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Dear Sirs

**ABLE MARINE ENERGY PARK – PROPOSED COMPULSORY ACQUISITION OF LAND  
WITHIN WHICH CENTRICA HOLDS AN INTEREST**

**CENTRICA PLC (UNIQUE REFERENCE NUMBER: 10015551) – KILLINGHOLME POWER  
STATION AND ASSOCIATED INFRASTRUCTURE, CHASE HILL ROAD, NORTH  
KILLINGHOLME AND CENTRICA STORAGE LIMITED, STATION ROAD, NORTH  
KILLINGHOLME**

Please find detailed below Centrica's objection to the proposed compulsory acquisition of land by Able UK Limited (hereafter referred to as "Able") as part of the proposed Able Marine Energy Park (AMEP) development, over which it holds an interest.

**Background**

Article 29(1) of Part 5 of the draft Development Consent Order (DCO) dated 9 October 2012 states that:

*"The undertaker may acquire compulsorily so much of the Order land as is shown washed pink on the land plans as is required for the authorised development or to facilitate it."*

Article 29(2) adds that such land will be discharged from all rights, trusts and incidents to which it was previously subject. Article 30 of Part 5 also permits the undertaker to discharge any easements, liberties, privileges, rights or advantages over this land.

In addition, Article 41 of Part 5 of the draft DCO states that the undertaker may:

- "(a) compulsory acquire the land belonging to statutory undertakers shown on the land plans within the limits of the land to be acquired and described in the book of reference;*
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the land plans and described in the book of reference; and*



*(c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the land plans and described in the book of reference.”*

The Book of Reference and Land Plans submitted with the DCO application identify that land over which Centrica has rights and interests is proposed to be compulsorily acquired and rights held by Centrica over this land extinguished. The table below identifies which plots of land Able proposes to compulsorily acquire and Centrica’s interest in that land.

<b>Plots (as referenced in the Book of Reference and on the Land Plans)</b>	<b>Centrica’s Interests in that Land</b>
03009	Centrica has right of access across this plot (Station Road) to facilitate access to its stores on Station Road (The “CSL site”).
05017*, 05018*, 05022*, 05023*, 02029* and 05030*	The cooling water pipeline for the Killingholme Power Station runs through this land. Centrica owns the freehold easement for this pipeline and also as a right to access the pipeline for purposes of maintenance, repair and to replace or add to the cooling pipeline.
04023, 04030, 04030, 04032, 05004, 05005, 05007, 05008, 05012, 05013, 05024, 05031 and 05032	Centrica has a right of access to its pumping station (which is located outside of the Order land) through parts of these plots.
05044* and 06006*	Centrica’s condensate pipeline runs through these plots.

In addition to the above, on 10 October 2012, Able applied to the Secretaries of State for Energy and Climate Change, Transport and Environment, and Food and Rural Affairs for a certificate under Section 127 of the Planning Act 2008 for the compulsory acquisition of statutory undertaker’s land. In respect of land within which Centrica holds an interest, this application covered the plots asterisked in the second and fourth columns of the table above within which the cooling and condensate pipelines run and over which Centrica has rights of access to these pipelines.

The rights and interests that Centrica hold over the above plots of land are essential for the continued operation of the Killingholme Power Station and for the activities of Centrica Storage Limited (hereafter referred to as “CSL”). Centrica therefore strongly objects to the compulsory acquisition of the above land and the extinguishment of its existing rights. Reasons for this are given below.

**Access to CSL Site on Station Road**

As stated above, Able is proposing to compulsorily acquire land over which Centrica benefits from a right of access to its site on Station Road (plot 03009).

CSL leases its stores site on Station Road from Bethany Jane Limited (hereafter referred to as “BJL”) and it is understood that this lease has a term of 8 years unexpired. As part of this lease, Centrica benefits from a right of access to the site along Station Road. If this land (Station Road) is compulsorily acquired by Able, and all rights across the land extinguished, Centrica will no longer have access to the CSL site.

Article 22 of the Planning Act 2008 sets out conditions that must be satisfied if the compulsory purchase of land is to be permitted in an order granting development consent. These conditions are:



- The land is required for the development to which the development consent relates, is required to facilitate or is incidental to that development, or is replacement land which is to be given in exchange for the order land under Section 131 or 132; and
- There is a compelling case in the public interest for the land to be acquired compulsorily.

Both of these tests must be met if the compulsory acquisition of land is to be allowed and the onus is with the applicant to demonstrate compliance with both of the tests.

In terms of the first of the above two tests, it is not considered that the compulsory acquisition of Station Road (plot 03009) is required for, or to facilitate, the proposed AMEP development. The Statement of Reasons identifies that this plot of land is required for the onsite manufacturing and storage part of the proposed development. However, no specific reason is given for why this specific plot of land is needed. It is understood that it is proposed that Station Road will be used to provide access to the main AMEP site, and that the undertaker proposes to widen and re-align Station Road.

It is questioned whether it is necessary for the undertaker to compulsorily acquire Station Road in order to widen and re-align the access. Temporary possession of Station Road could be taken to facilitate the widening and re-alignment works. Schedule 6 of the draft DCO provides a list of other roads for which possession will be temporarily taken to facilitate widening and re-alignment works, including Rosper Road. An agreement could then be reached with the current owner of Station Road, BJL, to secure rights of access along this road for the undertaker.

In relation to the second of the tests at Section 122 of the Planning Act 2008, Able has not provided any justification for why there would be a **compelling case** in the public interest for the compulsory acquisition of this land. A case for the development as a whole being in the public interest is given in the Statement of Reasons; however, no case is put forward for why the compulsory acquisition of this plot would be within the public interest.

In addition to the above, Paragraph 2.10 of the Statement of Reasons, in support of the case of compulsory acquisition states the following:

*“There is also a private road crossing the land, where the freehold will be acquired but the private rights to use the road for any users whose land is not being acquired, will be re-granted in the same form.”*

Whilst no indication is given in the Statement of Reasons to which road the above paragraph relates, it is presumed that it relates to Station Road. Whilst the Statement of Reasons states that the private rights to use this road will be re-granted, there is currently nothing within the draft DCO which ensures that this will be the case. This was an issue raised in a written submission by BJL dated 8 October 2012. A protective provision has now been included within the draft DCO for BJL which ensures that a new right for BJL to use Station Road will be granted by the undertaker prior to any existing right being extinguished. No such provision has been included for Centrica however. As such, if this land is compulsory acquired and Centrica's rights of access along Station Road extinguished, Centrica will be left with no access to the CSL site. Centrica has therefore requested in a separate written submission dated 25 October 2012 that a similar protective provision to the one included in the draft DCO for BJL is also included within the DCO in respect of granting a new right for Centrica. Centrica is unable to withdraw its objection to the compulsory acquisition of Station Road until the DCO contains a protective provision which provides security to Centrica that it will continue to enjoy unrestricted access to its CSL site on Station Road.

### **Cooling Water Pipeline, Condensate Pipeline and Access to Pumping Station**

As stated above, Able is proposing to compulsorily acquire land within which Centrica's cooling and condensate pipelines run and over which Centrica has rights in respect of access to these pipelines and its pumping station (those plots listed in the second, third and fourth rows of the table above).



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This infrastructure, and unrestricted access to it, is vital to ensure the continued operation of the Killingholme Power Station and CSL's continued operations. As such, Centrica also strongly objects to the compulsory acquisition of this land.

Similarly to the above, Centrica considers that the compulsory acquisition of this land does not meet the tests set out at Section 122 of the Planning Act 2008.

In relation to the compulsory acquisition of this land being required for, or to facilitate, the proposed development; as stated above, Able has not demonstrated why the compulsory acquisition of these specific plots of land would be necessary for the development, and in particular have not demonstrated why it would be necessary to extinguish Centrica's existing rights across this land.

Furthermore, Paragraph 2.10(i) of the Statement of Reasons states that Centrica's cooling water pipeline and cables will be left in situ. The Protective Provision for Centrica at Part 10 of Schedule 9 of the DCO states, at Article 79, that prior to the extinguishment of rights for Centrica to keep, inspect, renew and maintain its infrastructure on, over or in the Order land, the undertaker will create new rights in the same location. Given that Able will re-grant Centrica's rights in the same location, and will not move the pipelines or cables it is not considered that there is a need, or it is necessary for these rights to be extinguished. It is considered that the more appropriate alternative would be to leave Centrica's existing rights in situ. It is therefore considered that the compulsory acquisition of the land and the extinguishment of Centrica's rights are not required for, or to facilitate, the proposed development.

In regard to the second of the tests at Section 122 of the Planning Act 2008, as stated above, Able has only demonstrated why it considers the development as a whole to be within the public interest. It has not demonstrated why there is a compelling case in the public interest for compulsory acquiring these specific plots of land. Centrica's infrastructure and associated rights to this infrastructure are essential for the operation of the Killingholme Power Station. As stated in previous written submissions, the power station provides electricity to the national grid, and fulfils an important role providing electricity at peak times. It can therefore be argued that the continued operation of the power station is in the public interest. Able has not provided any reasoning as to why it considers the compulsory acquisition of this land, and the extinguishment of Centrica's rights, would be in the greater public interest than the continued operation of the power station. It is therefore considered that the proposal to compulsory acquire this land and extinguish Centrica's rights also fails the second of the tests at Section 122 of the Planning Act 2008.

In addition, as stated above, Able has also applied to the Secretaries of State for Energy and Climate Change, Transport and Environment, and Food and Rural Affairs for a certificate under Section 127 of the Planning Act 2008 for the compulsory acquisition of statutory undertaker's land, including the plots of land within which Centrica holds an interest (identified by an asterisk in the second and forth columns of the table above).

Section 127 of the Planning Act 2008 applies where land has been acquired by a statutory undertaker or the purposes of their undertaking, a representation has been made about an application for an order granting development consent before the completion of the examination of the application and as a result of that representation, the decision-maker is satisfied that the land is used for the purposes of carrying on the statutory undertaking or an interest in the land is held for those purposes.

Article 8 of Section 127 defines "statutory undertakers" for the purposes of the Planning Act 2008 as the meaning given by Section 8 of the Acquisition of Land Act 1981, including parties which are deemed to be statutory undertakers for the purposes of the 1981 Act by virtue of another enactment.

Persons / companies which hold a licence under Article 1 of Part 1 of the Electricity Act 1989 are deemed to be a statutory undertaker. Centrica is one such company and holds a generation



licence under Article 1(a) in respect of Killingholme Power Station. It is therefore deemed to be a statutory undertaker for the purposes of the Planning Act 2008.

As identified above, and in previous written submissions, the Killingholme Power Station's cooling water pipeline and associated infrastructure runs across those plots of the Order land identified above and Centrica has a right of access to this infrastructure. This infrastructure was acquired by Centrica in 2004 from National Power alongside the acquisition of Killingholme Power Station. The infrastructure and the rights to access this infrastructure are essential to the operation of the power station and therefore essential to allow Centrica to continue its statutory undertaking. Therefore, Centrica holds an interest in the land proposed to be compulsorily acquired for the purposes of carrying on its statutory undertaking.

This land therefore meets the criteria set out at Article 1 of Section 127 of the Planning Act 2008. As such, the tests set out at Article 3 and / or Article 6 of Section 127 must be met before the compulsory acquisition of the land can be confirmed. These tests are:

- (a) The land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
- (b) The land can, if purchased, be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.

As stated above, the cooling water pipeline and associated infrastructure is essential to the operation of the Killingholme Power Station and the condensate pipeline is essential to CSL's operations. Centrica's right of access to this infrastructure for purposes of maintenance and repair, and to replace or add to the infrastructure is also essential to these operations. The extinguishment of these rights will therefore have a detrimental impact on Centrica's undertakings. It would therefore not be possible for the land to be purchased, and Centrica's rights extinguished, without serious detriment to Centrica's undertaking occurring. The compulsory acquisition of this land would therefore fail the tests at Article 3(a) and 6(a) of Section 127 the Planning Act 2008.

In addition, in order for the second of the above listed tests to be satisfied (i.e. the tests at Article 3(b) and Article 6(b) of Section 127), the cooling water pipeline and associated infrastructure and the condensate pipeline would both need to be relocated. This would not be possible without incurring significant costs and would also be at detriment to Centrica's undertakings as it would require these undertakings to cease for the period of time whilst this infrastructure was being relocated. Furthermore, Able has stated on many occasions, including in responses to Centrica's written representations and in the Statement of Reasons (at Paragraph 2.10(i)), that it does not intend to relocate this infrastructure. Given that this infrastructure will not be relocated, and will remain in situ, it will not be possible for Centrica's existing rights to be replaced on other land belonging to Able. As such, the compulsory acquisition of this land and the extinguishment of Centrica's rights would also fail the tests at Articles 3(b) and 6(b) of Section 127 of the Planning Act 2008.

The above demonstrates that the compulsory acquisition of the above mentioned plots within which Centrica has infrastructure and rights to access this infrastructure, would not be possible without serious detriment to Centrica's undertakings. As a result of this and Centrica's objection to the compulsory acquisition of this land and the extinguishment of these rights, it is considered that it would not be possible for the compulsory acquisition of this land and extinguishment of Centrica's rights to be confirmed, as this would be contrary to Section 127 of the Planning Act 2008.

Notwithstanding the above, Able has stated that it is willing to enter into agreement with Centrica to create new rights for Centrica to keep, inspect, renew and maintain this infrastructure in the same location as its existing rights. A protective provision has been included in the draft DCO at Article 79 of Schedule 9 to secure this. However, as set out in its written submission dated 25 October



2012, Centrica does not consider that this protective provision is sufficient to provide adequate protection to Centrica's undertaking as it does not guarantee that Centrica will not be left with new rights that are inadequate for purpose of less suitable than the current rights it benefits from. The above mentioned written submission therefore requested changes to this protective provision to ensure that any new rights granted to Centrica to replace its existing rights are fit for purpose and would allow Centrica to continue to carry out its undertakings. Centrica cannot therefore at this stage withdraw its objection to the compulsory acquisition of this land and the extinguishment of its rights as it still has concerns that it could potentially be left with rights which are not fit for it to be able to carry out its undertakings.

Once the requested change to the protective provision has been made, Centrica will be able to withdraw its objection to the compulsory acquisition of the land within which its cooling and condensate pipelines are located as the protective provision will provide security that Centrica will be granted new rights of access that are fit for purpose before any existing rights are extinguished, and will therefore provide the security that is required to ensure that it can continue to carry out its undertakings.

## **Conclusion**

Centrica objects to the compulsory acquisition of land by Able as part of the proposed AMEP development within which it has interests. These interests include:

- A right of access to the CSL site on Station Road;
- A right of access to its pumping station;
- Its cooling water pipeline and associated infrastructure;
- Its condensate pipeline; and
- A right to access the cooling water pipeline and condensate pipeline.

It is considered that the compulsory purchase of this land and the extinguishment of Centrica's rights across this land would have a serious detrimental impact on its operations. Furthermore, it is not considered that the compulsory acquisition of this land and the extinguishment of Centrica's rights is required for, or to facilitate, the proposed development or is in the public interest. It is therefore considered that the proposed compulsory acquisition of this land fails to meet the requirements of the conditions at Article 2 of Section 122 of the Planning Act 2008.

Furthermore, in respect of the land for which Centrica holds an interest for the purposes of carrying out its statutory undertaking, and for which Able has applied for a certificate under Section 127 of the Planning Act 2008, it is not considered that it would be possible for this land to either not be replaced or to be replaced with other land without there being a serious detriment to Centrica's undertakings as this would require the relocation of Centrica's pipelines and associated infrastructure. As such, it is considered the compulsory acquisition of this land and the extinguishment of Centrica's rights also fails the conditions set at Articles 3 and 6 of Section 127 of the Planning Act 2008.

It is therefore considered that the compulsory acquisition of this land and the extinguishment of Centrica's rights cannot be confirmed whilst Centrica still holds an objection.

Notwithstanding the above, Centrica is keen to enter into agreement with Able to secure replacement rights in the same location as its existing rights. A protective provision has been added to the draft DCO at Article 79 of Schedule 9 to secure this. This protective provision states that before any existing rights across the Order land in respect of Centrica's pipelines are extinguished, the undertaker will enter into an agreement with Centrica to create new rights in the



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same location. Whilst Centrica welcome the inclusion of this protective provision, it is not considered that the wording of this provision provides sufficient security to Centrica that any new rights granted will be “fit for purpose” by being sufficient to ensure that Centrica can continue to carry out its undertaking. In a separate written submission, Centrica has therefore requested amendments to this protective provision. As such, Centrica is only able to withdraw its objection to the compulsory acquisition of this land and the extinguishment of its rights, once the requested amendments have been made to this proposed protective provision to guarantee that before extinguishment of any existing rights, the new rights to be granted are sufficient to enable Centrica to carry on its undertakings.

We reserve the right to amend or withdraw the above if necessary.

Finally, we trust the above is clear and satisfactory; however, if you require further information or would like to discuss the above please do not hesitate to contact Paul Forshaw at the above office.

Yours faithfully,

**BNP Paribas Real Estate**

Cc Mr N Warwick – Centrica  
Ms A Mason - Centrica  
Mr S Wadhams – Centrica  
Mr A Hayward-Browne – Centrica  
Mr N Lumley – Centrica Storage Limited  
Mr H Church – CBRE