ClientEarth

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34 Drayton Park
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[Name], CEO
[Bank]
[Address]

By email: **[Email]**

Cc: **General Counsel of [Bank]; see Appendix 1 for list of other recipient banks**

Dear **[Name of CEO]**

Your net-zero commitments and the Cambo oil field

ClientEarth is an international non-profit environmental law organisation headquartered in London. Our Climate Finance initiative focuses on the legal implications of climate change-related financial risks and impacts for a wide spectrum of market participants, including banks, companies, investors, directors, professional advisors and regulators.

We are writing to you as the CEO of **[Bank name]** (the **Bank**) to raise the issue of how the Bank's ongoing, and any future provision of, financial and/or advisory services to Siccar Point Energy Ltd and its subsidiaries (**Siccar Point**) and/or Royal Dutch Shell PLC and its subsidiaries (**Shell**) is compatible with the climate commitments the Bank has made – including as a member of the Net-Zero Banking Alliance and/or a signatory to the Collective Commitment on Climate Action – in light of Siccar Point and Shell's plans to obtain approval to develop the Cambo oil field in the North Sea (the **proposed Cambo development**).

The Bank's Board of Directors must carefully consider how, and satisfy itself it can justify that, its existing and any future financial and/or advisory relationship with Cambo's owners is compatible with the Bank's net-zero commitments and best available science, the fiduciary duties of its directors, the Board's prudent management of climate risks, the Bank's broader legal and regulatory obligations, and shareholder expectations.

As one of the world's leading legal experts on climate finance, ClientEarth maintains that the scientific consensus on climate change necessitates that banks **no longer provide financial or advisory services relating to projects, or to companies involved in activities, that involve new exploration or development of fossil fuels**. The proposed Cambo development is one such example.

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The proposed development of the Cambo oil field

The Cambo oil field is located 125 km north-west of the Shetland Islands in the United Kingdom. It spans offshore blocks covered by two licences – P.1028 and P.1189 – granted in 2001 and 2004 respectively.

Siccar Point acquired a 100% operated interest in the field in January 2017, before selling a 30% non-operated interest to Shell UK Limited in May 2018.

The Cambo oil field is believed to contain over 800 million barrels of heavy crude oil. Phase 1 of the proposed Cambo development seeks to extract ca. 170 million barrels of oil. Subject to development consent, drilling is expected to start in 2022, with production beginning in 2025 for a period of approximately 25 years. Further phases are envisaged.[1]

The applications for development consent from both the Oil and Gas Authority and the Secretary of State are currently pending; such consent is required under the licences and the Environmental Impact Assessment (**EIA**) regulations respectively. The Offshore Petroleum Regulator for Environment and Decommissioning (**OPRED**), acting on behalf of the Secretary of State, has recently requested the provision of further information for the purposes of considering whether to grant EIA approval.

As explained in more detail below, the proposed Cambo development is clearly not aligned with the pathways required to meet the 1.5°C temperature goal under the Paris Agreement.

First, according to the 'Production Gap Report'[2] published in 2019 by the United Nations Environment Programme (**UNEP**) and other experts, governments' national plans and projections showed that they plan to produce about 120% more fossil fuels by 2030 than would be consistent with a 1.5°C pathway.

For oil, the report finds that instead of this planned increase in extraction, global supply must be reduced by an average of 4% per year over the next decade in order to be consistent with 1.5°C. In 2030, planned oil production will exceed production consistent with a 1.5°C pathway by 59%, or 42 million barrels per day. In 2040, this gap increases to approximately 200%, with 120 million barrels of oil extracted per day, instead of the up to ca.40 million barrels that would be consistent with a 1.5°C pathway.

Similarly, a recent report published in the journal Nature, 'Unextractable fossil fuels in a 1.5°C world',[3] found that by 2050 nearly 60% (compared to the 2018 reserve base) of oil and fossil methane gas reserves globally must remain unextracted to have a 50% probability of limiting warming to 1.5°C.

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[1] Rystad Energy predict that the second phase would start production in 2032, producing an additional 158 million barrels of oil equivalent (**BOE**) of oil and gas with production continuing past 2050: see Uplift, Cambo Briefing (September 2021).
[2] See UNEP et al, Production Gap Report (2019). See also UNEP et al, Production Gap Report (2020), which addresses the production gap in the specific context of the COVID-19 pandemic.
[3] See Welsby et al, 'Unextractable fossil fuels in a 1.5°C world' (2021).

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The effect of increased extraction of fossil fuels on increasing overall global emissions is also widely recognised. The Production Gap Report explains that "*for oil, each barrel left undeveloped in one region will lead to 0.2 to 0.6 barrels not consumed globally over the longer term.*"

The potential for increased fossil fuel extraction to lead to increased overall emissions has also been recognised by the UK's Climate Change Committee (**CCC**).[4] And while industry body Oil and Gas UK (**OGUK**) has pointed to continuing domestic demand for oil and gas as grounds for maximising domestic production,[5] this logic has been expressly refuted by the CCC's chief executive Chris Stark: "*the UK must transition away from the unabated use of fossil fuels as quickly as possible. This requires action now, with policies to reduce direct emissions from fossil fuel consumption across the UK energy system. We expect continuing demand for fossil fuels over this transition, but that fact alone does not justify investment in new oil and gas fields*" (emphasis added).[6]

Quite apart from ignoring the increased emissions resulting from increased global supply, OGUK's position also overlooks the fact that the UK currently exports over 80% of its oil production.[7]

Second, the 'Net Zero by 2050 Roadmap'[8] (**IEA Net Zero Roadmap**) published in May 2021 by the International Energy Agency (**IEA**) underscores this need to phase out oil and gas production. Under its pathway for achieving a 1.5°C warming scenario, the IEA confirms that "*no new oil and natural gas fields are required beyond those that have already been approved for development*" (emphasis added).[9] On publishing its analysis, the IEA explained that "*the Roadmap sets out more than 400 milestones to guide the global journey to net zero by 2050. These include, from today, no investment in new fossil fuel supply projects…*" (emphasis added).[10]

When recently interviewed about the Cambo oil field, Dr Fatih Birol, the executive director of the IEA, stated that a decision to refuse the project would be a "*step in the right direction*".[11]

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[4] In the context of shale gas: "*The addition of UK production to the market for fossil gas could lead to higher fossil gas consumption through displacement of low-carbon energy and/or an increase in energy consumption. Should extra UK fossil gas production lead to higher gas consumption globally, especially in the likely case that this is without CCS, this would push up global emissions. … the lifecycle emissions savings of UK shale gas over LNG imports would be counteracted if global unabated fossil gas consumption increases by a mere 7% of the extra UK production*": 31 March 2021 CCC Letter to Kwasi Kwarteng MP. See also the CCC's letter of January 2021 regarding a proposed coal extraction project: "*The opening of a new deep coking coal mine in Cumbria will increase global emissions…*": 29 January 2021 CCC Letter to Robert Jenrick MP.

[5] See, for example, OGUK, Economic Report 2021, p. 20.

[6] The Herald, 'Cambo oil field: UK Government's climate advisers warn oil demand 'does not justify' support' (August 2021).

[7] See BEIS, 'Digest of United Kingdom Energy Statistics 2020', pp. 46-47.

[8] IEA, 'Net Zero by 2050: A Roadmap for the Global Energy Sector' (May 2021).

[9] *Ibid*, at p. 99.

[10] IEA, 'Pathway to critical and formidable goal of net-zero emissions by 2050 is narrow but brings huge benefits, according to IEA special report' (May 2021).

[11] Channel 4 News, Extract from Interview with Dr Fatih Birol (July 2021).

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Third, the Sixth Assessment Report 'Climate Change 2021: The Physical Science Basis'[12] published in August 2021 by the Intergovernmental Panel on Climate Change (**IPCC**) found that unless there are immediate, rapid and large-scale reductions in greenhouse gas emissions, limiting warming to close to 1.5°C or even 2°C will be beyond reach.[13] In response to the report, UN Secretary-General António Guterres stated that "*[w]e need immediate action on energy. Without deep carbon pollution cuts now, the 1.5-degree goal will fall quickly out of reach. This report must sound a death knell for coal and fossil fuels, before they destroy our planet... Countries should also end all new fossil fuel exploration and production…*" (emphasis added).[14]

An approval for the proposed Cambo development would be one of the first decisions to go against the watershed finding by the IEA, as well as the authoritative analysis conducted by UNEP, the IPCC and other experts. It is clear that the proposed Cambo development is not aligned with the pathways required to limit global temperature rise to 1.5°C.

The Bank's relationship with Siccar Point and/or Shell

ClientEarth's research has found that the Bank (and/or a subsidiary of the Bank) has a recent and/or ongoing financial and/or advisory relationship with one or both of Cambo's owners, Siccar Point and Shell.

Siccar Point's financing currently includes a $200m bond listed on the Nordic ABN maturing in 2026 and a $550m Reserves Based Lending Facility.[15]

Shell's current and recent financing includes numerous bonds listed on the New York, London and Zurich stock exchanges with maturity dates up to 2052, a $10bn revolving credit facility and a dual currency $7.2bn and €4.4bn revolving credit facility. Shell's debt totalled $108bn as at 31 December 2020.[16]

Key considerations for the Bank's directors

As a member of the Net-Zero Banking Alliance (**NZBA**) and/or a signatory to the Collective Commitment to Climate Action (**CCCA**), the Bank has committed to transition its portfolios to align with the goals of the Paris Agreement. Appendix 2 sets out the key commitments for members of the NZBA and signatories to the CCCA in detail.

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[12] IPCC Sixth Assessment Report, 'Climate Change 2021 – The Physical Science Basis' (2021).
[13] IPCC, 'Climate change widespread, rapid and intensifying' (August 2021).
[14] UN Secretary-General, 'Secretary-General's statement on the IPCC Working Group 1 Report on the Physical Science Basis of the Sixth Assessment' (August 2021).
[15] See Siccar Point webpage, 'Bond Investors', Siccar Point Energy Ltd 2020 Annual Report and Financial Statements and Siccar Point webpage, 'Siccar Point Extends Reserves Based Lending Facility'.
[16] See Royal Dutch Shell PLC 2020 Annual Report and Shell webpage, 'Outstanding Bonds'.

In short, the Bank has committed to (*inter alia*):

1. Align the Bank's portfolios with pathways to reaching net-zero emissions by 2050 or sooner, consistent with a maximum temperature rise of 1.5°C, taking into account best available science (**Commitment 1**).
2. Use credible science-based decarbonisation scenarios and provide a rationale for the scenarios chosen (**Commitment 2**).
3. Prioritise efforts where the Bank has, or can have, the most significant impact (**Commitment 3**).
4. Engage and work with the Bank's clients on their transition (**Commitment 4**) (together, its **Net-Zero Commitments**).[17,18]

The Bank's Board of Directors must carefully consider how, and satisfy itself it can justify that, its existing and any future financial and/or advisory relationship with Cambo's owners is compatible with the Bank's Net-Zero Commitments and best available science, the fiduciary duties of its directors, the Board's prudent management of climate risks, the Bank's broader legal and regulatory obligations, and shareholder expectations.

1. Fiduciary duties

The Bank's directors are bound by fiduciary duties. While the exact scope of those duties varies by jurisdiction, directors are generally required to (1) exercise reasonable care, skill and diligence, and (2) act in a way that would be most likely to promote the success of the bank.[19]

By recognising climate change as a material financial risk and making a public commitment to align the Bank's portfolios with net-zero and engage with its clients on their transition, the Bank's directors have indicated that they consider this to be the course of action which would be most likely to promote the success of the Bank. To the extent the Bank is providing financial and/or advisory services that conflict with that commitment, the directors are acting in a manner contrary to the success of the Bank and consequently risk breaching their fiduciary duties.

It is clear that the Bank's current and any future provision of financial and/or advisory services to Siccar Point and/or Shell, should the proposed Cambo development be approved, comprehensively conflicts with Commitments 1, 2 and 3 made by the Bank:

- The Bank cannot credibly claim it is "aligning its portfolios with net-zero emissions by 2050 or sooner, consistent with a maximum temperature rise of 1.5°C, taking into account the best available science." As set out above, the best available science confirms that the proposed Cambo development is incompatible with achieving a maximum temperature rise of 1.5°C. Further, the proposed Cambo development will increase the Bank's Scope 3 emissions associated with its client(s) Siccar Point and/or Shell, directly contrary to its commitment to align its portfolios with net-zero emissions by 2050 or sooner.

[17] NZBA Commitment Statement and UNEP Guidelines for Climate Target Setting for Banks.
[18] PRB CCCA Commitment Statement and UNEP Guidelines for Climate Target Setting for Banks.
[19] See, for example, the Commonwealth Climate and Law Initiative's country papers on Directors' Liability and Climate Risk.

- By implication, the Bank cannot be using a "credible science-based decarbonisation scenario" if it would allow such services to be provided by the Bank; there is no credible 1.5°C pathway that foresees the development of new oil fields beyond those already approved.
- It would be evident that the Bank is not "prioritising its efforts where it can have the most significant impact." The "carbon lock-in"[20] effects of a new oil field are significant; the Bank has an opportunity to help avoid the extraction of potentially over 300 million barrels of oil equivalent (**BOE**) of oil and gas that are not needed, and avoid that production continuing up to or beyond 2050, the year when emissions already need to have reached net-zero.

Furthermore, if the Bank's directors inadequately consider, consciously disregard or wilfully ignore the foreseeable material climate-related financial risks associated with the proposed Cambo development, they risk breaching their fiduciary duties.

These foreseeable risks include significant "stranded asset" risk relating to the Cambo oil field development. The reserves are likely to become unusable if new laws and regulation are brought in to reflect the best available science and 1.5°C pathways, or unusable without expensive and unproven carbon capture technology. The project may become financially unfeasible in light of the falling demand for oil and the reduced costs of renewables and electricity storage, leading to zero-marginal-cost renewable energy and a loss of investor confidence in fossil fuels.[21]

This risk is heightened given the UK's emissions reductions commitments: 68% reduction by 2030 compared to 1990 levels, 78% by 2035 and at least 100% (i.e. net-zero emissions) by 2050.[22] Even if the proposed Cambo development is approved, it faces transition risks from future governments working to achieve these targets – or amended targets that are brought in over time which are more ambitious and/or cover a wider range of emissions.[23]

Armed with the information in this letter about the risks associated with the proposed Cambo development, if the Bank continues its current and any future provision of financial and/or advisory services to Siccar Point and/or Shell, should the proposed Cambo development be approved, the directors may be exposing the Bank unnecessarily and unreasonably to those risks and may have failed to act with due skill, care and diligence by safeguarding the Bank against those risks.

[20] According to the IPCC, "*delaying GHG emissions reductions over the coming years also leads to economic and institutional lock-in into carbon-intensive infrastructure, that is, the continued investment in and use of carbon-intensive technologies that are difficult or costly to phase-out once deployed*": IPCC Special Report 1.5, section 2.3.5, p.126; see also Seto et al, 'Carbon Lock-In: Types, Causes and Policy Implications' (2016).

[21] See, for example, Carbon Tracker, 'Margin call: Refining Capacity in a 2°C world' (November 2017); and Bloomberg NEF, 'New Energy Outlook 2021' (July 2021).

[22] Gov.uk, 'UK enshrines new target in law to slash emissions by 78% by 2035' (April 2021).

[23] It is notable that the UK's emission reduction targets have become more stringent in recent years, from a target of 80% reduction by 2050 enshrined in law in the Climate Change Act 2008, to the 100% by 2050 target in 2019, to an interim target of 68% by 2030 in the UK's Nationally Determined Contribution in 2020, and to a further interim target of 78% by 2035 in 2021.

2. Prudential management of risk

Beyond fiduciary duties, the provision of financial and/or advisory services to Cambo's owners gives rise to material risks and impacts on the Bank's operations and therefore is also relevant to the regulatory duties on the Bank (including its directors and officers – of particular importance in jurisdictions with individual accountability regimes[24]) associated with the prudential management of risk.

In many jurisdictions, climate risk should be treated with the same consideration as any other material financial risk, and in others, regulators have set out additional expectations and guidance around climate risk management.[25] However, the European Central Bank (**ECB**) recently concluded that the banks it supervises are far from meeting their regulatory expectations on climate risks.[26] The banks themselves deemed that 90% of their reported practices are only partially or not at all aligned with the ECB's expectations, 75% of banks do not report on climate risks to management, and over 50% have no approach for even assessing the impact of climate risks, let alone managing them. Those that did almost all found that climate risks are already having, or are about to have, a material impact on their risk profile.

Further, given that the Bank has committed to align its portfolios with net-zero emissions by 2050 (Commitment 1), this objective must inform the Bank's strategic approach to climate risk management. For example, it should be integrated into its risk appetite statement, its risk management policies, its capital requirements calculations and its internal capital adequacy assessment process (**ICAAP**). It should also be reflected in its risk reporting.

The Bank's current and any future provision of financial and/or advisory services to Siccar Point and/or Shell, should the proposed Cambo development be approved, could not be considered prudent and would imply inadequate risk management and governance arrangements in relation to climate risk.

An additional consideration for the Bank's directors is the prospect of litigation, particularly against: (1) Siccar Point and/or Shell (or their directors or officers) in relation to the proposed Cambo development and their broader net-zero transition plans; (2) their banks, insurers, or professional and legal advisors; and (3) other relevant parties such as the UK Government, should it approve the development.[27]

The Bank should note that:

- Shell has already been subject to litigation in the Netherlands for the inadequacies of its net-zero transition plan, and has been ordered to reduce its worldwide carbon

[24] Such as the United Kingdom, where a Senior Manager must be allocated the responsibility for identifying and managing financial risks from climate change, and may be held personally accountable for failures in risk management in accordance with the Senior Manager & Certification Regime.
[25] See, for example, the Bank of England Prudential Regulation Authority's Supervisory Statement SS3/19 on Enhancing Banks' and Insurers' Approaches to Managing the Financial Risks from Climate Change (2019) and the European Central Bank Banking Supervision's Guide on Climate-related and Environmental Risks for Banks (2020).
[26] Elderson, 'Patchy data is a good start' (June 2021).
[27] The UK Government has already been threatened with legal action should the Cambo oil field development be approved: The Guardian, 'UK faces legal action over North Sea oilfield exploration plans' (July 2021).

emissions by 45% by 2030 compared to 2019 levels.[28] The costs and resources associated with this Court-ordered accelerated transition are likely to be significant. Shell has said that it will appeal the Court's order. In the meantime, although the order is already (provisionally) enforceable pending the outcome of an appeal years in the future, Shell has publicly stated it will not comply, risking enforcement proceedings and sanctions, and increasing the prospect of an award of damages – all of which increases its risk as a borrower.[29]

- Other energy companies have been successfully sued by shareholders for pursuing projects with significant climate-related financial risks.[30]
- Governments have also been subject to legal action for approving permits, plans and projects without adequately considering climate change, which in some instances has led to projects being delayed or abandoned.[31]
- Most recently, a shareholder of the Commonwealth Bank of Australia (**CBA**) has applied to the Federal Court of Australia seeking access to CBA's internal documents, including (*inter alia*) in relation to the CBA's reported involvement as one of seven arrangers of a Reserves Based Lending Facility provided to Siccar Point, given that the company's plans include the proposed Cambo development.[32]

The impact of litigation risk on banks' operations is an issue that regulators are requiring, and will increasingly require, banks to consider within their climate-related scenario analysis.[33] Consequently, such risks should be reflected in the Bank's management of climate risks, as set out above.

Furthermore, there is enforcement risk for the Bank and its directors associated with potential breaches of law, regulation, or regulatory guidance and expectations. For example, this might relate to: (1) poor due diligence processes for identifying the risks inherent in Siccar Point and Shell's pursuit of the proposed Cambo development; (2) the inadequate management of climate-related financial risks; or (3) greenwashing, given the inconsistency between the Bank's provision of services and its public statements on net-zero.

There is considerable litigation and enforcement risk associated with the proposed Cambo development, to which the Bank would expose itself if it continues its current and any future provision of financial and/or advisory services to Siccar Point and/or Shell.

[28] Reuters, 'Shell ordered to deepen carbon cuts in landmark Dutch climate case' (May 2021).
[29] The Guardian, 'Shell boss: we have no plans to change strategy despite emissions ruling' (July 2021).
[30] See, for example, the Ostrołęka C coal plant case.
[31] See, for example, the BP North Sea Vorlich oil field case, Heathrow Third Runway case and the Drax gas plant case in the UK.
[32] Equity Generation Lawyers, 'Abrahams v Commonwealth Bank of Australia' (August 2021); see also Financial Review, 'CBA sued in climate lawfare first' (September 2021).
[33] For example, the Bank of England's 2021 Biennial Exploratory Scenario exploring the Financial Risks from Climate Change is currently underway and requires banks to provide narrative responses on risks from climate litigation.

3. Client engagement

The Bank has also committed to engage and work with its clients on their transition (Commitment 4).

Client engagement is not an area where the Bank can expect to avoid transparency and accountability. The concept of engagement with clients is governed by and will be understood by reference to international corporate human rights standards, including:

1. The UN Guiding Principles on Business and Human Rights (**UNGPs**)[34] which set out a responsibility to respect human rights that applies to all business enterprises as a matter of international law; and

2. The OECD Guidelines for Multinational Enterprises (**OECD Guidelines**)[35] which apply to multinational enterprises operating in or from OECD countries and non-OECD adhering countries, supplemented by the OECD's Guidance on Due Diligence for Responsible Corporate Lending and Securities Underwriting (**OECD Guidance on Responsible Banking**).[36]

Under the UNGPs, the responsibility to respect human rights requires that business enterprises identify, prevent, and address human rights impacts linked to their business operations and value chains. Specifically, this means the Bank has a responsibility to "*a) avoid causing or contributing to adverse human rights impacts through their own activities,[37] and address such impacts when they occur; and b) seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships,[38] even if they have not contributed to those impacts*" (emphasis added).[39]

Climate change is a human rights matter. It is well-recognised that the UNGPs "*apply to all environmental human rights abuses, including impairments of human rights in relation to climate change*."[40] The dire outlook of climate change in excess of 1.5°C involves impacts on a range of internationally recognised human rights, including the rights to life, water and sanitation, health, food, a healthy environment, an adequate standard of living, housing, property, culture, self-determination, indigenous people, women, and development. Setting to one side their fossil fuel-related business activities to date, any future development of the Cambo oil field by Siccar Point and Shell and the associated emissions would fuel future climate change-related 'adverse human rights impacts', which are of the utmost severity and of an unprecedented scale.

[34] UN Guiding Principles on Business and Human Rights (2011).
[35] OECD Guidelines for Multinational Enterprises (2011).
[36] Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises (2019).
[37] A bank's 'own activities' includes actions and decisions (including omissions) involving third parties, such as providing financial products and services to clients: OHCHR Interpretation of the Guiding Principles for Banks, p.4.
[38] A bank's 'business relationships' include its clients or customers: OHCHR Interpretation of the Guiding Principles for Banks, p.4.
[39] UNGP 13.
[40] Report of Special Rapporteur on the Environmental and Human Rights (2016), para 66.

Under the UNGPs, a bank can be in a situation of 'direct linkage' to such adverse impacts where it has, for example, provided finance to a client and the client, in the context of using this finance, acts in such a way that it causes or contributes to an adverse impact (or is at risk of doing so).[41] This includes impacts caused by the greenhouse gas emissions attributable to the Bank's clients.[42]

However, in a situation where a bank knows, or should have known, that there are climate-related human rights risks associated with a particular client or project – as we have set out in this letter in relation to the proposed Cambo development – but omits or fails over time to take any action to require, encourage or support the client to prevent these risks, a bank can facilitate a client to cause harm and therefore may be considered as 'contributing' to those adverse human rights impacts (which brings with it the expectation that the bank has responsibility for remediating the human rights impacts).[43]

In order to comply with the standards above, the Bank must take appropriate action and use any leverage[44] it has to seek to prevent or mitigate the adverse human rights impacts, as follows:[45]

- If the Bank's services are 'directly linked' to the adverse impacts, the appropriate action will depend on the Bank's leverage over the client, whether the client relationship can be categorised as 'crucial',[46] the severity of the human rights impacts, and whether terminating the relationship would itself have adverse human rights consequences.[47] If the Bank lacks the leverage to prevent or mitigate the adverse human rights impact and is unable to increase its leverage, for example by acting together with other banks, it should consider ending the client relationship.[48]
- If the Bank may have 'contributed' to the adverse impacts, then it should take the necessary steps to cease or prevent its contribution, and use its leverage to mitigate any remaining impact to the greatest extent possible.[49]

The OECD Guidelines and OECD Guidance on Responsible Banking elaborate on banks' responsibilities to prevent actual and potential adverse impacts on human rights and on the environment in similar terms as set out above for the UNGPs.[50]

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[41] OHCHR Interpretation of the Guiding Principles for Banks, p.6.
[42] OHCHR Factsheet Frequently Asked Questions on HR and Climate Change, pp.36-37.
[43] OHCHR Interpretation of the Guiding Principles for Banks, p.8, also 6-7.
[44] 'Leverage' is an advantage that gives power to influence, such as the ability of a business enterprise to effect change in the wrongful practices of another party that is causing or contributing to an adverse human rights impact. A bank may not have sufficient leverage over a client to effectively influence its actions. However, there may be ways to increase its leverage, including by acting together with other banks: OHCHR Interpretation of the Guiding Principles for Banks, footnote 27.
[45] UNGP 19.
[46] "*A relationship can be deemed crucial if it provides a product or service that is essential to the [Bank's] business, and for which no reasonable alternative source exists*": Commentary to UNGP19.
[47] Commentary to UNGP19.
[48] OHCHR Interpretation of the Guiding Principles for Banks, p.13.
[49] Commentary to UNGP19.
[50] OECD Guidelines for Multinational Enterprises (2011), II.A.11-12, IV.1-3; and Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises (2019), pp.42-53.

As noted by the Office of the United Nations High Commissioner for Human Rights (**OHCHR**), for as long as the adverse impact continues and the Bank remains in the relationship, "*it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences – reputational, financial or legal – of continuing the connection*."[51]

No adequate due diligence process under the UNGPs and OECD Guidelines could fail to identify that Siccar Point and/or Shell's plans in respect of the proposed Cambo development are linked to potential climate change-related impacts on human rights. It is evident that by its provision of financial and/or advisory services to Siccar Point and/or Shell, the Bank would be 'directly linked' to the adverse human rights impacts of climate change caused by the actions of Siccar Point and Shell – both generally and in relation to the proposed Cambo development, should it be approved. Further, in full knowledge of the climate-related human rights impacts of the proposed Cambo development, the Bank may be 'contributing' to those adverse human rights impacts.

In order to meet its responsibilities and its commitment on engagement (Commitment 4), the Bank should be engaging with its client(s) Siccar Point and/or Shell to influence them to stop pursuing the proposed Cambo development, given it is inconsistent with 1.5°C pathways and the best available science, and would "lock in" significant emissions for an extended timeframe, fuelling climate impacts.

If Siccar Point and Shell proceed regardless, the Bank must consider terminating the relationship, in line with the globally expected standards of business conduct on human rights.[52] Whilst these standards comprise non-binding 'soft law' in many jurisdictions, actionable through governmental and international complaint mechanisms,[53] they are increasingly the subject of legal requirements[54] and Court litigation[55] in others. In the case against Shell in the Netherlands, the Dutch Court drew extensively on Shell's human rights responsibilities under the UNGPs to interpret the company's duty of care under Dutch law.[56] Mandatory human rights and environmental due diligence is set to become binding law in the EU in the coming years.[57] In the meantime, these standards provide the benchmark against which the Bank's engagement with clients will be assessed.

[51] Commentary to UNGP 19.
[52] In practice, communicating this credibly is likely to require 'red lines', such as: "*[t]he FI must make explicit what it is requiring of fossil fuel […] clients, by when, and what consequences follow from failing to meet those requirements. The FI must be transparent about the basis for any claims that continued support for such clients accelerates the client's transition towards climate alignment. Companies expanding the production and use of fossil fuels […], cannot be regarded as transitioning toward climate alignment*:" RAN, 'Principles for Paris-Aligned Financial Institutions', Principle 1.E.
[53] See, for example, OECD Watch and ClientEarth, 'Our OECD complaint against BP explained'.
[54] Human rights due diligence is a legal requirement in France, and there are various national laws on specific aspects of human rights due diligence. Clifford Chance, 'Business and Human Rights: Navigating a Changing Legal Landscape' (March 2019) and Clifford Chance, 'Environmental Social Governance put into practice: a Belgian duty of care act?' (July 2021).
[55] See, for example, Clifford Chance, 'Legal action based on the French Vigilance Law triggered by a wind farm project in Mexico' (January 2021).
[56] Clifford Chance, 'ESG: Dutch Court's Landmark Decision on Climate Change, Human Rights and Corporate Duties' (May 2021).
[57] See, for example, Clifford Chance, 'Mandatory Human Rights and Environmental Due Diligence: What an EU-level law will mean for business' (January 2021).

The Bank's current and any future provision of financial and/or advisory services to Siccar Point and/or Shell, should the proposed Cambo development be approved, would call into question the Bank's due diligence and client engagement procedures, and its adherence to international standards.

4. Investor expectations and engagement

As well as the legal and regulatory responsibilities set out above, the Bank is accountable to its shareholders and is likely to become the target of shareholder pressure if it is not living up to investor expectations or its NZBA and/or CCCA Net-Zero Commitments.

The Bank can reasonably be expected to be aware that climate change is a priority issue for its own investors, especially those which have made public statements on its materiality to their investment decision-making and/or have themselves committed to reach net zero financed emissions by 2050.[58]

In April 2021, the Institutional Investors Group on Climate Change (**IIGCC**) published a set of investor expectations for the banking sector.[59] These include, *inter alia*, that activities incompatible with the goals of the Paris Agreement should be prioritised for curtailed financing, and that banks should set explicit criteria for the withdrawal of financing to misaligned activities.

In July 2021, 115 investors representing $4.2tn assets under management and/or stewardship wrote to 63 global banks calling for them to integrate the findings of the IEA Net-Zero scenario or equivalent 1.5°C scenarios into their climate strategy, specifically highlighting the IEA's finding that "*there is no need for new oil, gas and coal development, which includes no need for oil and gas exploration investments*."[60]

In recent years, we have seen shareholder climate resolutions on banks' climate strategies[61] and votes against directors for failing to act on climate issues.[62]

It is clear that investors expect that the Bank will not provide financial and/or advisory services to a client carrying out an activity that is clearly misaligned with a 1.5°C pathway, such as the proposed Cambo development.

The Bank's current and any future provision of financial and/or advisory services to Siccar Point and/or Shell, should the proposed Cambo development be approved, may lead to significant pressure by investors on the Bank to withdraw these services (and indeed any other misaligned services), including through increased engagement with the Board, public pressure to strengthen the Bank's energy policies and Paris-alignment strategy, shareholder climate resolutions and votes against directors.

58 See, for example, 2021 BlackRock Client Letter.
59 IIGCC 'Aligning the Banking Sector with the Goals of the Paris Agreement' (April 2021).
60 5 July 2021 ShareAction Investor Letter to Global Banks.
61 Including against Barclays in 2020 and 2021, HSBC, Mizuho, MUFG and various US banks.
62 For example, in 2020-21, BlackRock voted against 255 directors and against 319 companies for climate-related concerns that could negatively affect long-term shareholder value: BlackRock 2021 Voting Spotlight.

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Questions for the Bank's directors

In light of Siccar Point and Shell's plans to develop the Cambo oil field, the Bank's directors must ask themselves how they can justify the Bank's current and any future financial and/or advisory services to Siccar Point and/or Shell.

In particular, we would ask the following questions of the Bank:

1. How do the Bank and its directors justify its current and any future provision of finance to Siccar Point and/or Shell in light of its Net-Zero Commitments and fiduciary duties, given (1) the incompatibility of the proposed Cambo development with a 1.5°C pathway and best available science, (2) the "carbon lock-in" effects of the development, and (3) the fact that it will increase the emissions associated with the services the Bank provides to Siccar Point and/or Shell? Is the Bank using the IEA Net Zero Roadmap as its science-based decarbonisation scenario and has it incorporated the Roadmap into its energy policies? If not, what is its rationale for relying on an alternative decarbonisation scenario?

2. How are the Bank and its directors ensuring that the climate-related financial risks associated with the Cambo oil field, should it be approved, are properly assessed and managed under its risk management framework? Has the Bank integrated these climate risks – including litigation and enforcement risk – into its risk appetite statement, its risk management policies, its scenario analysis, its capital requirements calculations and ICAAP, and its risk reporting? How will the Bank and its directors manage the risks flowing from the Dutch Court order referred to above, and Shell's apparent refusal to comply with it, including any issues relating to transacting with a legally non-compliant client?

3. Are the Bank's human rights due diligence procedures, required by the UNGPs and OECD Guidelines, capable of flagging climate change-related human rights impacts? Has the Bank's due diligence identified the potential adverse human rights impacts associated with the Cambo oil field development?

4. What steps has the Bank taken, in line with the UNGPs and OECD Guidelines, to engage with Siccar Point and/or Shell to prevent and mitigate the adverse human rights impacts by using its leverage to insist they do not pursue the Cambo oil field approval, and more broadly that they reduce their emissions (and those of their products) in line with the Paris Agreement goals, including by ceasing the development of new oil and gas supply? What is the Bank requiring of fossil fuel clients such as Siccar Point and Shell in that respect, by when, through what mechanism, and what consequences will follow from failing to meet those requirements? At what stage of engagement will the Bank consider terminating its relationship with Siccar Point and/or Shell, or imposing climate-related conditions on the financial and/or advisory services the Bank provides?

5. To what extent has the Bank engaged with its shareholders on whether it is appropriate to continue its services or extend further services to Siccar Point and/or Shell in light of the proposed Cambo development and the associated climate-related and reputational risks? Has the Bank assessed the risk of shareholder unrest in the event of the ongoing or future provision of services to Siccar Point and/or Shell?

We would appreciate a response to the above questions. We understand there are confidentiality considerations around client relationships, but this is not a reason for refusing transparency.[63]

The proposed Cambo development is just one example of an activity by your clients that is misaligned with the goals of the Paris Agreement, and consequently the Bank's Net-Zero Commitments. The Bank needs to ensure it has in place adequate policies and procedures to ensure it identifies such activities and appropriately addresses their climate risks and impacts, as the Bank's misaligned financing will come under increasing levels of scrutiny.

We would be pleased to discuss the contents of this letter further with you, the Board and the Bank's General Counsel.

Yours sincerely,

James Thornton

Chief Executive Officer, ClientEarth

[63] According to the OECD, banks can "*take steps to promote greater transparency with respect to client relationships without being in breach of this duty [of client confidentiality]*": see Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises (2019), pp.20-22; see also BankTrack, 'We are unable to comment on specific customers…' (2019).

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Appendix 1 – List of recipient banks

1. Banco Santander
2. Bank of America
3. Barclays
4. BNP Paribas
5. Citigroup
6. Crédit Agricole
7. Credit Suisse
8. Deutsche Bank
9. HSBC
10. ING Bank
11. Lloyds Bank
12. Morgan Stanley
13. Natixis (Groupe BPCE)
14. Société Générale
15. SpareBank 1 Markets
16. Standard Chartered
17. UBS

Appendix 2 – Commitments under the Net-Zero Banking Alliance and Collective Commitment to Climate Action

1. Net-Zero Banking Alliance[64]

Members of the Net-Zero Banking Alliance have committed to (*inter alia*):

- **transition all operational and attributable GHG emissions** from their lending and investment portfolios[65] **to align with pathways to net-zero by mid-century, or sooner,** including CO_2 emissions reaching net-zero at the latest by 2050, consistent with a maximum temperature rise of 1.5°C above pre-industrial levels by 2100. **This approach will take into account the best available scientific knowledge, including the findings of the IPCC**, so they commit to review and (if necessary) revise their targets at least every five years after the target is set. GHG emissions here refer to banks' Scope 1, 2 and 3 emissions. Banks' Scope 3 emissions should include their clients' Scope 1 and 2 and Scope 3 emissions, where significant, and where data allow;
- **use decarbonisation scenarios which: are from credible and well-recognised sources**; are no/low overshoot; rely conservatively on negative emissions technologies; and to the extent possible, minimise misalignment with other Sustainable Development Goals. Banks will **provide a rationale for the scenario(s) chosen**;
- **prioritise efforts where they have, or can have, the most significant impact, i.e. the most GHG-intensive and GHG-emitting sectors** within their portfolios, which are key to the transition to a net-zero carbon economy;

and will meet the above commitments through (*inter alia*):

- **facilitating the necessary transition** in the real economy through **prioritising client engagement**, and **offering products and services to support clients' transition**; and
- **engaging on corporate and industry (financial and real economy) action, as well as public policies**, to help support a net-zero transition of economic sectors in line with science and giving consideration to associated social impacts.

[64] NZBA Commitment Statement.

[65] While the commitment currently refers to the transition of lending and investment portfolios, the Commitment Statement notes the following: "*By the time net zero is achieved, all material attributable emissions will be covered. But at present, this refers to on-balance sheet investment and lending activities with the exclusion of on-balance sheet securities held for client facilitation and market-making purposes (as opposed to held for investment). Off-balance sheet activities, including facilitated capital markets activities, will be considered in the next version of bank-led UNEP FI Guidelines for Climate Target Setting for Banks. Banks may choose to include capital markets activity in target setting in advance of a revision of the Guidelines*."

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2. Collective Commitment on Climate Action[66]

Signatories to the Principles for Responsible Banking's Collective Commitment on Climate Action have committed to (*inter alia*):

- **in accordance with the Paris Agreement, align their portfolios to reflect and finance the low-carbon, climate-resilient economy required to limit global warming to well-below 2, striving for 1.5 degrees Celsius**. Putting their commitments under the Principles for Responsible Banking into practice and building on the pioneering Katowice Commitment, they commit to **mobilize their products, services and relationships** to help facilitate the economic transition necessary to achieve climate neutrality;

and commit to do so by (*inter alia*):

- **focusing their efforts where they have or can have the most significant impact, i.e. initially focusing on the most carbon-intensive and climate-vulnerable sectors** within their portfolios, which are key to the transition to a low-carbon economy and to building resilience in the most climate-vulnerable communities;
- **engaging and working with their clients on their transition.** As banks, this is how they can contribute most effectively to realizing the changes required in the real economy to achieve a low-carbon, climate-resilient economy; and
- **engaging with governments, scenario providers and other relevant entities** on the development of **clear and feasible sector-specific roadmaps** to reach well-below 2 and strive for 1.5 degrees Celsius for all relevant sectors and across different geographies.

[66] PRB CCCA Commitment Statement.