

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

of resource consent applications by Contact Energy Limited in respect of the Te Mihi Geothermal Power Station Proposal.

**BEFORE**

**BOARD OF INQUIRY**, Te Mihi Geothermal Power Station Proposal

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**EVIDENCE OF KERRY MARK DOWNEY**

23 June 2008

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## **Introduction**

1. My name is Kerry Mark Downey of Auckland, insolvency practitioner. I am the Managing Partner and a Director of McGrathNicol + Partners (NZ) Limited (“McGrathNicol”) an advisory firm of chartered accountants. Until 31 July 2004 I was a Senior Partner in KPMG, Canada and New Zealand. I lead the receivership of Geotherm Group Limited (“Geotherm”).

## **Qualifications and Experience**

2. I have the following qualifications and experience relevant to the evidence I shall give.
3. I hold the following qualifications and professional affiliations:
  - Bachelor of Commerce and Administration, Victoria University, Wellington 1969
  - CA, NZ Institute of Chartered Accountants 1971
  - CA, Institute of Chartered Accountants Ontario, Canada 1974
  - Trustee in Bankruptcy Licence Canada 1985
  - Member of INSOL New Zealand 1998
4. I have 38 years business experience, including 28 years insolvency experience. From late 1998 to August 2004, I had national responsibility for overseeing and directing the Corporate Recovery practice provided by KPMG in Auckland. This included the provision of financial restructuring, debt workouts, financial turnarounds, litigation support, receivership and liquidation work on behalf of banks and other clients. Prior to October 1998, I was a Senior Partner in the Canadian Corporate Recovery practice of KPMG. Since August 2004, and McGrathNicol’s acquisition of KPMG’s Corporate Recovery practice, I have conducted similar work as the Managing Partner of McGrathNicol.

5. I have been engaged in the presentation of training programs for two major banks in Canada, the direction of the Canadian practices' professional development program, and the development and co-ordination of the International Quality Performance Review Programme for KPMG's Corporate Recovery Practices. From 1994 to 1997 I was engaged as one of the three lead partners directing the liquidation of Confederation Life, the third largest life insurance company in Canada.
6. I have also had extensive dealings with financial and government regulatory agencies, industry guarantee corporations, industry representatives, loan syndications and advising stakeholder groups.

### **Scope of evidence**

7. My evidence will cover the following matters:
  - The background and status of the receivership of Geotherm, Geotherm Drilling Services Limited, and Geotherm Transmission Limited (the "Geotherm Group").
  - Clarification of the relationship between the Geotherm Group and Alistair McLachlan, Mac Power Limited and Mercury Geotherm.

### **Geotherm Group**

8. I, together with my partner William Black ("the Receivers") were appointed Receivers and Managers of the Geotherm Group on 15 December 2006. The appointment of receivers was necessary as a result of the secured lender, Financial Trust Limited, losing confidence in the management of the Geotherm Group.
9. As Receiver I have a duty to preserve and enhance value and ultimately realise on the assets of the Geotherm Group, primarily for the secured lender, but also for the benefit of other stakeholders including unsecured creditors.

10. Geotherm is the owner and developer of a geothermal power station project located in the south-western portion of the Wairakei Geothermal field (the "Project"). Since appointment, the Receivers' immediate focus has been to protect and enhance the value of the Project by the securing of resource consents in March 2007, obtaining independent analysis of the results of the first test well (GGL1) and modelling of the geothermal reservoir.
11. The resource consents granted in March 2007 allow Geotherm to explore for, drill for, extract, reinject and otherwise use geothermal fluid and any other associated resources.
12. Based on the work undertaken by the Receivers' specialist advisors since appointment, the Receivers are satisfied the Project has a range of development options, all of which are viable, and the resource consents granted to Geotherm will be exercised. As such the Receivers are currently engaged in a worldwide marketing process for the divestment or recapitalisation of the Project. A significant number of parties have registered their interest in the Project and are currently undertaking due diligence.
13. As noted by Contact Energy Limited ("Contact") in section 1.4 of its Assessment of Environmental Effects, the additional 60MW of base load renewable energy that the proposed Te Mihi Power Station will provide is of significant national benefit. Likewise, every megawatt of additional base load of renewable energy that will be provided by Geotherm's proposed power station development is of equal national significance to those produced by Te Mihi for the same reasons.
14. As stated in its submission dated 7 March 2008, Geotherm does not, in principle, oppose Contact's proposed new geothermal power station at Te Mihi and the associated resource consent applications, including the right to re-inject an additional 95,000 tonnes per day of geothermal discharge.
15. Geotherm, as an existing resource consent holder, seeks the inclusion of the conditions and restrictions in Contact's proposed resource consents as set out in Richard Matthews'

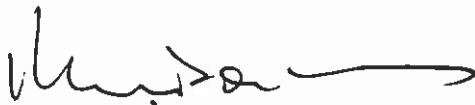
evidence, to ensure that any adverse impacts on the Project are appropriately avoided, remedied or mitigated.

**Alistair McLachlan, Mac Power, Mercury Geotherm**

16. Following my appointment on 15 December 2006, Alistair McLachlan, Director of the Geotherm Group, has no control or influence over the assets or operations of the Geotherm Group and is not an employee or otherwise working with the Receivers. I understand that he is focused on a new venture called MacPower Limited. MacPower Limited has registered as a potential bidder to either refinance or repurchase the Geotherm Group assets including the Project.
17. Geotherm's submission on Contact's Te Mihi resource consent application dated 7 March 2008 was prepared independent of Alistair McLachlan and Mac Power Limited. Any similarity in their submission with that of Geotherm's will likely have arisen as a result of a copy of Geotherm's submission being sent to David Towle, lawyer for Alistair McLachlan, purely for informational purposes, given that Alistair McLachlan is a guarantor.
18. The Geotherm Group and the Project must be distinguished from the Mercury Geotherm joint venture which failed in 1998. The Mercury Geotherm joint venture was 51% owned by Mercury Energy and 49% by the McLachlans. The Receiver appointed by Mercury Energy, now Vector, is Lawrence Chilcott who controls the joint venture lands which border the land owned by the Geotherm Group. The joint venture lands, which are subject to a Deed of Lease dated 15 December 2005, among other things, gives the McLachlans the right to lease the lands for farming use but subject to the higher rights and requirements of the lessor, the Mercury Geotherm joint venture, by its receiver Lawrence Chilcott.
19. The activities of MacPower controlled by Alistair McLachlan and the Mercury Geotherm joint venture controlled by its receiver Lawrence Chilcott are mutually exclusive and separate from the receivership of the Geotherm Group.

## **Conclusion**

20. Geotherm has been granted resource consents that allow it to explore for, drill for, extract, reinject and otherwise use geothermal fluid. Based on the advice provided to me as Receiver of the Geotherm Group, I am satisfied the Project has a range of viable development options and Geotherm's resource consents will be exercised.
21. Geotherm as an existing resource consent holder is therefore seeking the inclusion of the conditions and restrictions set out in Richard Matthews' evidence, in Contact's proposed resource consents. The purpose of the proposed conditions and restrictions is to ensure that any adverse impacts on the Project as a result of Contact's proposed activities for which it is seeking consent, are appropriately avoided, remedied or mitigated.



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**Kerryn M Downey**  
**Date: 23 June 2008**