

An Aboriginal Heritage Desktop Assessment of the proposed Merredin Battery Project in the Shire of Merredin

Prepared for: Merredin Big Battery Nominee Pty Ltd

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Aboriginal Heritage | Native Title

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Disclaimers

The analysis and recommendations contained within this report are based on information made available at the time of its preparation. The author takes no responsibility for omissions and/or inconsistencies that may result from information becoming available after the report's completion.

Any future compensation liabilities that may arise under the *Native Title Act 1993* do not form part of this advice. This report does not contain legal advice.

This advice is confidential and intended for use by Merredin Big Battery Nominee Pty Ltd only. It is not for inclusion in the Aboriginal Cultural Heritage Inquiry System or sharing with third parties.

Author

Aaron Rayner conducted the research and analysis and prepared this report for Merredin Big Battery Nominee Pty Ltd. Aaron is the former Chief Heritage Officer and Deputy Director General at the Department of Aboriginal Affairs in Western Australia. In these roles Aaron was responsible for managing the *Aboriginal Heritage Act 1972* and its regulations and for providing advice to executive government and industry proponents. For five years Aaron was a member of the Aboriginal Cultural Material Committee (ACMC) the statutory body that provides advice to the Minister for Aboriginal Affairs on all Aboriginal heritage matters. Aaron has significant experience and expert understanding of the Aboriginal Heritage regulatory framework in WA and is a practicing anthropologist.

Glossary of Terms

ACMC	Aboriginal Cultural Heritage Committee
AH Act	<i>Aboriginal Heritage Act 1972</i>
DPLH	Department of Planning, Lands and Heritage
GKBAC	Gnaala Karla Booja Aboriginal Corporation
MBBN	Merredin Big Battery Nominee Pty Ltd
Minister	Minister for Aboriginal Affairs
NT Act	<i>Native Title Act 1993</i> (Cth.)
SWALSC	South West Aboriginal Land and Sea Council

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Executive Summary

Key finding: there are no Aboriginal sites within the area of land proposed for the Merredin Big Battery Storage facility. No further Aboriginal due diligence is recommended prior to commencing project construction activities. There is no risk of committing an offence under section 17 of the *Aboriginal Heritage Act 1972*.

The author was engaged by Merredin Big Battery Nominee Pty Ltd at Merredin Big Battery Trust (**MBBN**), who are the proponent proposing to construct a battery storage facility in the Shire of Merredin in Western Australia. The proposed project land footprint is situated on Robartson Road in Merredin adjacent to an existing large-scale solar panel facility (**Project Land**) – see **Appendix 1**. The Project Land historically has been used for agricultural and farming purposes for three generations and as a result has been highly modified.

The *Aboriginal Heritage Act 1972* (**AH Act**) is the primary legislation for protecting Aboriginal sites of importance and significance in Western Australia. Section 5 of the AH Act defines the types of Aboriginal sites that are protected whether they are registered or unregistered on the Register of Aboriginal Sites. Section 17 makes it an offence to damage, alter, conceal, or destroy an Aboriginal site without explicit consent pursuant to section 16 and section 18 of the AH Act. Section 62 provides for a lack of knowledge defense. A person can rely on this defence where they can provide that they did not know or could be reasonably expected to know that they have caused a section 17 offence.

The entire Project Land is within the Ballardong region of the alternative Southwest Noongar Native Title Settlement Area. The Ballardong region is one of six Noongar regions in the southwest. In return for the settlement, the Ballardong People, along with other Noongar people from the other five regions, agreed to give up their native title rights in return for the benefits which are provided for in an Indigenous Land Use Agreement (**ILUA**) that is now registered with the National Native Title Tribunal (**NNTT**). Any cultural heritage sites in the Merredin area are associated with Ballardong customs and traditions.

The purpose of this due diligence assessment is to assess whether there are recorded Aboriginal sites within the meaning of section 5 of the AH Act, and whether there is potential for unrecorded Aboriginal sites in or near the Project Land. There is no mandated process to undertake Aboriginal heritage due diligence assessments in WA. However, it is normal practice to carry out searches of the Aboriginal Cultural Heritage Inquiry System (**ACHIS**) for Aboriginal heritage site records and survey reports.

A search of the ACHIS was undertaken and found that there are no recorded Aboriginal sites. The nearest recorded Aboriginal site is approximately 23km northeast of the Project Land.

This site is inside of the Shire of Merredin and is called Tagermine Rock ID 5605, a large rock with etched footprints. The site was recorded in 1973. There are no other sites listed on the ACHIS for anywhere in the Shire of Merredin.

The nearest recorded Aboriginal sites to the Project Land are shown in **Appendix 2**.

No Aboriginal heritage surveys are recorded on the ACHIS for the Project Land. However, a heritage survey by Daniel de Gand was undertaken specifically for the Project Land in 2018. De Gand found that there are no Aboriginal sites present and therefore no Aboriginal heritage management considerations exist.

It is worth noting that the area of land proposed for the development of the battery storage facility is highly disturbed with no natural permanent or semi-permanent water sources in proximity. There are also no rocky outcrops suitable for the manufacture of stone tools.

Evidence of past Aboriginal use and occupation is more likely to be found in:

- elevated areas such as hills and mountains.
- areas with sandy and sand-sheet where access and ease of movement is more favourable.
- areas with permanent and semi-permanent water sources.
- areas where economically preferable lithic raw materials (e.g. fine-grained stone) can be sourced; and,
- areas where rock shelters and rock overhangs are located.

These conditions are not found in the Project Land area.

The conclusion of this assessment is that MBBN have satisfied their obligations under the AH Act and no further Aboriginal heritage inquiry is warranted prior to constructing the battery storage project.

Recommendations

It is recommended that Merredin Big Battery Nominee Pty Ltd:

1. Note the contents of this report.
2. Note that under section 17 of the *Aboriginal Heritage Act 1972* it is a criminal offence 'to damage, destroy, alter or conceal an Aboriginal site'.
3. Note that there are no recorded Aboriginal heritage sites in the Project Land and consequently construction of the battery storage facility can commence and will be compliant with the AH Act.
4. Note that there is no potential for unrecorded Aboriginal sites to be present in the Project Land area.

Introduction & Methodology

MBBN is preparing to construct a battery storage facility in Merredin to provide reliability and system strength services to the grid. The battery will also charge during day time hours when the adjacent solar farm is generating and discharge in the evening peak when demand is greatest. The area of land has been used for agricultural purposes for decades and is a highly altered environment.

MBBN has commissioned the author to complete an Aboriginal heritage due diligence assessment prior to finalizing its development design and plans.

The methodology for this assessment included:

- A search of the ACHIS and National Native Title Tribunal (NNTT) databases,
- Analysis of archival information relevant to the Project Land and surrounding areas; and
- Consideration of recent aerial imagery of the Project Land and the immediate surrounds.

Regulatory Framework

In July 2023, the *Aboriginal Cultural Heritage Act 2021* was fully enacted. However, in early August 2023 the State Government announced plans to repeal the legislation and revert to an amended version of the AH Act 1972. The repeal of the ACH Act and the reinstatement of the AH Act was completed on 17 November 2023.

The AH Act protects all Aboriginal heritage sites of significance whether the sites are registered or not, and whether they are known or unknown. Section 5 defines the places the Act protects. The legislative regime is expansive as it protects both cultural material places and sacred sites of importance and significance to Aboriginal people.

Part 2 – Application and traditional use

Section 5 of the AH Act applies to:

- (a) Any place of importance and significance where persons of Aboriginal descent have, or appeared to have, left any object, natural or artificial, used for, or made or adapted for use for, any purpose connected with traditional cultural life of the Aboriginal people, past or present;
- (b) Any sacred, ritual, or ceremonial site, which is of importance and special significance to persons of Aboriginal descent;

- (c) Any place which, in the opinion of the Committee, is or was associated with the Aboriginal people and which is of historical, anthropological, archaeological or ethnographical interest and should be preserved because of its importance and significance to the cultural heritage of the State; and
- (d) Any place where objects to which this Act applies are traditionally stored, or to which, under the provisions of this Act, such objects have been taken or remove.

Section 6 of the AH Act protects Aboriginal objects.

Part 4 – Protection of Aboriginal sites

Section 17 of the AH Act provides that it is a criminal offence to excavate, destroy, damage, conceal or in any way alter any Aboriginal site. Penalties include fines up to \$100,000 and or 2 years imprisonment for a breach of section 17.

Section 18 of the AH Act provides the only means whereby a landowner can use land where an Aboriginal site might exist, and where a site can be altered or damaged in any way without the activity being an offence. Amendments to section 18 include providing appeal rights to Aboriginal parties aggrieved by a decision of the Minister.

Part 5 – Aboriginal Cultural Heritage Committee

Section 28 provides for the establishment of the Aboriginal Cultural Heritage Committee (ACHC).

Section 38 provides for a Register of Aboriginal Places and Objects.

Section 39 prescribes the functions of the Aboriginal Cultural Heritage Committee (ACHC) to evaluate on behalf of the community the importance of places and objects alleged to be associated with Aboriginal persons and to recommend to the Minister places and objects which, in the opinion of the ACHC, are, or have been, of special significance to persons of Aboriginal descent and should be preserved. Associated sacred beliefs, and ritual or ceremonial usage, in so far as such matters can be ascertained, are regarded as the primary considerations in the evaluation of any place or objects for the purposes of this Act.

Part 6 – Enforcement

Section 62 provides that it is a defence if the charged person did not know and could not reasonably be expected to have known, that the place or object to which the charge relates was a place or object to which the Act applies.

Aboriginal Site Types

The following are the main site types associated with the DPLH Register of Aboriginal Sites.

Artefacts

An artefact site is a place where human activity is identifiable by the presence of a portable object(s) (e.g. stone, bone, shell) utilized or modified by Aboriginal people in relation to traditional cultural life past or present.

Artefact Scatters / Shell Scatter / Midden

These sites are concentrations of cultural material associated with a wide range of activities, such as food processing, tool manufacture and seasonal camping. These sites can be small, localized scatters around single stone reduction episodes, or larger, higher density scatters containing hundreds or perhaps thousands of artefacts or shells over a large area.

Ceremonial

A place set aside for a formal act or series of acts prescribed by ritual, belief in a mythological manifestation, religious belief or observance, protocol or convention that is connected with the traditional cultural life of Aboriginal people past or present.

Mythological

A place that is connected to the spirit ancestors in their various manifestations of the 'Dreamtime', and which continues to be important and of special significance to persons of Aboriginal descent.

Engraving

A motif (either figurative or non-figurative) on a rock surface produced by percussion or abrasion. Engravings are also often referred to as petroglyphs.

Grinding patches/Grooves

A place where grinding patches or grooves can be found. Grinding patches or grooves are smoothed areas or grooves on rock surfaces (non-portable) that have been created by grinding activity associated with food production such as seed milling, preparation of pigments, tool manufacture and/or maintenance and ritual.

Landscape Assessment

The possibility of a landscape containing Aboriginal sites will differ between land which has had previous land use, for example intensive land clearing or development, and land which is largely in its natural state or is remote and undisturbed by previous land development.

Similarly, some landforms are more likely than others to serve as an indicator of Aboriginal traditional activity than others. Landscape features which may contain Aboriginal sites and

should be approached with some caution include, but are not limited to: rock outcrops, rock shelters, caves, alluvial terraces, foreshores and coastal dunes, ranges and hills, natural wetlands, waterholes, springs, gnamma holes, rivers, creeks, streams, swamps, hills and mound formations, or areas with potential archaeological deposits.

None of these conditions exist in the Project Land.

Existing Aboriginal heritage information

The DPLH separates Aboriginal heritage sites into three categories: *Aboriginal Cultural Heritage (ACH)*, *ACH Lodged Places*, and *ACH Historic Places*. ACH sites have been assessed by the ACHMC as meeting the threshold tests for registration under sections 5 and 39 of the AH Act. ACH Lodged Places are awaiting a formal assessment and ACH Historic places have been assessed by the ACHMC as not meeting the threshold test to be entered in the Register.

A search of the ACHIS maintained by the DPLH identifies no Aboriginal sites present in the Project Land. The search results are shown in **Figures 1, 2 and 3**. The nearest sites are more than 23km from the project location – see **Appendix 2**. Only one site has been recorded in the Shire of Merredin - Tagermine Rock ID 5605.

Cultural heritage reports for the Project Land

There are no survey reports listed on the ACHIS. An Aboriginal heritage survey was completed by de Gand in July 2018 prior to the installation of the solar panel facility. De Gand conducted pedestrian inspection of the solar farm location and the Project Land. His examination of the land was detailed and suitable for the ground conditions. He found two small granite outcrop area on the fringes of the survey area¹. He concluded that the granites had not been modified or used for a cultural purpose. No artefacts were identified during the survey with de Gand concluding this was because no suitable lithic materials were present.

¹ See de Gand 2018:38

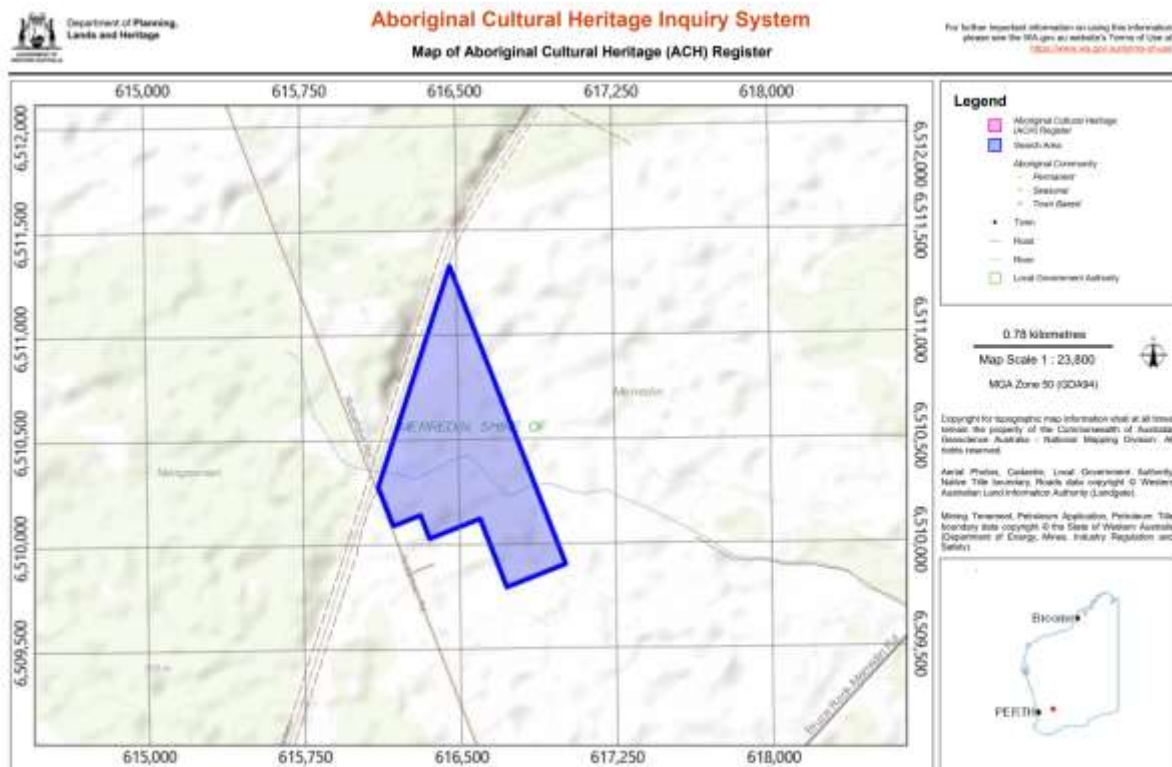


Figure 1. ACH Search Results

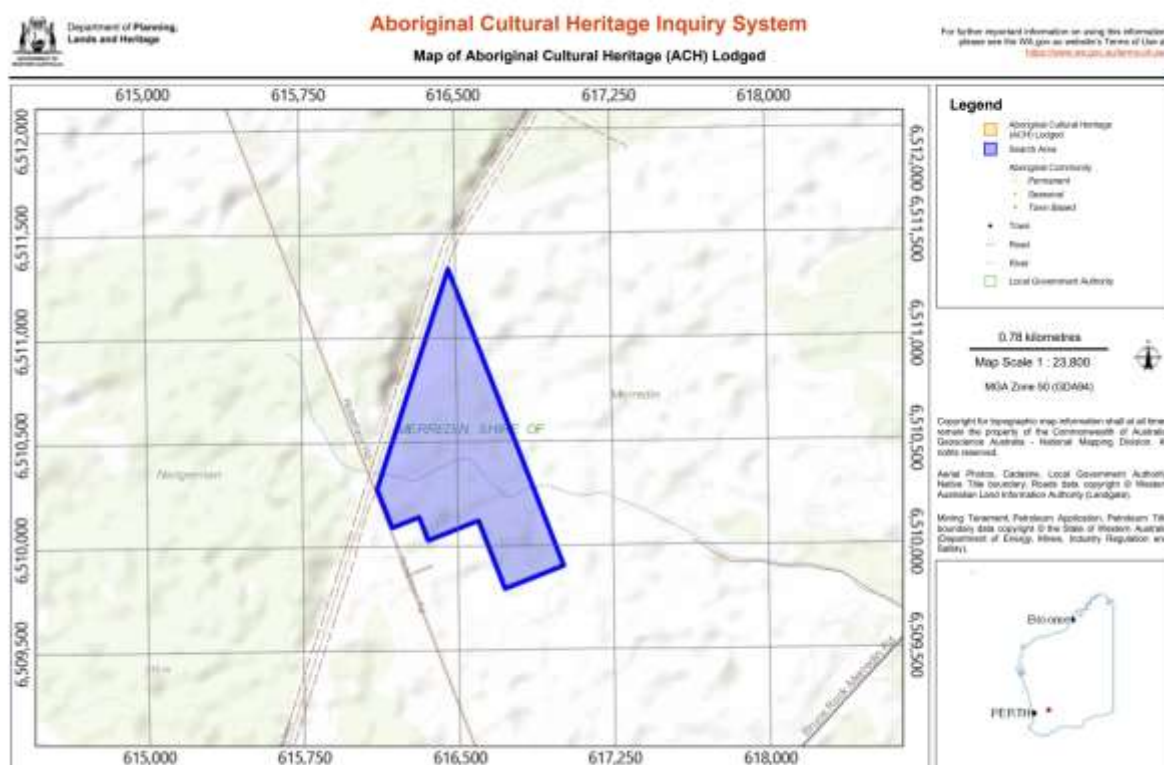


Figure 2. ACH Lodged Search Results



Figure 3. ACH Historic Search Results

The AHIS search also found that no previous Aboriginal heritage surveys have been submitted to the DPLH for Project Land see **Figure 4**. A report of a survey of the Kalgoorlie to Perth fibre optic cable route is listed on the ACHIS. The land subject of this survey is within 3km of the Project Land – see **Figure 4**.

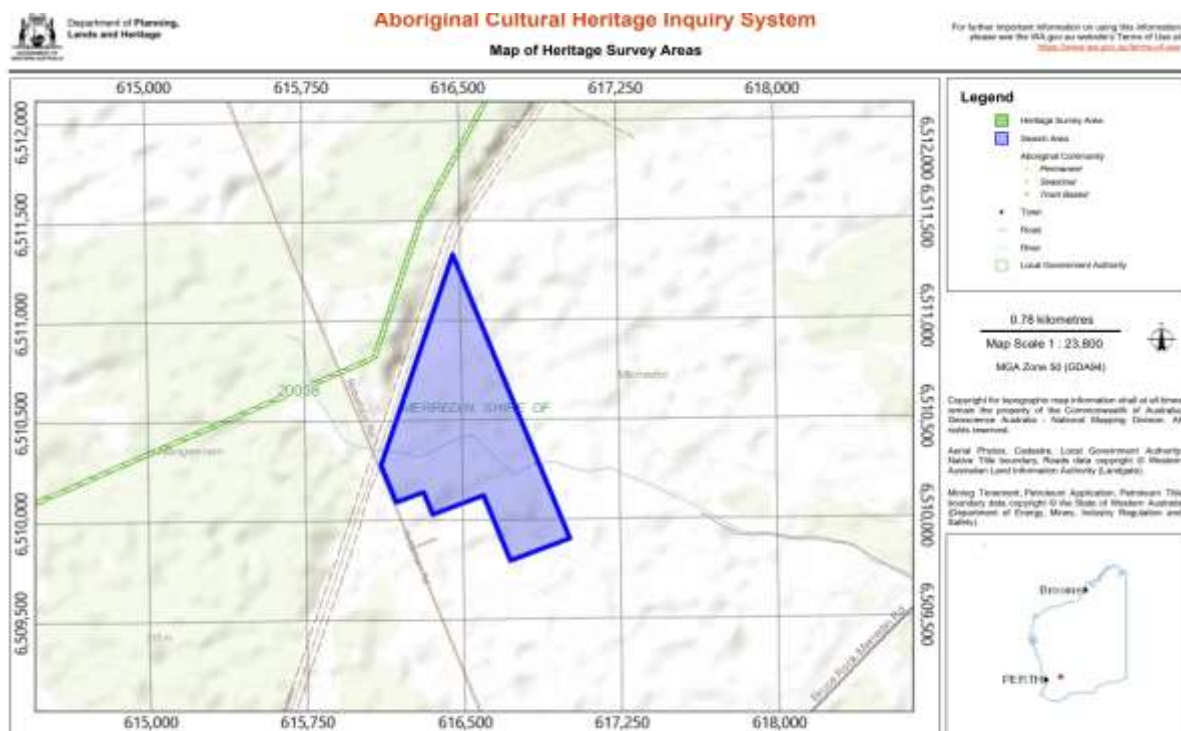


Figure 5. Heritage Survey Search Results for Project Land

Native Title

The Project is within the Ballardong native title area that was settled as part of the Alternative Native Title Agreement with SWALSC in 2015. This agreement settled the Ballardong native title claim (WC2000/007) by way of an ILUA. Five other native title claims were also settled. The six Noongar regions are shown in **Figure 5**.

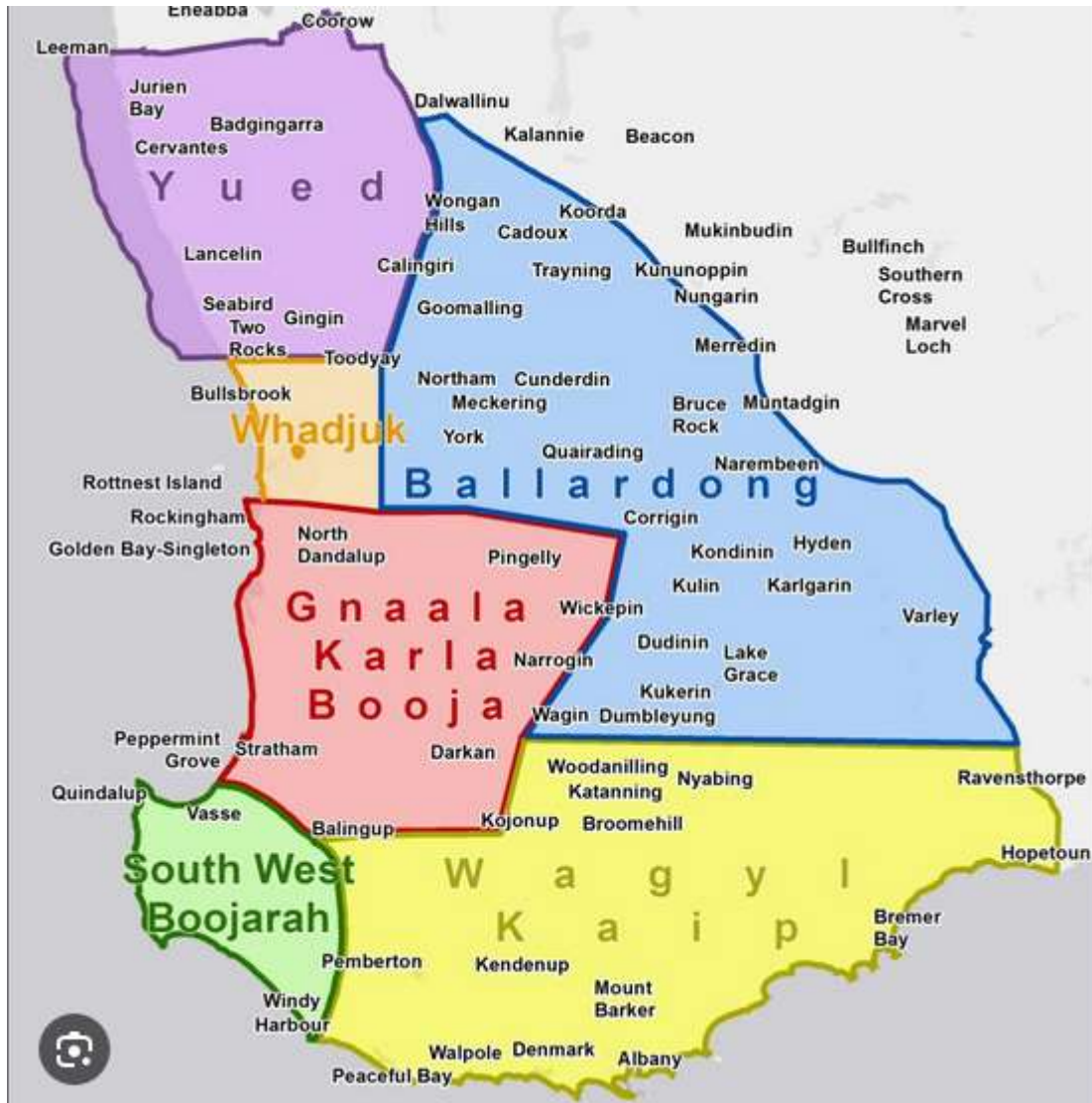


Figure 5. Six Noongar Regions in South West

Ballardong native title interests under the ILUA are being managed by the Ballardong Aboriginal Corporation, who are a newly formed body corporate. The Ballardong area is shown below in **Figure 6**. and covers an area approximately 114,488 km² in size and includes a range of different environment types from dry sclerophyll forest to mallee woodland, agricultural pastureland and peri-arid rangelands.

Research of the NNTT database was carried out by the author to assess whether any heritage sites had been reported during any of the native title processes for the Merredin area. No heritage site records were identified during this research.

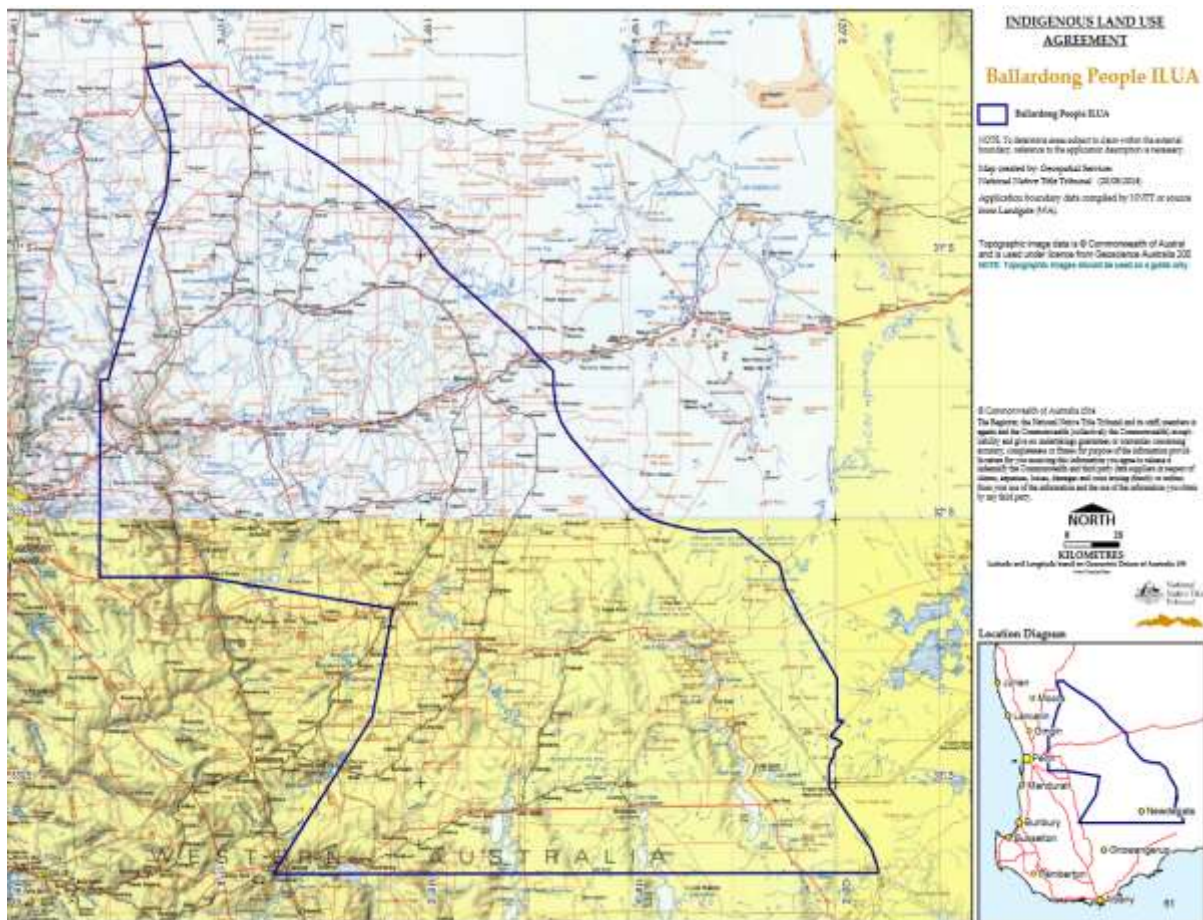


Figure 6. Ballardong Native Title Settlement Area

Bates (1985) records that many Noongar groups, including the Ballardong, followed a matrilineal system of descent, consistent with the rest of the south coast groups, but different to those groups north of Augusta which followed patrilineal descent. The Ballardong and neighbouring groups by all accounts kept a complex and very detailed cosmology revolving around obligations to care for land and maintain the ceremonies and rituals associated with the cosmology, which in turn supported complex social and kinship obligations and networks (see for example Machin 1996, McDonald *et al* 1996).

Archaeological evidence of the activities and lives of Noongars and their ancestors in southwest of the state is rich and diverse, and reflects the wide variation in land, environment and people within the area. Research in rockshelters shows Aboriginal people have lived in the southwest from at least 48,000 years ago (see Turney *et al* 2001), which is not a surprise to Ballardong people. Many Aboriginal sites have been recorded within the Ballardong claim area, 12 of which are entered on the Register of Aboriginal sites in the Kondinin local

government area. Aboriginal sites found within the area include engraving sites, caves, natural formations with mythological associations, scarred trees, camping places and gnamma holes.

Ethnographic Background

Aboriginal spirituality is inextricably linked to land and its creation. Everything in the landscape has meaning and purpose and was created in the Dreamtime by creation beings that roamed the earth. In Noongar mythology the Waugal is central to beliefs and customs. The Waugal is a snake or rainbow serpent recognised as the giver of life and maintains all freshwater sources. In Noongar beliefs it is the Waugal that made Noongar people the custodians of the land.

Noongar people believe that the Waugal resides in all waterways, pools, springs and rock holes. Customary rituals must be performed when approaching these types of water sources. These types of customary rituals are performed by Noongar Elders to keep people safe.

Discussion & Conclusion

The AH Act protects all Aboriginal sites whether they have been recorded or not. It is a criminal offence to damage, destroy, alter, or conceal any Aboriginal site in WA. Penalties for breaching section 17 of the AH Act include fines and imprisonment. It is therefore important that all land users consider the potential impacts to Aboriginal heritage before embarking upon their chosen land use.

This assessment reviewed existing Aboriginal cultural heritage and other information from a variety of sources including the ACHIS and a report of a heritage survey undertaken over the Project Land in 2018, aerial imagery, and consideration of the previous land uses. No field inspections were conducted for this assessment.

The search of the ACHIS found that there are no recorded Aboriginal sites in the Project Land. This finding is confirmed by the field work undertaken by de Gand in 2018, who undertook a thorough field inspection of the Project Land and concluded that no Aboriginal sites are present. He also confirmed that there are no natural water sources or suitable lithic materials to manufacture stone tools. The area of land is flat with no breakaways or rock-shelters. The lack of water, suitable lithic materials, and shelter, explains why there are no Aboriginal sites in the Project Land.

This author concludes that there is no risk of the proposed battery storage development causing unauthorized impacts to Aboriginal heritage sites in the Project Land. This conclusion is based on there being no Aboriginal sites recorded on the ACHIS, the unequivocal findings

from the de Gand report (2018), and the lack of water and suitable lithic material for stone tool manufacture in the Project Land.

No further Aboriginal heritage due diligence is required by MBBN. MBBN can proceed with the construction of the proposed battery storage project and will be in full compliance with the requirements of the AH Act.

Recommendations

It is recommended that Merredin Big Battery Nominee Pty Ltd:

1. Note the contents of this report.
2. Note that under section 17 of the *Aboriginal Heritage Act 1972* it is a criminal offence 'to damage, destroy, alter or conceal an Aboriginal site'.
3. Note that there are no recorded Aboriginal heritage sites in the Project Land and consequently construction of the battery storage facility can commence and will be compliant with the AH Act.
4. Note that there is no potential for unrecorded Aboriginal sites to be present in the Project Land area.

References

Legislation

Aboriginal Heritage Act 1972 (WA)

Publications

Bates, D. 1985 *The Native Tribes of Western Australia*. Edited by I. White. National Library of Australia, Canberra.

Berndt, R. M. 1992 *The World of the First Australians: Aboriginal traditional life, past and present*. Aboriginal Studies Press for the Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra.

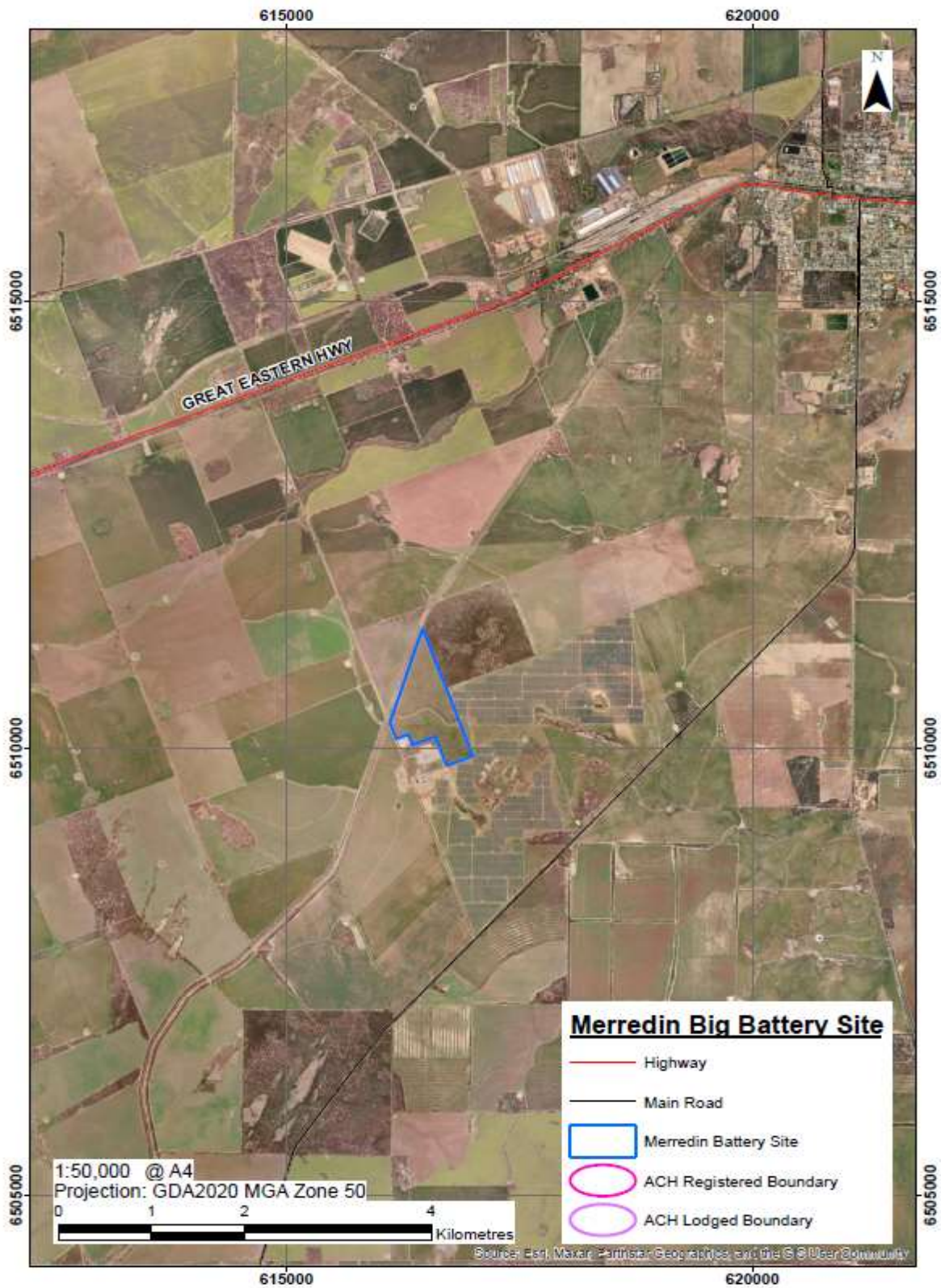
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De Gand, D. 2018 *Report of an Aboriginal Heritage Assessment of the Proposed Merredin Solar Farm Project in Merredin WA*

Tindale, N. 1974 *Aboriginal Tribes in Australia*. University of California Press, Berkley.

Webb, E. 2002 *Final Report on Numerous Cultural Heritage Surveys between Kalgoorlie and Perth to clear a route for fibre optic cable installation*.

Appendix 1. Location of Project Land



Appendix 2. Location of Project Land

