Appendix A - Bill 37 changes to *The City of Winnipeg Charter Act*

	Description	Note
1	Consultation with minister and region	No concerns
2	Hearings on Plan Winnipeg by-laws	No concerns
3	Secondary Plan adoption and amendment process	No concerns
4	Secondary plan not a pre-condition	Concerns
5	Interpretation: when are objections sufficient	Monitor
6	Alterations to a zoning by-law	No concerns
7	Costs on appeal re failing to proceed	Concerns
8	Appeals to Municipal Board	Concerns
9	Appeals concerning failing to proceed	Concerns

1 Consultation with minister and region

The City of Winnipeg will now be required to consult with the Capital Planning Region, the minister and any other entity designated by the minister, before commencing a review of Plan Winnipeg.

New Section(s)

226(3.0.1) Consultation with minister and region
On beginning a review of Plan Winnipeg, council must consult with the Capital Planning Region, the minister and any other person or organization designated by the minister.

Implications for the City of Winnipeg

Consultation with a number of entities will be specifically required, as determined by the minister, at the outset of each Plan Winnipeg review (every 5 years). Consultation would likely occur with these entities regardless of this new requirement however, the wording of this new section requires that such consultation occur at the beginning of the Plan Winnipeg review process.

City of Winnipeg Position

The City of Winnipeg has no concerns with this Section.

2 Hearings on Plan Winnipeg by-laws

The Executive Policy Committee will no longer be required to act as the hearing body for Plan Winnipeg By-laws.

New Section(s)

Hearings on Plan Winnipeg by-laws

227(1) After council gives first reading to a proposed Plan Winnipeg by-law, and before second reading,
(a) the city must give notice of a hearing by ~~the executive policy~~ *a designated* committee of council respecting the proposed by-law; and
(b) the ~~executive policy~~ *designated* committee must conduct a hearing and submit its report respecting the proposed by-law to council

Sections **227(2)**, **228(1)**, **228(2)** and **230(1)** are also amended by deleting “executive policy committee” and replacing with “designated committee”.

Implications for the City of Winnipeg

Council will need to determine the hearing body for Plan Winnipeg hearings.

City of Winnipeg Position

The City of Winnipeg has no concerns with this new Section.

3 Secondary Plan adoption and amendment process	
The City of Winnipeg will no longer be required to provide first reading to a proposed secondary plan by-law or an amendment to a secondary plan by-law prior to the public hearing.	
New Section(s)	
Existing	~~**Hearing on secondary plan by-law**~~ ~~**234(3)**After council gives first reading to a proposed secondary plan by-law,~~ ~~(a) the city must give notice of a hearing by a committee of council respecting the proposed by-law; and~~ ~~(b) the committee of council designated for the purpose must conduct a hearing respecting the proposed by-law and submit its report respecting the proposed by-law to council.~~
New	**Adoption and amendment process** **234(3)** A secondary plan by-law and an amendment to a secondary plan by-law are subject to the same approval process required for a zoning by-law or an amendment to a zoning by-law under this Part.
Implications for the City of Winnipeg	
With this change, the City of Winnipeg must now hold a public hearing prior to first reading of a proposed secondary plan by-law or amendment. It is interesting to note that, under the revised *Planning Act*, other municipalities will have the option of holding a public hearing before or after first reading.	
City of Winnipeg Position	
The City of Winnipeg has no concerns with this amended section.	

4 Secondary plan not a pre-condition

Secondary Plans, including *Complete Communities*, can no longer contain policies which require that a secondary plan be prepared for a new area in advance of development applications being accepted.

New Section(s)

Secondary plan not a pre-condition
235.1 Subject to Section 246, no decision on an application made under this Part may be delayed, and no permit may be withheld, pending the preparation or adoption of a secondary plan or an amendment to a secondary plan.

Implications for the City of Winnipeg

This section will reduce secondary plans to Council-endorsed concept plans and Complete Communities to a guideline document.

In the draft CCDS 2.0, the following areas require a secondary plan prior to or in concurrence with a development application:

A. Major Redevelopment Sites
B. Public Major Open Spaces
C. New Communities precincts
D. Employment Redevelopment Areas

With adoption of this Clause, the City of Winnipeg would be obligated to accept and process Development Applications and/or Permit Applications prior to the preparation or adoption of a secondary plan, which is to set up the framework for orderly development prior to the submission of Development Applications and/or Permit Applications. This would defeat the purpose of a secondary plan.

It is also important to note that this Section is unique to the City of Winnipeg as a similar provision was not included in *The Planning Act*.

City of Winnipeg Position

The City of Winnipeg strongly recommends that Section 235.1 be deleted.

5 New Provision for Objections

Winnipeg residents now have the ability to appeal a Council decision on the first reading of a proposed amendment to a zoning or secondary plan by-law to the Municipal Board. This section brings *The City of Winnipeg Charter* into alignment with *The Planning Act.*

New Section(s)

Interpretation: when are objections sufficient?

236.1(1) To be sufficient for the purpose of this section,

(a) in the case of a proposed zoning by-law, objections must be received from at least 25 voters; or

(b) in the case of a proposed by-law that amends a zoning by-law, objections must be received from at least

  (i) 25 voters, or

  (ii) 50% of the total number of registered owners of land located within 100 metres of the real property affected by the by-law.

Effect of objections

236.1(5) After receiving a report from the designated committee of council, council may,

(a) if there are not sufficient objections to the zoning by-law at the hearing,

  (i) proceed to adopt the by-law without further notice, or

  (ii) reject the by-law either in whole or in part; or

(b) if there are sufficient objections,

  (i) proceed to give first reading to the by-law, or

  (ii) reject the by-law either in whole or in part.

Referral to Municipal Board

236.1(7) If the city receives sufficient objections within 14 days after the day the notice is given, the city must, before council gives second reading to the proposed by-law, refer the proposed by-law to The Municipal Board.

Implications for the City of Winnipeg

The City Clerk's Office will need to confirm whether *a sufficient number of objections* have been received within the given time period (14 days) and if so, refer the matter to Municipal Board before second reading.

The threshold of 25 voters is more likely to be exceeded within the City than in other municipalities, resulting in an inordinate number of proposals in the City of Winnipeg being sent to the Municipal Board.

Public Service resources will be required to prepare presentations and attend Municipal Board hearings.

City of Winnipeg Position

The City of Winnipeg will closely monitor the number of objections and share any concerns as part of the minister's comprehensive review which is to occur within three years of *The Act* coming into force as per new section 89(1).

6 Alteration to a zoning by-law

An additional public hearing will be required when an alteration is made to a proposed by-law at first or second reading.

New Section(s)

Alteration to zoning by-law
236.1(3) If, after the hearing, council proposes to alter the by-law, a second hearing must be held in accordance with subsection (2) to receive representations on the alterations to the by-law.

No hearing for minor alteration
236.1(4) A second hearing is not required if the alteration is a minor one that does not change the intent of the by-law.

Implications for the City of Winnipeg

It will be up to the City to determine what constitutes a ‘minor alteration’, as well as the process to be followed if an alteration is not considered minor.

City of Winnipeg Position

The City of Winnipeg has no concerns with this section.

7 Costs on appeal re failing to proceed

The Municipal Board may require the City to pay for costs if they deem there was an unreasonable delay by the city.

New Section(s)

Costs on appeal re failing to proceed

282.2(4) If, in respect of an appeal under this section, The Municipal Board is satisfied that there was an unreasonable delay by the city in dealing with the appellant's application, the Board may make an order requiring the city to pay some or all of

(a) the costs incurred by the Board in hearing the appeal; and

(b) the appellant's reasonable costs related to the appeal.

Implications for the City of Winnipeg

Recommendation 2 of the PZP Report stated that, should the Municipal Board's mandate be enhanced to allow it to hear a wide range of planning, zoning and permitting appeals across the entire province, the Municipal Board should "operate on a cost-recovery basis, funded through costs assessed against the unsuccessful party, which follows best practice."

Bill 37 includes a requirement for the City to pay costs incurred by the Board and the appellants reasonable costs but there is no provision for an appellant being required to pay for costs.

The Bill or subsequent regulation must include guidelines that define what constitutes "reasonable costs" as the City could incur significant costs similar to those incurred as part of the expropriation process.

City of Winnipeg Position

The City of Winnipeg requests that this section be deleted, and that the Province of Manitoba fund the Municipal Board. With that said, should the Municipal Board operate on a cost-recovery basis as envisioned in the PZP Report, the Municipal Board costs related to the appeal should be assessed against the unsuccessful party.

The City of Winnipeg further recommends that it should not be responsible for an appellant's costs; if said provision is not deleted, guidelines with respect to reasonable costs should be included in the bill or subsequent regulation.

8 Appeals to Municipal Board

An applicant may appeal refusals and rejections to the Municipal Board

New Section(s)

Appeal of decisions

282.1(1) The owner of real property to which an application under subsection 275(1) relates may appeal the following decisions to The Municipal Board:

(a) the refusal or rejection of

- (i) an application respecting a secondary plan by-law or a zoning by-law,
- (ii) an application to approve a plan of subdivision,
- (iii) an application for a conditional use;

(b) the refusal of an application to amend a development agreement;

(c) the refusal to consent to registration or filing of a conveyance;

(d) a decision to impose conditions on the approval of an application referred to in clauses (a) or (b);

(e) a decision to reject an application for a permit for a proposed development as not conforming to the regional planning by-law of the Capital Planning Region, a Plan Winnipeg by-law or a secondary plan by-law;

(f) a decision of a designated employee that an application is incomplete.

Time limit for appeal

282.1(3) An appeal may be commenced by sending a notice of appeal to The Municipal Board within 30 days after the notice of decision is received.

Implications for the City of Winnipeg

Decisions made by elected City officials can now be overturned by members of a Provincially-appointed board.

Public Service resources will be required to prepare presentations and attend Municipal Board hearings.

As written, Section 282.1(1)(e) appears to give applicants the ability to appeal all conditions placed on applications. In meetings with the Public Service, the Province has indicated that if conditions of approval are consistent with those formally established by Council by By-law or Policy, said conditions would not be subject to appeal.

City of Winnipeg Position

Section 282.1(1) threatens the integrity of the democratic process by allowing the unelected individuals to override the decisions of an elected Council. The City of Winnipeg recommends that Section 282.1(1) be deleted in its entirety.

Should Section 282.1(1) not be deleted, the City of Winnipeg recommends that the legislation be amended to provide an opportunity for the City of Winnipeg to re-visit and make new decisions on applications, based on the findings of the Municipal Board. Criteria should also be provided for the Municipal Board to consider when adjudicating appeals, including whether an application is in compliance or non-compliance with local plans, policies and by-laws.

9 Appeals concerning failing to proceed

Applicant may appeal a development application to the Municipal Board if legislated processing deadlines are not met.

New Section(s)

Appeals concerning failing to proceed

282.2(1) For the following matters that are not decided within the period that is specified, an applicant may consider their application to have been rejected and may appeal the rejection to The Municipal Board under section 282.1:

(a) an application for an amendment to a secondary plan or a zoning by-law within 150 days after the completed application is received by the city;

(b) an application for the approval of a plan of subdivision, within

(i) 60 days after the completed application is received by the city, if council has authorized a designated employee to make a final decision respecting the plan of subdivision, or

(ii) 150 days, in any other case;

(c) an application for the approval of a conditional use within 90 days after the completed application is received by the city;

(d) an application for the approval of an application to amend a development agreement within 90 days after the completed application is received by the city;

(e) an application for consent to registration or filing of a conveyance within 90 days after the completed application is received by the city;

(f) for a development agreement executed under subsection 240(4) or ordered by The Municipal Board under section 282.1 within 90 days after the applicable zoning by-law, plan of subdivision, conditional use or variance being approved by the city or ordered by The Municipal Board;

(g) for a development agreement required under section 240.1.1 within the longer of 90 days after the issuance of the permit or the expiry of the time period that applies under section 246.

Implications for the City of Winnipeg

The City of Winnipeg supports predictable, consistent and transparent timelines for development applications but it is important to note that should Section 282.2(1) be adopted in its current form, the approval of some development applications will in fact take longer. For example, the City will be forced to eliminate concurrent processing of development applications if no provision to extend the timeframes is included in the Legislation or Regulation.

The City will also have to re-consider the process for determining when an application is deemed complete to ensure that all necessary materials have been received at the start of the process; this may result in increased costs for applicants as submission requirements are bolstered. Of further concern is the completeness of an application is an indicator that requested materials have been submitted but does not yet confirm the quality of the information provided. Should the City require additional information from an applicant upon inter-departmental review of the materials (ex. clarification, etc.), the current legislation does not afford the opportunity to pause the application timeline.

The Public Service has requested that legislation include a provision to pause the clock when a concurrent application (Variance/Conditional Use) is appealed. The Public Service would also like to see provisions that would allow for an applicant to pause the clock to allow for further research or public consultation.

It is important to note that should a timeline be missed, the Municipal Board will be making decisions on subdivisions that have not been considered by Council.

City of Winnipeg Position

The City recommends that the Legislation be amended or forthcoming regulations include provisions to allow processing timelines to be paused.

The City of Winnipeg does not support an unelected Board making decisions on matters for which final decision-making authority currently rests with an elected Council.