Investor Briefing

Redirecting Shell: Derivative claim against the Board of Shell plc

31 March 2022

ClientEarth

Important information

- ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE
  - A registered international non-profit organisation in Belgium, ClientEarth AISBL, enterprise number 0714.925.038
  - A registered company in Germany, ClientEarth gGmbH, HRB 202487 B
  - A registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208
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- ClientEarth holds shares in Shell plc. If you wish to know more about the legal claim discussed in this document please visit **www.redirectingshell.com** or email **redirectingshell@clientearth.org** to arrange a confidential discussion.

- During the webinar, email questions to the email address above.

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Contents

Summary of the proposed claim

- Litigation in the English High Court against the directors of Shell plc
- A “derivative action”, i.e. brought by ClientEarth in its capacity as a shareholder of the company – seeking permission to bring a claim against the directors on behalf of the company
- **Claim**: The Board is fundamentally mismanaging climate risk
- **Cause of action**: Directors are in breach of their legal duties under the UK Companies Act which require them to:

  (i) promote the success of the company (section 172)
  (ii) exercise reasonable care, skill and diligence (section 174)

- **Remedy** – We intend to seek:
  (i) a declaration that the directors are in breach of their duties
  (ii) an Order that the directors prepare and adopt a strategy that includes GHG reduction targets aligned to the goals of the Paris Agreement

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Background and operating context

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Climate-related risks to the company

"If we fail to stay in step with the pace and extent of society's demands with regard to the energy transition to a low-carbon future, we could fail in sustaining and growing our business."

"Rising climate change concerns and the effects of the energy transition have led and could lead to a decrease in demand and potentially affect prices for fossil fuels. This may also lead to additional legal and/or regulatory measures which could result in project delays or cancellations, potential litigation, operational restrictions and additional compliance obligations."

Shell, 2020 Annual Report and Accounts p.29

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Shell’s taxonomy of climate risks

- Regulatory risk
- Demand destruction
- Increased taxes/fees
- Stranded assets/revaluation/write downs
- Physical impacts
- Sunken project approval costs
- Increasing cost of and loss of access to capital
- Litigation risk

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O&G sector exposure to climate risk

"The oil and gas sector is on notice. Stakeholders are demanding greater accountability for carbon emissions along the value chain. Net zero Scope 1 and 2 emissions by 2050 are now the industry standard. Scope 3 emission reductions are coming – with significant implications for corporate strategies and capital allocation…"

"It's incredibly rare for an industry to get decades-long notice that its business is under threat. Firms cannot ignore the inevitable; the only strategic dilemma is timing and pace. Not only has the oil and gas industry been afforded the luxury of a warning, but it has received it when a wall of cash is coming its way. Now is the time to reinvest cash flows from higher oil prices into building a sustainable business for future decades."

Wood Mackenzie
A Verisk Business

WoodMac, CO2mmit and CO2llaborate: Squaring the carbon circle for oil and gas
August 2021

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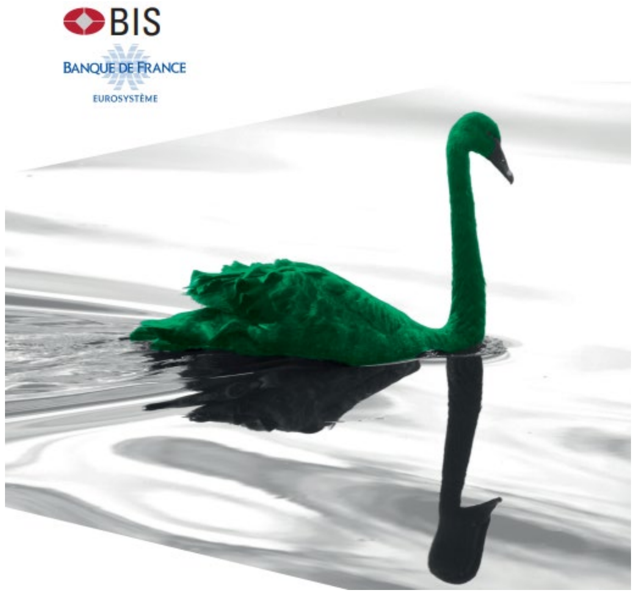
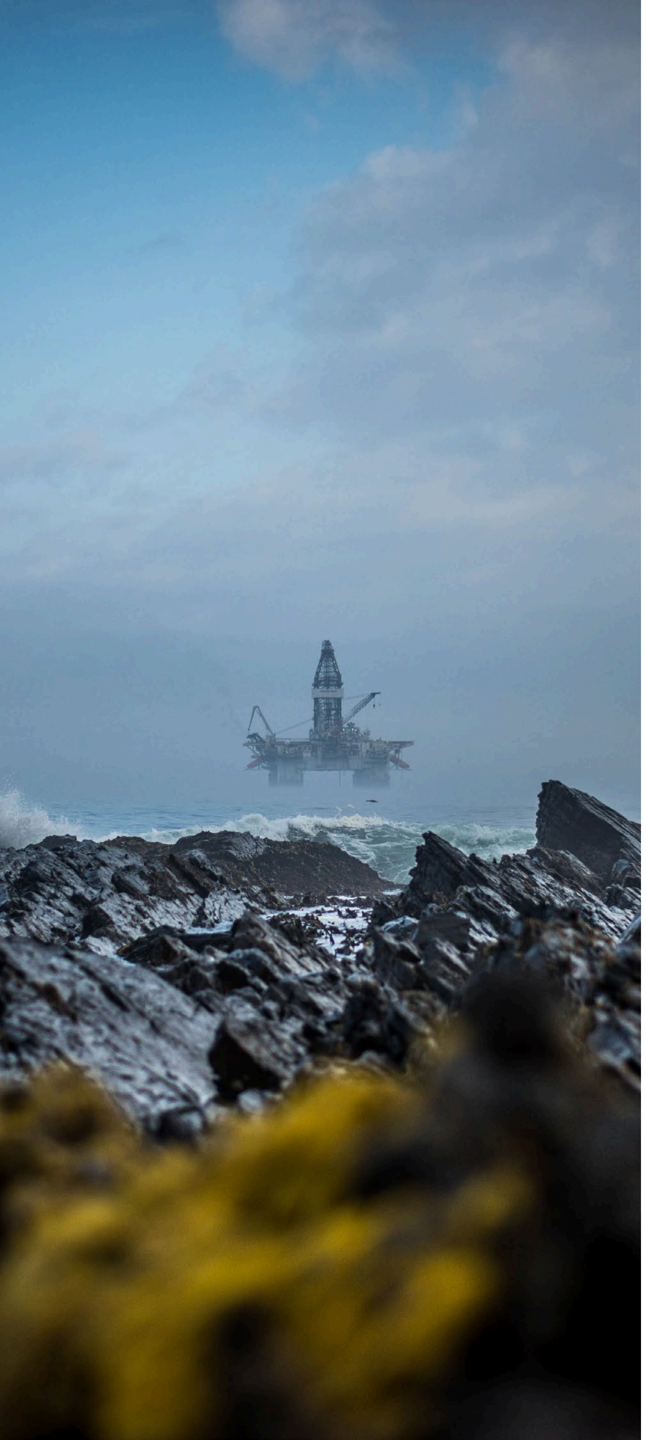
Unhedgeable physical risk / system level risk



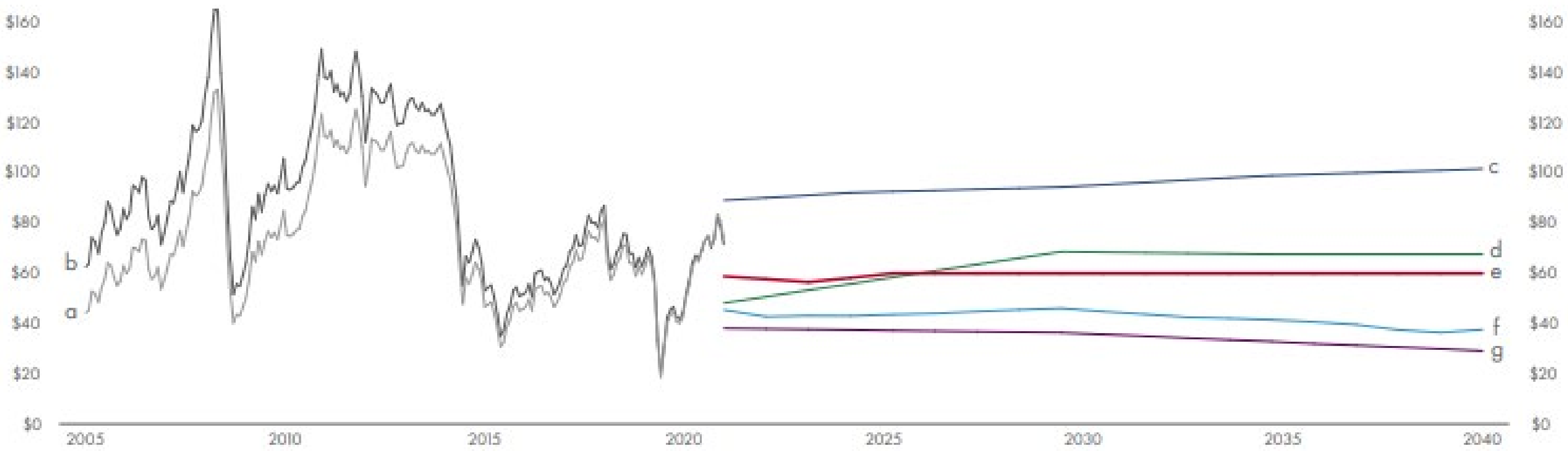
"Once climate change becomes a defining issue for financial stability, it may already be too late."

Mark Carney, 2015



Quantification of stranded asset risk

Oil price assumptions



a — Monthly average price (actual on money of the day basis) b — Monthly average price (actual on real terms basis using US CPI all urban consumers) c — NGFS GCAM NZE 2050 [A]
d — IEA APS e — Shell mid-price f — Average prices from four 1.5-2 degrees Celsius external climate change scenarios g — IEA NZE50

[A] The Network for Greening the Financial System (NGFS) is a group of 65 central banks and supervisors and 83 observers committed to sharing best practices, contributing to the development of climate- and environment-related risk management in the financial sector and mobilising mainstream finance to support the transition toward a sustainable economy. This scenario results from the NGFS GCAM model. This model embodies certain assumptions on the relationships between economic and energy output and climate interactions. This NGFS scenario shows a decline in world oil demand relative to the current policies baseline, in part a response to substitution away from fossil fuels. At the same time prices increase due to supply constraints.
[B] All figures are presented on real-term 2021 basis unless noted differently.

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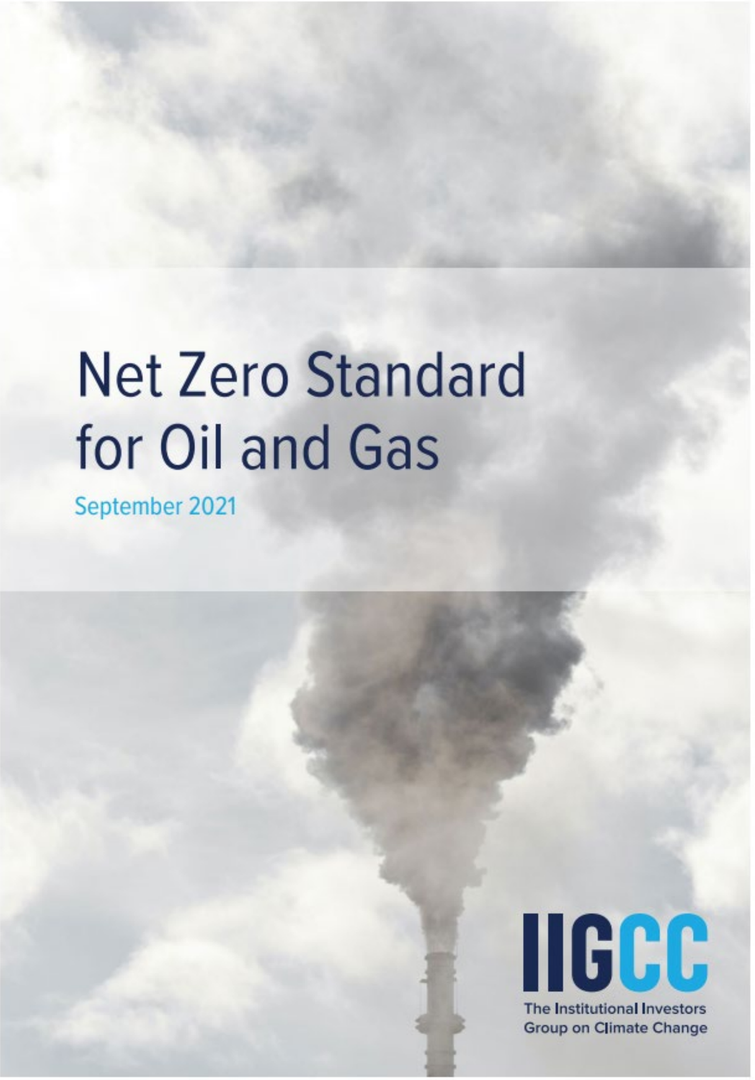
Investor expectations



Emerging regulatory landscape

- UK Treasury Transition Taskforce
- EU's Corporate Social Responsibility Directive
- SEC Disclosure Rules
- Litigation risk: Carbon majors litigation in the US due to proceed to Court in Hawaii

U.S. SECURITIES AND EXCHANGE COMMISSION

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The Board's approach to the energy transition

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Over-arching Net Zero ambition heavily caveated

"Overall, mitigation of the risk is addressed through our strategy to accelerate the transition to net-zero emissions, purposefully and profitably." This includes "a target to become a net-zero emissions energy business by 2050, **<u>in step with society and our customers."</u>**

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Inadequate absolute emissions reduction targets

- Shell has **no short term absolute emissions reduction targets.**
- Shell's medium term (2030) absolute emissions reduction target **excludes scope 3 emissions**.
- Scope 1 (direct emissions) and scope 2 (electricity used) comprise less than 10% of the company's total footprint.
- This means that more than **90%** of the emissions from which the company derives revenue are **excluded** from its only interim absolute emissions reduction target.

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Intensity targets insufficient

- Shell's **absolute emissions could increase, even if carbon intensity is declining** (i.e. through increased production/sales). Credible research (from Global Climate Insights) finds that Shell's overall emissions will increase, not decrease by 4% by 2030.

- Shell's **interim intensity targets are extremely low** (e.g. 20% carbon intensity reduction by 2030 equates to just 3% of its absolute emissions in 2020).

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Reliance on unrealistic levels of CCS / NBS

- Shell plans **CCS to capture 6.6% of its emissions,** even though it has **not been proven at scale and can only address scope 1 emissions** (4-5% of Shell's total emissions)

- Shell **relies heavily on offsets**, which would require an unrealistic amount of land to realise (approximately the size of the UK)

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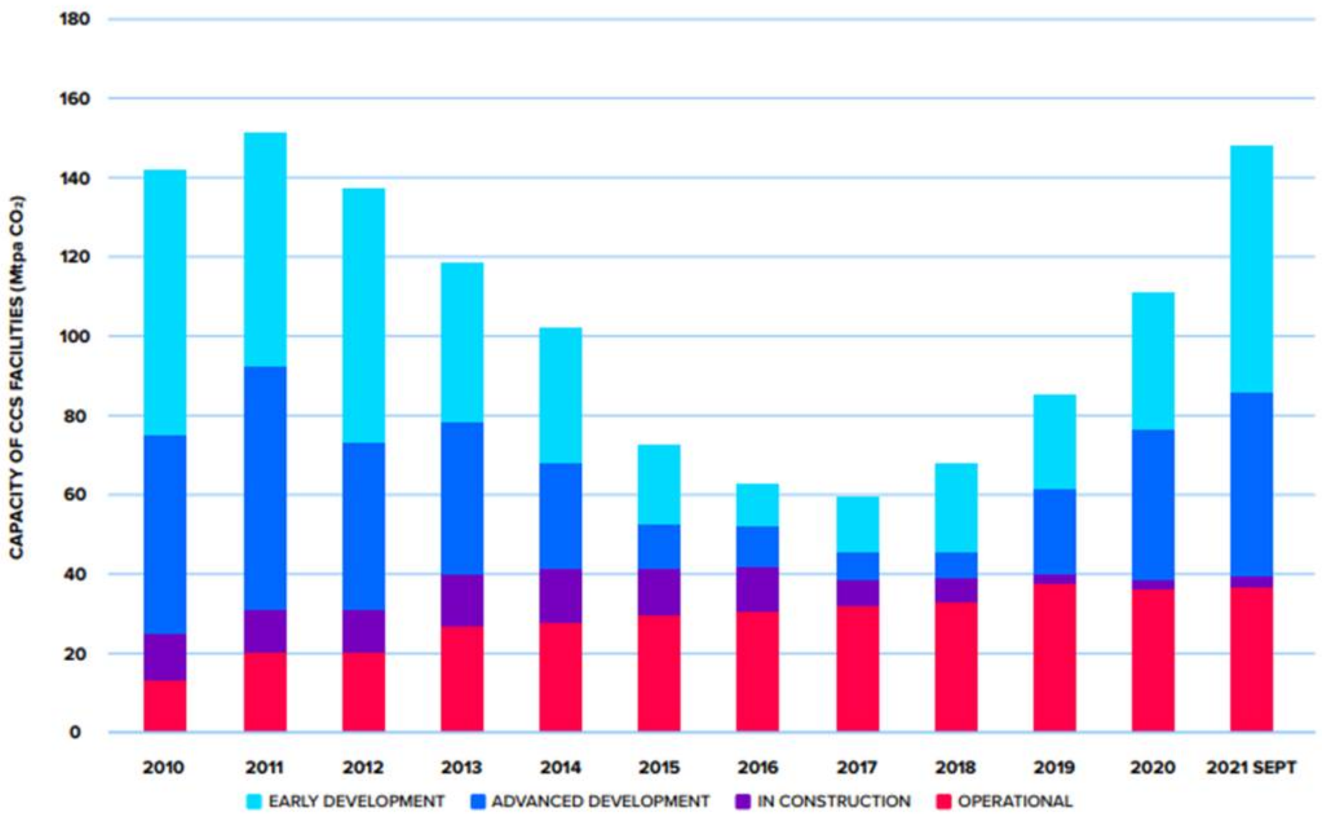
Betting on CCS?



Facilities that have not announced their capacity are not included in this chart

FIGURE 7 PIPELINE OF COMMERCIAL CCS FACILITIES FROM 2010 TO SEPTEMBER 2021 BY CAPTURE CAPACITY

Shell’s transition in practice – capital expenditure

- According to CA100+, **66% of Shell’s capex** is inconsistent with the IEA’s Beyond 2°C Scenario.
- Shell intends to **grow its gas business**: Shell targets a 40% growth in LNG by 2040, whereas the IEA anticipates a decline of 60%.
- Between 2010 and 2018, Shell spent **98.7% of its investments on oil and gas.**
- Shell’s spending on “Renewables and Energy Solutions” rose to ~12% of total capex in 2021, but this **incudes spending on marketing, selling and trading gas and power**.

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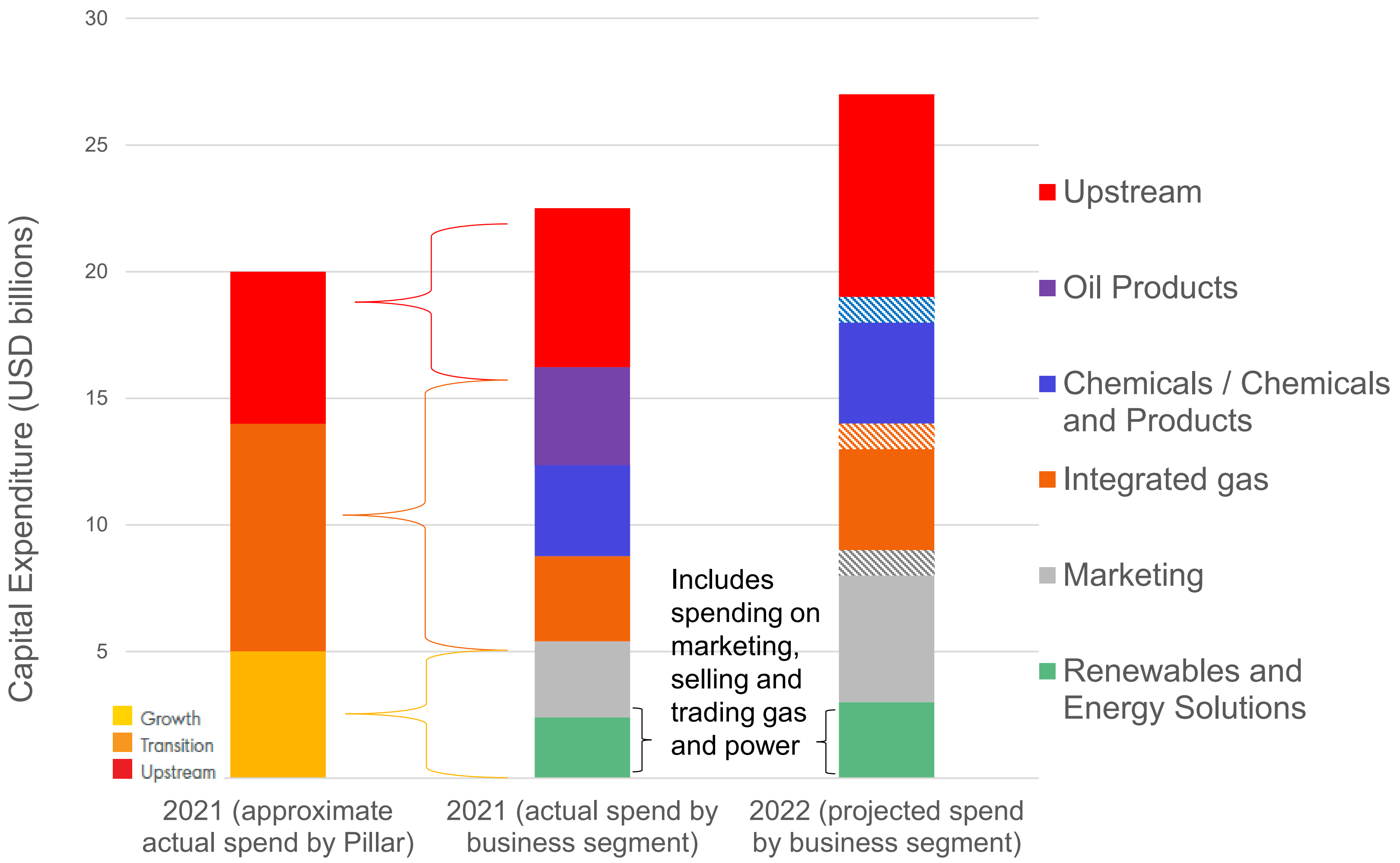
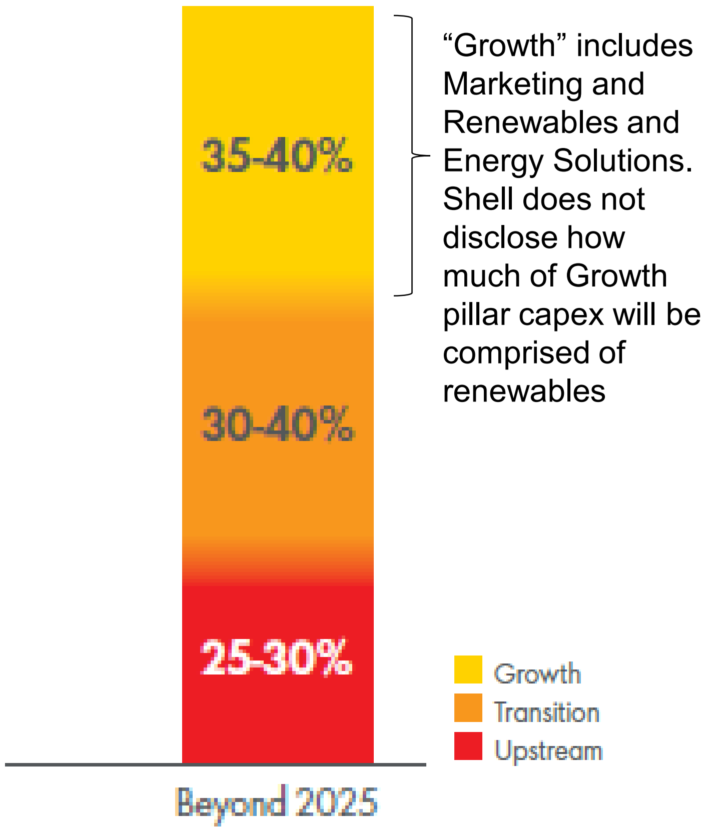
Shell's transition in practice – capex on renewables is a small proportion of overall spending and disclosures are unclear





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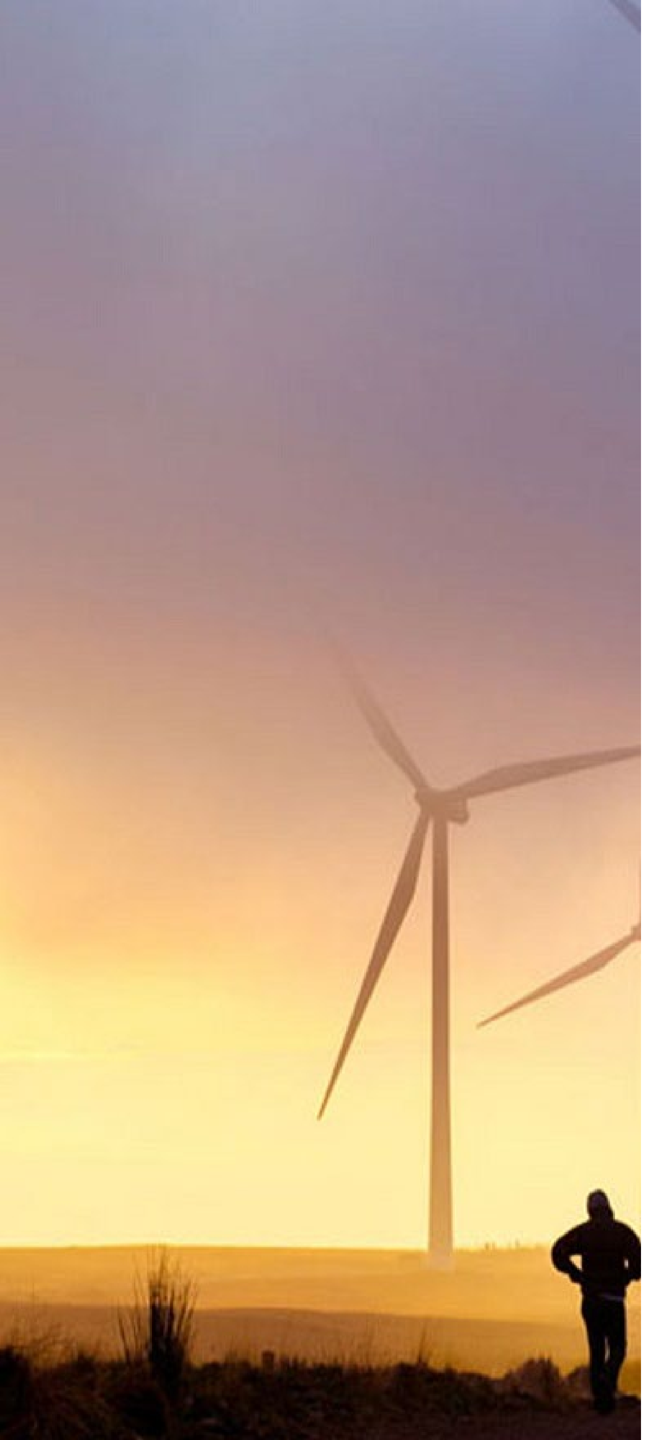
Shell’s transition in practice - project pipeline

- To limit warming to 1.5°C, the IEA called for **no new oil and gas fields to be approved for development after 2021**.
- Shell continues to open, construct and plan major oil and gas projects as usual.
- The project pipeline incudes at least 14 major oil and gas projects that are not aligned with the IEA’s recommendation:

Phase (as of Feb 2022)	Known number of projects	Total peak production per day	Total estimated recoverable reserves
Start-up 2020-2022	4	415,000 BOE	2.98 billion BOE
Under construction	14	>1.2 million BOE	> 1.1 billion BOE
Pre- Final Investment Decision	**14**	**1.2 million BOE**	**> 3.8 billion BOE**



Overall, a ‘wait and see’ approach

- No real diversification into renewables/low carbon technologies
- Continued focus on oil and gas (LNG)
- A plan that is inconsistent with decarbonisation and the net-zero transition.

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Hague District Court judgment of May 2021

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Dutch court judgment against Shell

- In May 2021, the Hague District Court ordered Shell to reduce its group-wide scopes 1-3 GHG emissions by net 45% by the end of 2030.
- Shell must deliver in respect of its scope 1 and 2 emissions, and has a "*significant best-efforts obligation*" for its Scope 3 emissions.
- The company has appealed the decision but must comply until the decision is overturned.
- The case is likely to require a final decision by the Supreme Court of the Netherlands, as in *Urgenda*.

The Board's response

- In its Q2 2021 results call, Shell's CEO stated that the company has no plans to change its strategy following the ruling, calling it "unreasonable".
- In an interview in January 2022, Shell's CEO stated in relation to the judgment and scope 3 emissions that, "*our progress will remain dependent on society's progress with the energy transition*."
- These responses imply that Shell is not intending to comply with the court order in respect of scope 3 emissions.

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Legal basis of the claim

Companies Act – s.172 – Duty to promote the success of the company

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

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

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

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

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

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

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

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

Companies Act – s.174 – Duty to exercise reasonable care, skill and diligence

- Directors must exercise the same level of skill and diligence as a reasonably diligent person with—
  - the general knowledge, skill and experience that may reasonably be expected of **a person carrying out the functions carried out by the director in relation to the company** (subjective test); and
  - the general knowledge, skill and experience **that the director has** (objective test).

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“Heightened duty”

“As things stand, there is much force in the view that directors may and, increasingly, must take into account and accord significant weight to climate change in their decision-making. […] Under certain circumstances, however, their companies’ interests may be so implicated by climate change effects that their general fiduciary and due care obligations actually require them to cause their companies to take action to reduce their contribution to climate changing activity”.

Lord Sales, acting Justice of the UK Supreme Court

2019

Remedy sought

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What should the Board do?

1. Prepare, disclose to shareholders and adopt a strategy to manage climate-related risks including GHG reduction targets that (at a minimum) follows the latest IEA or IPCC energy sector transition pathways with a reasonably likely chance of meeting the 1.5°C temperature goal of the Paris Agreement, with no or limited overshoot, limited reliance on carbon dioxide removal technologies (CDR), and no reliance on offsets or independent CDR actions by customers.

2. Prepare and execute a plan to ensure timely compliance with the Dutch Court Judgment and Dutch Court Order in *Milieudefensie et al v Royal Dutch Shell plc*.

Procedure and next steps

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Derivative claim procedure

- As a derivative claim, ClientEarth would bring the case **against Shell's directors, as a shareholder on behalf of the company**.
- ClientEarth needs to **secure "permission"** from the court to proceed with the derivative claim. There are two phases of permission, the second phase involves an in-person hearing.
- If permission is granted, the case would then proceed as an ordinary civil case in the High Court.
- Pre-action procedure commenced with letter sent on 14 March. Filing likely to be in around 3-5 months if dispute can not be resolved.

Role for institutional investors

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What can investors can do?

1. Vote against the company's inadequate Energy Transition Strategy at the AGM on 24 May
2. Consider:
   - Joining the claim as a co-claimant
   - Participating in the case as an independent third party intervener
   - Signing on to a joint letter of support for the case, or making a public statement of support
   - Writing privately to the company to express concern
   - Asset Owners: Asking your asset manager about the above

Email redirectingshell@clientearth.org to arrange a confidential discussion about the case

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Common questions

1. How is this case connected to the Dutch case and how are they different or similar?

2. What about Ukraine and potential sanctions of Russian oil and gas? Won't the war increase demand for Shell's products?

3. Isn't decision making about the business strategy up to the directors and their judgement? Why should we intervene?

4. Isn't Shell a leader within the sector? Aren't you singling them out?

5. What exactly can investors do to show support, without joining the case?

Email further questions to **redirectingshell@clientearth.org**

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