

27 March 2015

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Our Ref: 15-0098oac4

**Subject to Legal Professional Privilege**  
**Telstra Corporation Limited – Development Application No 18212014**

Dear Ms Adams,

I refer to your letter of 24 February 2015, as well as to our correspondence and discussions providing instructions in the above matter. I understand that you are seeking my advice for the purposes of providing legal advice to your client. I further understand that this advice relates to the proposed construction of a telecommunications tower at 334 McCulloch Street, Broken Hill, in the proximity of the Broken Hill Regional Aquatic Centre ('Swim Centre site'), in accordance with Development Application 182/2014, which has been approved by Broken Hill City Council ('Swim Centre DA').

I confirm that I, and GML Heritage Pty Ltd (GML Heritage), have been retained in accordance with Division 2 of Part 31 of the Uniform Civil Procedure Rules 2005 and the Expert Witness Code of Conduct as set out in Schedule 7 of those rules (Expert Witness Code of Conduct) and that all tasks required as part of this commission have been, and will continue to be, undertaken in accordance with the duties and responsibilities set out in the Expert Witness Code of Conduct. In particular, I agree to be bound by the Expert Witness Code of Conduct in any report or statement of opinion that I prepare. I further understand that I may be required to provide and/or present evidence in court.

In order to provide the opinion below, I have:

- reviewed the background and briefing provided in your letter of 24 February 2015;
- reviewed additional information, including photographs provided by you of the type of telecommunications tower proposed;
- reviewed the Swim Centre DA and supporting documentation provided;
- reviewed the Notice of Determination issued by Broken Hill City Council, following the granting of development consent on 18 February

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2015, noting particularly, that no heritage issues were raised by Council;

- reviewed the gazettal notice, and particularly the National Heritage values assessment, related to the inclusion of the City of Broken Hill on the National Heritage List (listed on 20 January 2015);
- examined the *Broken Hill Local Environmental Plan 2013* (the LEP), having particular regard to heritage provisions of the LEP (Clause 5.10) and its Heritage Maps (Sheet 005);
- inspected the Swim Centre site, surrounding streets, the Line of Lode lookout and other parts of the City of Broken Hill on two occasions with my GML Heritage colleague Julian Siu; and
- relied on my own background knowledge of Broken Hill and its history and heritage, arising from more than eight years involvement in heritage management issues.

The Swim Centre site is not within a heritage conservation area, as identified in the LEP, and is not located within close proximity of any heritage item that is included on the schedule of heritage items in the LEP (Schedule 5) (see Figure A below).

The Swimming Centre site is located towards the north-eastern edge of the City of Broken Hill, in an open area to the south-east of the Broken Hill Regional Aquatic Centre. The site is generally grassed, with some trees and the outlook towards the south is to the rear fences and yards of properties which face Fisher Street. The Willyama High School is across Murton Street to the east. The proposed tower would be visible in the backdrop when looking towards the Aquatic Centre, the High School or houses in the vicinity.

There are at least six existing telecommunications towers within the Broken Hill City area. None are as tall as the proposed Swim Centre DA tower, but some have more extensive infrastructure. For example, one telecommunications tower in the centre of town is adjacent to the historic Post Office and the retained (Argent Street) section of the former Town Hall; (see Figure B below). Telecommunications towers are visible as part of the existing backdrop/skyline in a number of views around the City of Broken Hill; including some which are visible in significant views of major historic features.

In relation to the specific questions asked in the brief, the following responses are provided.

*In your opinion, is the proposed action at the site likely to be a controlled action under the EPBC Act?*

While it would change the visual qualities of the suburban context, streetscape presentation and general amenity of the surrounding area, the proposed construction of the Telstra telecommunication tower at the Swim Centre site would not have a substantive heritage impact. In forming this view, I have had regard to the fact that Council did not raise any heritage issues in determining the Swim Centre DA and to the recent inclusion of the entire City of Broken Hill on the National Heritage List (which occurred notwithstanding the presence of the existing telecommunications towers), noting that the Swim Centre site is neither within a conservation area nor in close proximity to a listed heritage item.

The proposed construction of a Telstra telecommunication tower at the Swim Centre site would not have a 'significant impact' within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* (Cwth) (EPBC Act). In particular, the proposal would not have a substantive impact on the National Heritage values of the City of Broken Hill.

Therefore, in my view the proposed action is unlikely to become a controlled action under the EPBC Act.

*If your answer to Question 1 is "yes", what matters would you consider relevant to Telstra seeking approval from the Australian Government for the proposed action under the EPBC Act?*

As noted above, I do not believe that the proposed action is likely to become a controlled action under the EPBC Act.

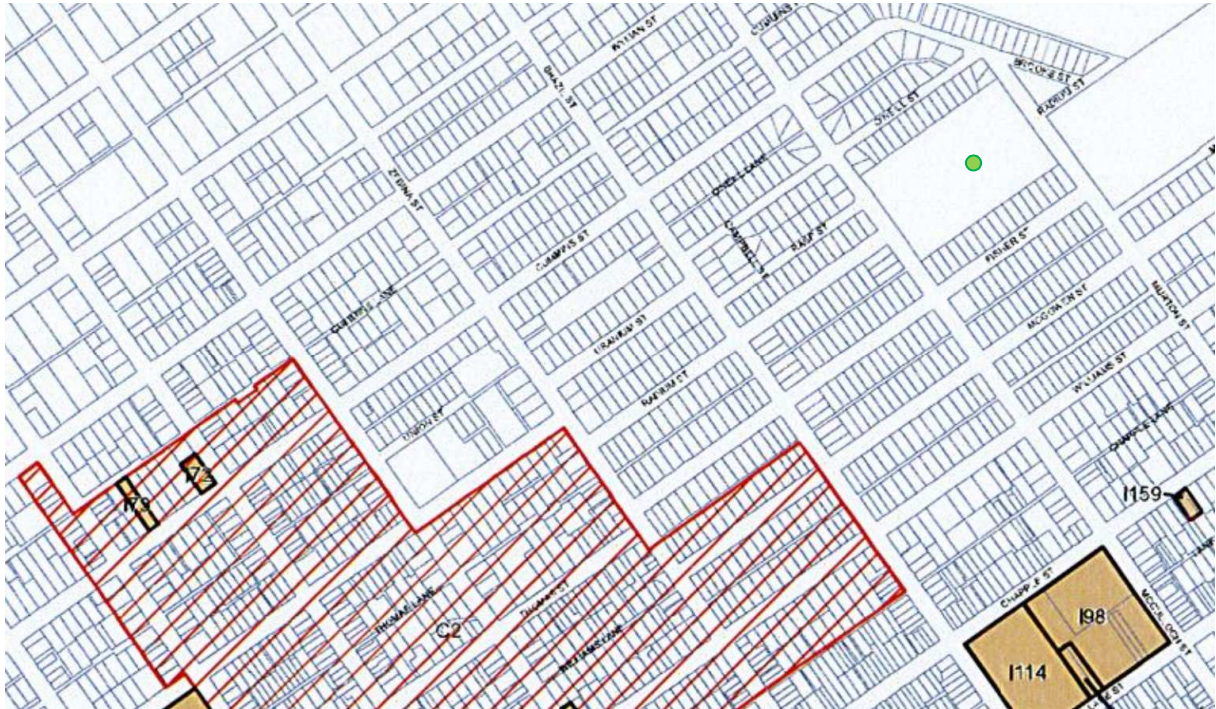
I trust that this information is of assistance to you and your client. I would be grateful if you could confirm whether any additional inputs are required from me at this stage.

Should you have any queries or comments, I would be happy to discuss these directly.

**Yours sincerely**  
**GML Heritage Pty Ltd**

A handwritten signature in black ink that reads "Richard Mackay". The signature is written in a cursive, flowing style with a large, sweeping "R" and a long, trailing underline.

**Prof Richard Mackay, AM**  
**Partner**



**Figure A** Approximate location of the proposed Telstra telecommunication tower at the Swim Centre site shown by a green circle. The proposed site is not in close proximity to any heritage items nor within a heritage conservation area. (Source: Broken Hill LEP 2013, Heritage Map 005).



**Figure B** View from Argent Street (looking north) at the telecommunications tower behind to the historic Post Office and the retained (Argent Street) section of the former Town Hall. (Source: GML Heritage, March 2015).