

3.2. PROCUREMENT BY EXCEPTION UNDER SECTION 235 LOCAL GOVERNMENT REGULATION 2012

REPORT AUTHOR(S)	Construction and Commercial Manager
MANAGER	Chief Engineer
DEPARTMENT	Infrastructure and Recovery

RECOMMENDATION

That Council resolve to engage Archaeology Survey Team (AST) under s235 (b) of the *Local Government Regulation 2012* for the provision of Traditional Owner Monitoring Services.

EXECUTIVE SUMMARY

This report seeks Council's endorsement for the engagement of the Archaeology Survey Team (AST) to deliver Traditional Owner monitoring services across the fully recoverable Douglas Shire DRFA Reconstruction Program.

The program comprises over 25 infrastructure restoration packages following Tropical Cyclone Jasper. These works occur within Eastern Kuku Yalanji country and include areas of high cultural sensitivity, such as Alexandra Range, Cape Tribulation–Bloomfield Road, Noahs Range, and China Camp Road.

AST is the only provider formally endorsed by Jabalbina Yalanji Aboriginal Corporation—the Registered Cultural Heritage Body (RCHB) under the *Aboriginal Cultural Heritage Act 2003 (Qld)*. AST holds established relationships with Traditional Owners and possesses the operational capability to coordinate heritage monitoring across multiple concurrent project sites.

Failure to secure appropriately endorsed monitoring services may expose Council to:

- Legal and regulatory non-compliance under cultural heritage legislation;
- Delays to critical infrastructure restoration works;
- Financial risk, including the potential loss of Queensland Reconstruction Authority (QRA) funding eligibility; and
- Reputational harm and breakdown of Traditional Owner relationships.

It is therefore recommended that Council engage AST under Section 235(b) of the *Local Government Regulation 2012 (QLD)* due to the specialised and culturally sensitive nature of the services it would be impractical or disadvantageous to invite quotes or tenders.

This approach ensures continued compliance, program continuity, and delivery of DRFA milestones within legislated and funding timeframes.

BACKGROUND

When undertaking projects, the Douglas Shire Council is legally obligated to ensure compliance with the *Aboriginal Cultural Heritage Act 2003 (Qld)* and the *Torres Strait Islander Cultural Heritage Act 2003 (Qld)*. These Acts require all proponents—including local

governments—to take all reasonable and practicable measures to avoid harm to Aboriginal and Torres Strait Islander cultural heritage during any ground disturbance activity.

These compliance obligations include:

- Engaging appropriate Traditional Owner (TO) groups to undertake cultural heritage monitoring;
- Respecting established cultural protocols, relationships, and Country-specific knowledge;
- Applying a precautionary, risk-based approach in areas with known or likely heritage values—even where sites are unmapped or unregistered.
- Failure to meet these obligations may result in:
 - Immediate project delays or work stoppages;
 - Legal enforcement or regulatory action;
 - Reputational harm and loss of community trust; and
 - Ineligibility for reimbursement under DRFA, where compliance with all legislative conditions is a requirement.

Jabalbina Yalanji Aboriginal Corporation is the Registered Cultural Heritage Body (RCHB), Registered Native Title Body Corporate (RNTBC), and land trust representing the Eastern Kuku Yalanji People. It was established following the Eastern Kuku Yalanji native title determination in 2007, which recognised the group’s traditional rights over more than 126,000 hectares of Country, extending from Port Douglas to Cooktown, including parts of the Wet Tropics and Daintree Rainforest.

Jabalbina has the statutory authority to:

- Act on behalf of the Traditional Owners in all matters relating to cultural heritage protection and compliance under the *Aboriginal Cultural Heritage Act 2003*;
- Facilitate Cultural Heritage Management Plans (CHMPs) and site monitoring agreements;
- Nominate and endorse Traditional Owner monitors for development activities;
- Lead cultural land management, environmental stewardship, and ranger programs on Country.

The organisation plays a central role in ensuring that all proponents—including government agencies—engage appropriately and respectfully with the Eastern Kuku Yalanji People.

Following Tropical Cyclone (TC) Jasper, the Douglas Shire Council is currently delivering in excess of \$165 million Disaster Recovery Funding Arrangements (DRFA) infrastructure reconstruction program (The Program), involving over 25 active packages across unsealed roads, sealed roads, landslips, bridges, spoil sites, and culvert networks.

Key features of The Program include:

- Extensive ground disturbing works in culturally sensitive corridors, including Alexandra Range, Cape Tribulation–Bloomfield Road (CTBR), China Camp, and Noah’s Range;
- High-risk activities requiring clearing, excavation, geotechnical works, bridge replacements, and drainage realignments;
- A compressed delivery window, with multiple contractor mobilisation dates between July and September 2025;
- Concurrent approvals involving Queensland Reconstruction Authority (QRA), Wet Tropics Management Authority (WTMA), Cultural Heritage Management Plans (CHMP’s), State Assessment Referral Agency (SARA), and other regulatory stakeholders.

The Program results in obligations under the *Aboriginal Cultural Heritage Act 2003 (Qld)* and the *Torres Strait Islander Cultural Heritage Act 2003 (Qld)*

COMMENTS

In this instance, the engagement of the Archaeology Survey Team (AST) is proposed based on their unique position as the only provider formally endorsed by Jabalbina Yalanji Aboriginal Corporation, the Registered Cultural Heritage Body (RCHB) for Eastern Kuku Yalanji Country under the *Aboriginal Cultural Heritage Act 2003 (Qld)*.

Jabalbina's endorsement provides AST with the formal authority to coordinate and deliver cultural heritage monitoring across sites where Traditional Owner engagement is a legislative requirement.

AST's services include, but are not limited to:

- Coordination and scheduling of Traditional Owner (TO) monitors endorsed by Jabalbina;
- Cultural heritage briefings, daily sign-in/attendance sheets, and compliance documentation;
- Travel logistics, meals, accommodation, and payment facilitation for TOs;
- On-call response for potential or unexpected cultural finds during excavation or construction;
- Preparation of supporting documentation required to satisfy Queensland Reconstruction Authority (QRA) and DRFA milestone claims;
- Ongoing liaison with Council, Contractors, and Jabalbina to manage site access and community protocols.

Procurement Compliance

Section 235 of the *Local Government Regulation 2012 (Qld)* and Council's Procurement Policy (2025) provides for exemptions to open market procurement:

- Section 235(b): Where a local government resolves that, because of the *specialised or confidential nature* of the services sought, it would be *impractical or disadvantageous* to invite quotes or tenders.

It is proposed to seek exemption under Section 235(b) as AST is the only supplier endorsed by the RCHB (Jabalbina), and no other providers have approval to coordinate TO monitors across the Eastern Kuku Yalanji footprint; The services involve highly sensitive cultural matters, direct engagement with community representatives, and obligations under both State legislation and local land use protocols.

Proceeding to market would result in:

- Immediate project delays due to come constrained construction windows
- Delays through negotiations with a potential alternate supplier and the requirement to be endorsed by Jabalbina.
- Due to the Culturally sensitive nature of the work, that endorsement is likely to take an extended period of time and may not be successful.
- Potentially damage trust and relationships with Eastern Kuku Yalanji Traditional Owners;
- Place QRA and DRFA funding at risk, particularly where heritage monitoring is required for milestone claims and audit trails.

Benefits of AST Engagement

- Certainty in program delivery across more than \$165 million in active DRFA works;
- Confidence in satisfying legal and cultural heritage obligations;
- Ongoing relationships that support community wellbeing and cultural respect;
- Avoidance of risk exposures tied to funding, compliance, and stakeholder confidence.

PROPOSAL

That Council resolve to engage Archaeology Survey Team (AST) under s235 (b) of the *Local Government Regulation 2012* for the provision of Traditional Owner Monitoring Services.

FINANCIAL/RESOURCE IMPLICATIONS

The proposed engagement of AST will be funded from existing DRFA program allocations. Costs are eligible for reimbursement under Queensland Reconstruction Authority (QRA) guidelines, provided cultural heritage obligations are met.

Failure to engage an endorsed provider may result in significant financial exposure to the Council, including:

- Loss of QRA reimbursement due to non-compliance with the *Aboriginal Cultural Heritage Act 2003 (Qld)*;
- Contractor delay claims, variation costs, or demobilisation/mobilisation expenses where works are on hold pending the availability of Traditional Owner monitors;
- Inefficient use of internal project and contract management resources, where program sequencing is disrupted;
- Community dissatisfaction due to perceived neglect of cultural obligations or disruption to local access and essential services.

RISK MANAGEMENT IMPLICATIONS

- Proceeding without securing endorsed cultural heritage monitoring presents a material risk of non-compliance with the *Aboriginal Cultural Heritage Act 2003 (Qld)*, potentially triggering legal action, regulatory penalties, or project cessation.
- Engaging unendorsed or alternative providers not formally recognised by the Registered Cultural Heritage Body (RCHB) introduces significant risk in the event of a cultural dispute or site incident, which may not be defensible under DRFA or QRA audit processes.
- Delays in engaging AST may prevent timely site access and disrupt construction sequencing across multiple DRFA packages, resulting in critical path delays and heightened contractor variation claims.
- Failure to uphold established monitoring arrangements may damage Council's long-standing relationships with the Eastern Kuku Yalanji People, undermining trust and compromising future cooperation on culturally sensitive projects.
- A lack of cultural heritage oversight increases the risk of unintentional harm to sites of cultural significance, exposing Council to reputational harm and potential media scrutiny.
- Inadequate risk controls in this area could compromise DRFA milestone delivery and eligibility for reimbursement, particularly where cultural heritage compliance is a condition of funding.

SUSTAINABILITY IMPLICATIONS

- Economic:** Continued engagement of AST supports uninterrupted delivery of the \$165 million+ DRFA reconstruction program, protecting local employment, contractor certainty, and regional economic recovery efforts following TC Jasper.
- Environmental:** AST's services include early identification of culturally and environmentally sensitive sites, reducing the likelihood of unintentional disturbance and supporting Council's broader environmental stewardship responsibilities.
- Social:** Partnering with AST reinforces Council's commitment to reconciliation, cultural respect, and inclusive project delivery by ensuring Traditional Owners are actively involved in the protection of their heritage. This fosters stronger relationships with the Eastern Kuku Yalanji People and the broader community.

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

Corporate Plan 2025-2030 Initiatives:

Theme 1 - Liveability

To deliver community activities to promote safe, healthy, inclusive and socially engaged communities with an environmental conscious.

1.3 - Be culturally sensitive, inclusive and improve Council's cultural competency.

Theme 3 - Service Delivery

We deliver Council services effectively and efficiently to meet community expectations, focusing on the wellbeing of both the community and our employees.

3.4 - Ensure capital and maintenance programs for infrastructure/open spaces are prioritised and delivered on time.

3.7 - Identify and manage risk.

Theme 4 - Recovery and Resilience

To partner with community to build resilience against natural disasters creating a strong sense of social capital.

4.1 - Support our community's journey of recovery and rebuilding after natural disasters.

4.2 - Deliver infrastructure asset restoration and betterment.

4.3 - Foster collaboration, sustainability, and a strong sense of belonging.

4.5 - Undertake effective disaster management (planning, preparedness, response, recovery).

Operational Plan 2025-2026 Actions:

Legislative requirement.

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The

implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

Advocate	Council makes representation on behalf of the community on important issues, funding opportunities, projects and programs. Council will use its influence to seek the best outcomes for the community.
Builder/Owner	Council makes a significant investment every year in the infrastructure that underpins the Shire through its capital works program. Council will manage its assets with appropriate frameworks and deliver its projects through robust project management.
Facilitator	Council often brings stakeholders together on important issues, projects or for service delivery. In this role, Council can act as a mediator, connector, collaborator or initiator.

CONSULTATION

Internal: Chief Financial Officer
Chief Executive Officer
Chief Engineer Infrastructure and Recovery

External: Nil

COMMUNITY ENGAGEMENT

Nil

ATTACHMENTS

Nil