental Advertising on the basis that it was misleading as Shell could not demonstrate that it was fully offsetting CO2 pollution caused by its fossil fuel products. This finding was upheld on appeal in 2023; and
- (5) On 7 June 2023, the ASA upheld complaints regarding three advertisements of Shell UK:
 - (a) The first advertisement concerned a poster in Bristol with large text “BRISTOL is READY for Cleaner Energy”, accompanied by advertisement that “In the South-West 78,000 homes use 100% renewable electricity from Shell Energy” and a Shell logo on the top right-hand corner of the poster;
 - (b) The second and third advertisements concerned TV and YouTube advertisements focusing on environmental projects and including claims that “In the UK, 1.4 million households use 100% renewable electricity from Shell”; “Shell experts are working on a wind project that could power six million homes”; and “Shell aims to fit 50,000 [electric vehicle] chargers nationwide by 2025”; with the claims “The UK is READY for cleaner energy” and the hashtag “#Powering Progress” appearing in the closing shots of the advertisements with the Shell logo; and
 - (c) The ASA considered the advertisements to be misleading, in breach of rule 3.1, 3.3 and 11.1 of the UK Code of Non-broadcast Advertising and Direct and Promotional Marketing (“CAP Code”), and in breach of rules 3.1, 3.2 and 9.2 of the BCAP Code on the basis that: (i) Shell’s GHG emissions represented a substantial contribution to climate change and large-scale oil and gas investment and extraction comprised the vast majority of Shell’s business model in 2022 and would continue to do so in the near future; and, despite this, (ii) the adverts gave the impression that a significant portion of

Shell's business comprised of lower-carbon energy products.

56. Further, a study by InfluenceMap published on 8 September 2022 found that approximately 70% of Shell's public communications contain green claims, while only 10% of its capex was directed at low carbon investments (including fossil gas). That disparity gives consumers a misleading impression of the nature of Shell's business.

D. THE MILIEUDEFENSIE JUDGMENT

57. On 5 April 2019, a coalition of environmental non-governmental organisations (including Greenpeace Netherlands) and over 17,000 individuals brought a claim in the District Court of the Hague against Shell plc (then known as Royal Dutch Shell) alleging that its contributions to climate change violated its duty of care under Book 6 Section 162 of the Dutch Civil Code.

58. On 26 May 2021, the District Court of The Hague gave judgment after a full and contested four-day hearing over 1, 3, 15 and 16 December 2020. Notably:

- (1) The Court found that Shell is a major player on the worldwide market of fossil fuels and is responsible for significant CO₂ emissions, which exceed the emissions of many States and contribute towards global warming and dangerous climate change, which has serious and irreversible consequences and risks for the human rights of Dutch citizens (§4.4.16);
- (2) It further found that, while Shell cannot solve the problem of climate change on its own, this does not absolve Shell of its individual partial responsibility to do its part regarding emissions which it can control and influence (§4.4.49);
- (3) Based on the median emissions pathway in the IPCC SR1.5, the Court held that Shell has a "reduction obligation", in light of its breach and/or likely future breaches of the duty of care imposed on it under the Dutch Civil Code, to reduce, by the end of 2030, its Scope 1, 2 and 3 CO₂ emissions by net 45% relative to 2019 levels (§4.4.55):
 - (a) This was an obligation of result for activities of the Shell Group (§4.4.55);
 - (b) This was a significant best-efforts obligation with respect to the business

relations of the Shell Group, including end-users, in which context Shell is expected to take the necessary steps to remove or prevent the serious risks ensuing from the CO₂ emissions generated by its business relations, and to use its influence to limit any lasting consequences as much as possible (§4.4.55); and

- (c) A consequence of the reduction obligation may be that Shell will be required to forgo new investments in extraction of fossil fuels and/or limit its production of fossil fuels (§4.4.39);

- (4) The Court accordingly made an order that Shell Plc (then Royal Dutch 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 (Scope 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 Order”);

- (5) The Court held that the Order is provisionally enforceable and binding upon Shell notwithstanding that it may have far-reaching consequences for Shell (§4.5.7).

59. Shell has not taken any or any sufficient steps to comply with the Order and it can be inferred from the circumstances that it does not intend to comply with the Order. In this regard:

- (1) On 29 July 2021, Mr van Beurden stated that Shell had no plans to change its strategy following the Judgment and called the Judgment “unreasonable”;
- (2) In January 2022, Mr van Beurden stated in relation to the Judgment and Shell’s Scope 3 emissions that “our progress will remain dependent on society’s progress with the energy transition”;
- (3) In a document titled “Frequently Asked Questions (FAQ) on Dutch District Court Legal Case” (updated 22 March 2022), Shell stated that it considered the Order for it to reduce its Scope 1 and 2 emissions as a direction for “acceleration of our

Powering Progress strategy and aim to rise to the challenge”. With respect to Scope 3 emissions, Shell repeated that it intends to help its customers reduce their emissions and sets out a disparate range of examples where Shell has invested in renewable energy. These steps will not, however, be sufficient to result in compliance with the Order;

- (4) Other than as stated above and at paragraphs 33-34, Shell has not adjusted and does not as far as the Defendants are aware intend to adjust its climate targets or plans in order to comply with the Order. In this regard:
 - (a) The Defendants repeat paragraphs 39(2)-(3) regarding Shell’s continued failure to implement any absolute emissions reduction target for Scope 3 emissions;
 - (b) The Shell board has recommended on multiple occasions following the Judgment, most recently in March 2023, that its shareholders to reject resolutions by Follow This which called for the adoption of absolute emissions reduction targets (including Scope 3 emissions) in line with the Paris Agreement and the shifting of investments from fossil fuels to renewable energy;
 - (c) The Defendants repeat paragraphs 44-46 regarding Shell’s decisions following 26 May 2021 to invest in, develop and/or open new oil and gas fields; and
 - (d) The Defendants repeat paragraphs 48-50 regarding Shell’s oil and gas production being projected to remain steady or increase by 2030;
- (5) To the contrary, following the Judgment, Shell appears to have reneged or be in the process of reneging on its limited commitment to reduce oil production by 1–2% per annum by 2030 (paragraphs 36-38 above) and has scaled back its renewables and low carbon business (paragraph 39(10)); and
- (6) To the extent Shell represents that its current climate targets are consistent with the Judgment and Order, that constitutes another example of misrepresentation further to those set out at paragraphs 54-56 above.

60. In this respect, Shell is currently acting in breach of the Order and unlawfully. Further, the Judgment and Order are consistent with the finding, by the Supreme Court of New Zealand in *Smith v Fonterra and Others* [2024] NZSC 5, that substantial GHG emissions may be capable as a matter of law of leading to a finding of liability in tort in respect of those emissions, including in public nuisance and negligence.

E. CONCLUSION

61. Despite seeking for its own economic and/or corporate reputational purposes to portray itself as a net-zero business and its operations and plans as consistent with the Paris Agreement, and despite having full knowledge of the very serious adverse consequences of climate change, Shell's operations and plans are: (i) manifestly inconsistent with holding global warming to 1.5°C; (ii) contrary to scientific and political consensus on the need for emission reductions (including Scope 3 emissions), reductions in oil and gas production and a moratorium on new oil and gas projects; and (iii) are in deliberate breach of an enforceable and valid order of a court of competent jurisdiction.

62. The redevelopment of the Penguins Field involves a significant expansion of oil and gas production, pursuant to Shell's overarching plans to maximise fossil fuel production, and will make a significant contribution to Shell's overall emissions and to climate change.

63. The purpose, importance and justification for the protest (which is relevant to the role of Articles 10 and 11 ECHR) cannot be understood without reference to the aforesaid. Further, Shell does not come before the Court with clean hands and should as a matter of discretion be debarred from relief by way of injunction.