EXECUTIVE SUMMARY:

At the May 18, 2010 meeting of the Council of the Corporation of the City of Kingston, an amendment to the City’s Legal Deposit By-Law for Archaeological Assessments (Clause 1, sub clause 3 of Report 72 of the Planning Committee) was deferred in order that the revised wording for Clauses 2 and 5 of By-Law No. 2006-132 be presented to Council. This report outlines the requested information, providing a discussion of the Legal Deposit By-Law for Archaeological Assessments (By-Law No. 2006-132) and providing the recommended revisions. A copy of the draft By-Law is appended hereto as Exhibit ‘B.’

RECOMMENDATIONS:

1. That By-Law 2006-132 “A By-Law To Establish A Legal Deposit For Archaeological Assessments Carried Out Within The City Of Kingston”, be amended as follows:

   a. That Clause 2 be amended to read as follows:

2. That unless contrary to explicit instructions from a higher level of government, all persons who conduct an archaeological assessment within the boundaries of the City of Kingston shall provide to the City of Kingston a copy (electronic or hard copy) of any final report accepted by the Ministry.

   b. That a new Clause 5 be added as follows:

5. Failure to comply with this By-Law will result in the offending firm becoming ineligible for any City of Kingston Purchase Order, Request for Proposal or Tender until such time as all final archaeological assessments prepared by the firm and accepted by the Ministry are received by the City.
AUTHORIZING SIGNATURES:

<table>
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<tr>
<th>ORIGINAL SIGNED BY COMMISSIONER</th>
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<tr>
<td>Cynthia Beach, P.Eng, MCIP, RPP, Commissioner, Sustainability &amp; Growth Group</td>
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<th>ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER</th>
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<td>Gerard Hunt, Chief Administrative Officer</td>
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CONSULTATION WITH THE FOLLOWING COMMISSIONERS:

<table>
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<tr>
<th>Commissioners</th>
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<tr>
<td>Terry Willing, Community Services</td>
<td>N/R</td>
</tr>
<tr>
<td>Denis Leger, Transportation, Properties &amp; Emergency Services</td>
<td>N/R</td>
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<tr>
<td>Jim Keech, President and CEO, Utilities Kingston</td>
<td>N/R</td>
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*(N/R indicates consultation not required)*

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OPTIONS/DISCUSSION:
At the May 18, 2010 meeting of the Council of the Corporation of The City of Kingston, an amendment to the City’s Legal Deposit By-Law for Archaeological Assessments (Clause 1, sub clause 3 of Report 72 of the Planning Committee) was deferred in order that the revised wording for Clauses 2 and 5 of By-Law No. 2006-132 be presented to Council. This report outlines the requested information, providing a discussion of the Legal Deposit By-Law for Archaeological Assessments (By-Law No. 2006-132) and providing the recommended revisions for Council’s consideration.

While the City of Kingston has a Data Sharing Agreement for archaeological sites with the Ministry of Tourism and Culture, this agreement is insufficient to enable staff to make appropriate and informed recommendations concerning archaeological resources. The information received from the Ministry of Tourism and Culture under the Data Sharing Agreement only relates to registered archaeological sites, not properties where the assessment did not find any archaeological potential or sites which found materials but which were not registered. Additionally, based on past experience and comments received from the Ministry of Tourism and Culture on previous requests to receive copies of specific archaeological assessments undertaken in the City, the City was advised as follows:

- Archaeological assessments reports will only be released if the consulting firm gives its permission;
- The Ministry would charge for the reports which are only provided in hard copy; and
- These reports would not include any associated mapping due to confidentiality requirements.

In response, the City created a Legal Deposit By-Law for Archaeological Assessments which was passed by Council as By-Law 2006-132 on May 23, 2006. This By-Law was created to enable the City to address its responsibilities to address archaeological issues under the Planning Act, the Ontario Heritage Act, the Environmental Assessment Act, the Cemeteries Act, and the Canadian Environmental Assessment Act. A ‘Legal Deposit’ is an internationally recognized means of building a collection of important materials and has also been introduced in several other Ontario municipalities. The By-Law requires that a copy of all final archaeological assessment reports for archaeological assessments undertaken within the City of Kingston be forwarded to the Planning and Development Department, which ensures that any archaeological database/mapping is updated. The text of the existing By-Law has been attached as Exhibit A. This ‘Legal Deposit for Archaeological Assessments’ has been used by City of Kingston staff for the last four years to not only identify new sites, but also to exclude areas from requiring an archaeological assessment and to recommend clear actions to allow the conservation of the City’s cultural heritage resources.

In Report to Planning Committee No. PC-10-041, a gap within the existing By-Law was noted. While most firms have voluntarily complied with the By-Law, there is currently no mechanism to ensure that the City receives the assessments. In consultation with members of the archaeological community, the possibility of tying compliance with the eligibility for City contracts was raised. A new clause to this end was recommended for inclusion in the City’s Legal Deposit By-Law for Archaeological Assessments. Following questions from Council, the clause was amended for clarity to indicate that the City requires a copy of the final report that had been reviewed and accepted by the Ministry of Tourism and Culture. The new proposed clause reads as follows:

“5. Failure to comply with this By-Law will result in the offending firm becoming ineligible for any City of Kingston Purchase Order, Request for Proposal, or Tender until such time as all final archaeological assessments prepared by the firm and accepted by the Ministry are received by the City.”

In addition, changes were identified and recommended for Clause 2 of the By-Law to state that reports could be submitted in either hard copy or electronic formats and to recognize that a higher level of government could, in retaining a firm, give express instructions that the archaeological assessments be not released. To reflect these changes, the following revised Clause 2 is proposed:
“2. That unless contrary to explicit instructions from a higher level of government, all persons who conduct an archaeological assessment within the boundaries of the City of Kingston shall provide to the City of Kingston a copy (electronic or hard copy) of any final report accepted by the Ministry.”

These changes will enable staff to better implement the Archaeological Master Plan:

EXISTING POLICY/BY LAW:
Canadian Environmental Assessment Act 1992, c. 37 (Canada)
Environmental Assessment Act, R.S.O. 1990, c. E.18 (Ontario)
Aggregate Resources Act, R.S.O. 1990, c. A.8 (Ontario)
Cemeteries Act (Revised), R.S.O. 1990, c. C.4 (Ontario)
Municipal Act, 2001, R.S.O. 2001, c. 25 (Ontario)
Provincial Policy Statement, 2005 (Ontario)
Ontario Heritage Act, R.S.O. 1990, c. O.18. (Ontario)
Planning Act, R.S.O. 1990, C. P.13 (Ontario)
By-Law 2006-132 “A By-Law To Establish A Legal Deposit For Archaeological Assessments Carried Out Within The City Of Kingston” (Kingston)

NOTICE PROVISIONS:
N/A

ACCESSIBILITY CONSIDERATIONS:
Alternative formats of this report and Exhibits are available on request.

FINANCIAL CONSIDERATIONS:
N/A

CONTACTS:
George Wallace, Director, Planning and Development Department 613-546-4291 ext. 3252
Marcus Létourneau, Heritage Planner, Planning and Development Department 613-546-4291 ext. 1386

OTHER CITY OF KINGSTON STAFF CONSULTED:
John Bolognone, Deputy City Clerk, Corporate Administrative Team

EXHIBITS ATTACHED:
Exhibit ‘A’ – Text of By-Law 2006-132 “A By-Law to Establish a Legal Deposit For Archaeological Assessments carried out within the City of Kingston” (As Amended)
Exhibit ‘B’ – By-Law 2010-XXXX “A By-Law to Amend By-Law 2006-132 ‘A By-Law to Establish a Legal Deposit For Archaeological Assessments carried out within the City of Kingston’ (As Amended)”
EXHIBIT A

Existing Text of BY-LAW NO. 2006-132

A BY-LAW TO ESTABLISH A LEGAL DEPOSIT FOR ARCHAEOLOGICAL ASSESSMENTS CARRIED OUT WITHIN THE CITY OF KINGSTON

PASSED: May 23, 2006

WHEREAS the City of Kingston values its cultural heritage;

AND WHEREAS the Provincial Policy Statement, 2005 and the Ontario Heritage Act, R.S.O. 1990, c. O.18 necessitates the protection of recognized or potential archaeological resources;

AND WHEREAS Community Development Services, to make diligent decisions concerning archaeological resources, requires a mechanism to develop a comprehensive database of all known existing archaeological sites;

AND WHEREAS new archaeological sites, including find spots and negative results, are not always registered with the Province of Ontario;

AND WHEREAS a ‘Legal Deposit’ is an internationally recognized means of building a collection of important written materials;

AND WHEREAS this legal mechanism has been introduced in several other Ontario municipalities to facilitate the creation of archaeological databases;

AND WHEREAS, it is necessary that Community Development Services Staff be made aware of all archaeological results, including find spots and negative results to ensure that planning decisions are consistent with the Provincial Policy Statement, 2005 and the requirements of the Ontario Heritage Act;

NOW THEREFORE the Council of the Corporation of the City of Kingston enacts as follows:

1. That the City of Kingston establish a legal deposit requirement for all archaeological assessments carried out within the boundaries of the City of Kingston.

2. That all persons who conduct an archaeology assessment within the boundaries of the City of Kingston shall provide to the City of Kingston with a copy of any final report produced.
3. That this legal deposit be located with the Heritage Planner in Community Development Services.

4. That such materials are used to update any archaeological mapping and data and may be used in the development review process.

GIVEN THREE READINGS AND FINALLY PASSED:

CITY CLERK

MAYOR
BY-LAW NO. 2010-XXX

A BY-LAW TO AMEND BY-LAW NO. 2006-132 “A BY-LAW TO ESTABLISH A LEGAL DEPOSIT FOR ARCHAEOLOGICAL ASSESSMENTS CARRIED OUT WITHIN THE CITY OF KINGSTON” (As Amended)

PASSED:

WHEREAS the City of Kingston values its cultural heritage and enacted By-Law No. 2006-132 to require archaeological consultant or firm to deposit with the City of Kingston copies of any archaeological assessment report for an archaeological assessment undertaken within the City of Kingston;

AND WHEREAS, it is necessary that Planning and Development Department Staff be made aware of all archaeological results, including find spots and negative results to ensure that planning decisions are consistent with the Provincial Policy Statement, 2005 and the requirements of the Ontario Heritage Act;

AND WHEREAS, the existing By-Law does not have any mechanism for enforcement to ensure compliance;

NOW THEREFORE the Council of The Corporation of the City of Kingston enacts as follows:

1. That Clause 2 of By-Law No. 2006-132 be amended as follows:

   2. That unless contrary to explicit instructions from a higher level of government, all persons who conduct an archaeological assessment within the boundaries of the City of Kingston shall provide to the City of Kingston a copy (electronic or hard copy) of any final report accepted by the Ministry.

2. That the following new clause be added into By-Law No. 2006-132:

   5. Failure to comply with this By-Law will result in the offending firm becoming ineligible for any City of Kingston Purchase Order, Request for Proposal, or Tender until such time as all required archaeological assessments are received by the City.

GIVEN THREE READINGS AND FINALLY PASSED

CITY CLERK 

MAYOR