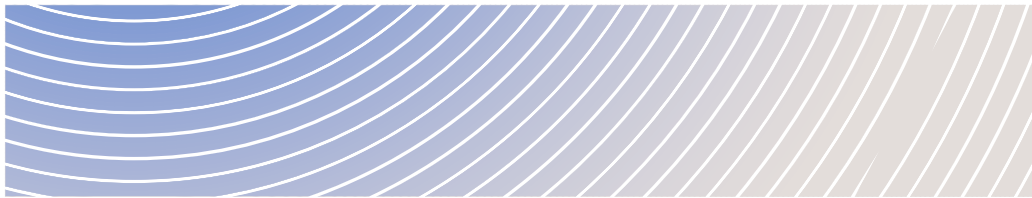


# Analysis Report



WHETHER DESIGNATION OF THE **ONTARIO PLACE SPA COMPLEX** OR **ONTARIO PLACE UNDERGROUND PARKING GARAGE PROJECTS** IN ONTARIO WOULD HAVE BEEN WARRANTED PURSUANT TO THE *IMPACT ASSESSMENT ACT*

November 2023



Impact Assessment  
Agency of Canada

Agence d'évaluation  
d'impact du Canada

Canada



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# Purpose

The Impact Assessment Agency of Canada (the Agency) prepared this report for consideration by the Minister of Environment and Climate Change (the Minister) to inform any potential communication regarding a request to designate the Ontario Place Spa Complex (the Spa Project) and the Ontario Place Underground Parking Garage (the Garage Project) (collectively, the Projects) under subsection 9(1) of the *Impact Assessment Act*, SC 2019, c 28, s 1 (IAA).

Following the Supreme Court of Canada's (SCC) issuance of its opinion on the constitutionality of the IAA on October 13, 2023, the Government of Canada issued the *Statement on the Interim Administration of the Impact Assessment Act Pending Legislative Amendments* on October 26, 2023 (Interim Statement).<sup>1</sup> The guidance set out in the Interim Statement is being followed until amendments come into force to address the issues in the IAA identified by the SCC.

With respect to designation requests, the Interim Statement provides that no decisions to designate projects will be taken under section 9 of the IAA and that consideration of any new designation requests will only resume, as appropriate, once amended legislation is in force. The Interim Statement further sets out that where the Minister is of the opinion that designation of a project under section 9 of the IAA would not have been warranted, he would communicate that information to proponents.

A review of whether a designation would have been warranted for the Projects had commenced prior to the SCC's issuance of its opinion on the constitutionality of the IAA. The review is summarized in this report for consideration by the Minister in accordance with the Interim Statement.

# Context of Request

On September 18, 2023, the Minister received a request from Ontario Place for All Inc. (the requester) to designate two projects associated with the revitalization of Ontario Place: the Spa Project proposed by Therme Canada, and the Garage Project proposed by the Ontario Ministry of Infrastructure (MOI) with planning and implementation being led by Infrastructure Ontario (IO) on behalf of MOI. The requester expressed concerns regarding potential effects of the Projects on fish, aquatic habitat, navigable waters, fisheries, migratory birds, species at risk, and greenhouse gas emissions.

On September 28, 2023, the Agency sent letters to Therme Canada and IO notifying them of the designation request and requesting information about the Projects. Therme Canada responded on October 16, 2023, with information about the Spa Project, the potential adverse effects, proposed design and mitigation measures, and its view that the Spa Project should not be designated. IO responded on October 18, 2023, and provided information regarding the Spa Project and the Garage Project, the potential adverse effects of both Projects, proposed design and mitigation measures, and its view that the Projects should not be designated.

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<sup>1</sup> <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/statement-interim-administration-impact-assessment-act-pending-legislative-amendments.html>

In addition, the Agency requested and received advice and/or input from the City of Toronto, the Toronto and Region Conservation Authority (TRCA), Environment and Climate Change Canada (ECCC), Fisheries and Oceans Canada (DFO), Transport Canada (TC), the Ontario Ministries of Citizenship and Multiculturalism (MCM), Environment, Conservation and Parks (MECP), Natural Resources and Forestry (MNR), Tourism, Culture and Sport (MTCS), and Infrastructure (MOI).

The Agency also requested views and received responses from two potentially affected Indigenous communities: Mississaugas of the Credit First Nation and the Huron-Wendat Nation. Submissions were also received from 32 individual members of the public.

## Project Context

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### Project overview

Ontario Place is a waterfront venue for activities, festivals and events in Toronto, Ontario, constructed on three artificial islands along Lake Ontario's north shore in the 1960s. The Province of Ontario is undertaking a revitalization project for the Ontario Place site to update flood mitigation measures, rehabilitate shoreline protection infrastructure, ensure conformity with applicable environmental and accessibility standards, and modernize the public realm. The Province of Ontario anticipates the revitalized Ontario Place will be visited by 6 million people a year and peak at 29,000 visitors per day. The revitalization includes several projects proposed by the Province of Ontario and by the private sector.

The Spa Project and Garage Project are two distinct projects. While they are geographically proximate, they are independent because either can proceed in the absence of the other and they have different proponents.

### Ontario Place Spa Complex Project

In 2022, Therme Canada entered into a lease agreement with the Province of Ontario to construct and operate a large commercial spa facility and waterpark located at 955 Lakeshore Boulevard West, Toronto. As part of the project, Therme Canada will extend the footprint of the West Island by 12 acres through near-shore lake infilling. IO, on behalf of MOI, is responsible for site preparation works prior to the construction of the Spa Project. The boundary of the Spa Project includes the West Island of Ontario Place, a portion of the mainland south to Lake Shore Boulevard West, and portions of the adjacent water lots (Figure 1). The footprint of site preparation activities is included in Figure 2.

Site preparation activities are anticipated to commence in early 2024. Construction is expected to take approximately 3 years. There is no timeline for the Spa Project decommissioning and abandonment.

The project lands and waters are owned by the Province of Ontario and the City of Toronto. The City of Toronto is expected to transfer lands and waters to provincial ownership as per a larger land transfer agreement made in 2022.

The Spa Project will not undergo a provincial environmental assessment. Site preparation activities were included in the MOI Public Work Class Environmental Assessment conducted by IO, on behalf of MOI, under the Province of Ontario's *Environmental Assessment Act*, for the larger Ontario Place Revitalization.

**Figure 1: Spa Project location and footprint (red thatched area)**



**Figure source:** Therme Canada submission to the Agency's request for information for the Spa Project, October 2023.

## Components and activities

Components of the Spa Project include:

- shoreline works, including a 12-acre extension of the footprint of the West Island, and modernized shoreline protection;
- a 61,000 square meter spa facility on the West Island;
- a 22,000 square meter reception building on the mainland;
- a multipurpose bridge connecting the West Island to the mainland;
- a private outdoor space on the West Island;
- a public swimming pier and plaza area in the northwest section of the West Island;
- publicly accessible walking paths; and,
- a connection to a proposed underground parking garage (the Garage Project).

The activities being undertaken by IO, on behalf of MOI, include:

- site preparation, including tree and vegetation clearing, grading, and risk management measures for soil contamination, as required;
- site servicing modernization, including water, wastewater, storm, electrical, telecommunication, and gas; and,
- demolition and removal of existing buildings and structures.

The main construction activities being undertaken by Therme Canada include:

- shoreline modification, lake in-filling, and aquatic habitat creation; and,
- construction of several buildings and infrastructure on the West Island and mainland.

## Ontario Place Underground Parking Garage Project

MOI is proposing the construction and operation of the Garage Project in Toronto, Ontario. The Garage Project includes the construction and operation of a five-story, below-grade commercial parking garage to service the redeveloped Ontario Place and act as a shared parking space for all Ontario Place tenants and site users. IO is leading the planning and implementation of the Garage Project on behalf of MOI. The Garage Project will consolidate services such as laundry, catering, and garbage and recycling pick up, provide direct underground access to the proposed spa pavilion, and be structurally integrated with a proposed relocated Ontario Science Centre.

Construction of the Garage Project is anticipated to begin in 2025 and take three years. Operations are anticipated in perpetuity; decommissioning and abandonment are not anticipated.

The Garage Project has been evaluated through the MOI Public Work Class Environmental Assessment noted above. It is located exclusively on lands owned by the Province of Ontario. The site of the Garage Project, at present, consists of an asphalt parking lot (Figure 2).

**Figure 2: Underground Garage Project location and footprint (blue shaded area)**



**Figure source:** Infrastructure Ontario submission to IAAC information request for the Garage Project, October 2023.

### Components and activities

Components of the Garage Project include:

- approximately 1,900 vehicle parking spaces, including 475 spaces equipped with charging infrastructure for electric vehicles;
- approximately 300 bicycle parking spaces;
- five loading spaces; and,
- bus loading and drop-off area accommodating 3 standard school buses.

Construction entails the excavation and construction of the below-grade parking garage.

# Analysis of Designation Request

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## Framework for designating

Given the Interim Statement, no designation decision will be made with respect to the Projects under section 9 of the IAA. This Analysis Report was completed in order to inform the Minister about these projects, in order that he consider whether he could inform the proponents that a designation of these two projects would not have been warranted.

Under the IAA, the *Physical Activities Regulations*, SOR/2019-285 (the Regulations) identified the physical activities that constitute designated projects. Neither project is included in the Regulations. Under subsection 9(1) of the IAA, the Minister may, by order, designate a physical activity that is not prescribed in the Regulations if, in the Minister's opinion, the physical activity may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, or public concerns related to those effects warrant the designation.

Given that no designation decisions will be taken, it is not necessary to consider whether the carrying out of either project has substantially begun or whether a federal authority has exercised a power or performed a duty or function that would permit either project to be carried out, in whole or in part.<sup>2</sup> However, in order to provide complete information about the Projects in this report, the Agency evaluated whether the limitations set out in section 9(7) of the IAA would have applied. The Agency is of the view that these two Projects have not substantially begun, and that no action had been taken by a federal authority that would permit either project to be carried out in whole or in part, such that the limitations set out in subsection 9(7) of the IAA would not have applied to them.

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## Potential adverse effects within federal jurisdiction

The Agency's analysis, commenced prior to the SCC's opinion and in accordance with the Interim Statement, considered the potential for adverse effects within federal jurisdiction that may result from carrying out the Project. The Agency is of the view that the Spa Project may cause potential adverse

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<sup>2</sup> The IAA limited the Minister's authority to designate physical activities if the carrying out of the physical activity had substantially begun, or a federal authority had exercised a power or performed a duty or function in relation to the Project.

effects within federal jurisdiction; however, the project design, application of standard mitigation measures, and existing legislative mechanisms (Annex 1) provide a framework to address potential adverse effects. The Agency is of the view that the Garage Project is not likely to cause potential adverse effects within federal jurisdiction, taking into account the project design, application of standard mitigation measures, and existing legislative mechanisms. No federal lands are expected to be affected by the Projects.

## Ontario Place Spa Complex Project

### Fish and Fish Habitat

The Agency is of the view that the Spa Project is likely to cause adverse effects to fish and fish habitat, as defined in subsection 2(1) of the *Fisheries Act*. However, the project design, application of standard mitigation measures, and existing legislative mechanisms provide a framework to address potential adverse effects.

#### Potential Adverse Effects to Fish

IO does not anticipate any adverse effects on fish during site preparations, as there are no in-water works scheduled for that portion of the work.

Therme Canada anticipates that there will be temporary potential adverse effects to fish during the construction phase due to the infilling of Lake Ontario. Potential effects include temporarily blocked movement and entrapment in the work area, avoidance of the area due to construction disturbance, and loss of access to habitat. Increased underwater noise is also expected to cause temporary behavioural changes in fish and could potentially cause physical injury to some fish species at close ranges.

Therme Canada indicated that it would implement several mitigation and compensation measures, including:

- salvaging fish from isolated areas of water, and releasing the captured fish in appropriate areas; and
- deploying noise curtains and restricting activities to appropriate timing windows to protect fish from noise.

DFO has indicated that the Spa Project will likely require an authorization under the *Fisheries Act*. If DFO determines that project activities could cause the death of fish, an authorization pursuant to the *Fisheries Act* paragraph 34.4(2)(b) would be required for the Spa Project. This authorization would require Indigenous consultation and would include mitigation and offsetting measures to address potential effects to fish.

DFO also noted that Shortnose Cisco, a threatened species, are found in the vicinity of the Spa Project and that the Spa Project may require a permit under the *Species at Risk Act*. DFO reviews projects for effects to listed aquatic species at risk, any part of their critical habitat, or the residences of their individuals in a manner which is prohibited under sections 32, 33 and subsection 58(1) of the *Species at Risk Act*.

The application of standard mitigation measures, the *Fisheries Act*, and, if required, the *Species at Risk Act*, provide a framework to address potential adverse effects to fish.



## Potential Adverse Effects to Fish Habitat

The requester expressed concerns with potential adverse effects to fish habitat due to the extension of West Island via lake in-filling.

IO does not anticipate any adverse effects on fish habitat during site preparations as there are no in-water works scheduled for that portion of the work. However, to reduce the risk of effects to fish habitat related to water quality, IO indicated that it would implement several best management practices, including erosion and sediment control measures, excess soil management, and managing excavated materials to avoid runoff.

Therme Canada anticipates that there will be both temporary and permanent potential adverse effects to fish habitat. Therme Canada anticipates temporary sedimentation during project construction and noted that it intends to mitigate this by using clean rock fill for all in-water applications, diverting sediment and construction contact water away from fish habitat, and implementing best practices.

Expected permanent effects include a loss of existing aquatic habitat and habitat resources, loss of substrate along the southern shore of West Island, reduction in primary and secondary productivity, moderation of water temperatures due to shade, and loss of substrate along the southern shore.

Therme Canada indicated that it would implement several mitigation and compensation measures, including:

- the introduction of aquatic vegetation and substrates to increase habitat diversity;
- incorporation of a range of substrate sizes to increase opportunities for reproduction, feeding, and growth;
- the creation of a range of complex habitats at different depth gradients using various materials;
- using clean rock fill for all in-water applications;
- the design and installation of structures to allow natural light penetration to aquatic habitat in appropriate materials;
- the protection of new beach habitat by using offshore reefs and other shoreline protection measures; and,
- the creation of new habitat with lakefill areas.

Therme Canada noted that the current artificial shoreline of the West Island provides limited habitat function and is prone to erosion. As such, Therme Canada anticipates a net positive effect to fish habitat, noting that the shoreline of the West Island will provide fish habitat that is consistent with the goals and objectives established by the Fish Community Objectives for Lake Ontario, Urban Recreational Fisheries Strategy, and Toronto Waterfront Aquatic Habitat Restoration Strategy.

DFO has indicated that the Spa Project will likely require an authorization under the *Fisheries Act*. If DFO determines that project activities may result in harmful alteration, disruption or destruction to fish habitat, an authorization pursuant to the *Fisheries Act* paragraph 35(2)(b) would be required. This would include mitigation and offsetting measures to address potential effects to fish habitat and would require Indigenous consultation.

ECCC noted that the Spa Project has the potential to cause adverse effects to surface water quality, but that potential effects on fish and fish habitat could be managed through the *Fisheries Act*. ECCC is responsible for the administration (including enforcement) of the pollution prevention provisions of the *Fisheries Act*, including subsection 36(3), which prohibits the deposition of deleterious substances into

waters frequented by fish, or to any place, under any conditions, where they may enter waters frequented by fish.

There is additional provincial regulatory oversight to address potential adverse impacts on fish and fish habitat from changes to surface water quality. MECP advised that Therme Canada may be required to apply for an Environmental Compliance Approval under the *Ontario Water Resources Act* for infrastructure related to stormwater management and subsurface sewage disposal. Therme Canada may also be required to apply for a Permit to Take Water or Registrations if it takes more than 50,000 litres per day from surface and groundwater sources for construction-related dewatering and/or domestic use.

The project design, application of standard mitigation measures, and the *Fisheries Act* and *Ontario Water Resources Act* provide a framework to address potential adverse effects to fish habitat, including effects related to water quality.

## Migratory Birds and Species at Risk

The Agency is of the view that the Spa Project is likely to cause adverse effects to migratory birds and migratory bird species at risk, as defined in subsection 2(1) of the *Migratory Birds Convention Act, 1994* and Schedule 1 of the *Species at Risk Act*. However, the project design, application of standard mitigation measures, and existing legislative mechanisms provide a framework to address potential adverse effects.

The requester expressed concerns with potential adverse effects to migratory birds due to the removal of habitat during site preparation activities and changes to bird movement due to sensory disturbance or physical blockage.

ECCC identified seven migratory birds potentially present or confirmed at the project site. ECCC also advised that several migratory bird species at risk are confirmed or likely to occur at the project site, including Chimney Swift, Canada Warbler, Wood Thrush, Red-headed Woodpecker, and Barn Swallow. Therme Canada noted that Chimney Swifts and Barn Swallow have been observed over and above the site boundary in flight, feeding, or foraging. There is no roosting, nesting, or categorized or critical habitat present within the site limit for Chimney Swifts, but there are active Barn Swallow nests on buildings on the West Island.

IO anticipates the removal of migratory bird habitat during site preparation activities. ECCC further indicated that the construction and operation of the Spa Project may create potential adverse effects to migratory birds, their nests and/or eggs. Potential effects may include sensory disturbance (light, noise, vibration) due to the Spa Project and increased bird mortality from collisions with vehicles and infrastructure.

IO indicated that it would implement several best management practices to address effects to migratory birds, including restricting site preparation activities to outside the breeding season, incorporating bird exclusion measures in line with best management practices established by MNR or in consultation with an avian specialist, and revegetating with clean fill and native plantings to improve productivity for migratory birds.

Therme Canada indicated that it would implement design features to mitigate potential adverse effects to migratory birds due to the Spa Project, including the use of bird-friendly glass and lighting design for the main spa building. Therme Canada indicated it would continue developing appropriate solutions through the design process to prevent bird mortality.

ECCC administers and enforces the *Migratory Birds Convention Act, 1994*, including relevant regulations and guidelines, which prohibit the harming of migratory birds, their nests and/or their eggs. Additionally, for federally listed migratory bird species at risk, ECCC administers and enforces the *Species at Risk Act* (SARA), which protects threatened and endangered species and their critical habitat. ECCC noted that the Spa Project is not on federal lands, that there are no SARA orders in place, and that there is no critical habitat for any species on site. ECCC advised, however, that a SARA permit could be required if individuals or residences of migratory bird species at risk would be affected by project activities.

MECP noted that environmental authorizations under Ontario's *Endangered Species Act, 2007* (ESA), which addresses adverse effects to provincially listed species at risk located on non-federal lands, may be required. While MECP did not identify specific species at the Spa Project site to which ESA protections would apply, ECCC noted that the majority of SARA-listed threatened and endangered species that are currently understood to have potential or confirmed presence in the project area are also listed as threatened or endangered under the ESA and thus would be subject to protection provisions of the ESA.

The project design, application of standard mitigation measures, and the *Migratory Bird Convention Act, 1994*, *Species at Risk Act*, and *Endangered Species Act, 2007*, provide a framework to address potential adverse effects to migratory birds and migratory bird species at risk.

## Indigenous Peoples

The Agency is not aware of any evidence to suggest that the Spa Project would be likely to cause adverse impacts on Indigenous peoples, as defined in section 2 of the *Impact Assessment Act*. This would include potential impacts resulting from any change to the health, social, and economic conditions of Indigenous peoples, the current use of lands and resources for traditional purposes, physical and cultural heritage, or on any structure, site, or thing that is of historical, archaeological, paleontological, or architectural significance to Indigenous peoples. The Agency is of the view that existing legislative mechanisms applicable to the Project and ongoing engagement provides a framework to address potential impacts to Indigenous peoples.

Therme Canada indicated it has engaged with the Mississaugas of the Credit First Nation throughout the development of the Spa Project and has solicited feedback on its design through open houses and community workshops. Therme Canada noted that Mississaugas of the Credit First Nation has raised concerns related to potential effects of the Spa Project to fish habitat and commented on the potential need for off-site fish habitat compensation.

Since 2021, IO has engaged Alderville First Nation, Curve Lake First Nation, Hiawatha First Nation, Kawartha Nishnawbe First Nation, Mississaugas of the Credit First Nation, Mississaugas of Scugog Island First Nation, and Six Nations of the Grand River as part of its Public Work Class Environmental Assessment for the Ontario Place Revitalization Project. IO also invited and participated in discussions with additional Indigenous communities, organizations, and urban Indigenous groups to review conceptual and recommended designs, including the Huron-Wendat Nation and the Métis Nation of Ontario.

While the Spa Project is not included in MOI's Public Work Class Environmental Assessment, IO advised that it has received comments about the Spa Project from Indigenous communities it is consulting. IO noted that it has heard concerns about potential impacts to hunting and fishing rights, as well as concerns about shorelines and waterways and impacts from proposed lakefill activities. Additionally, communities have shared concerns regarding the potential impact of shoreline modification, particularly on aquatic habitat, and have identified that more information is required on the extent of lake in-filling and shoreline

modifications to understand impacts. Finally, communities have expressed interest in understanding how potential impacts will be mitigated and in participating in the development of mitigation strategies, including for proposed tree removals.

### Health, Social, and Economic Conditions of Indigenous Peoples

Therme Canada and IO did not identify any anticipated changes to the health, social, and economic conditions of Indigenous peoples due to the construction and operation of the Spa Project.

Mississaugas of the Credit First Nation and the Huron-Wendat Nation did not indicate any concerns about potential changes to their health, social, or economic conditions. IO noted that it will continue to consult Indigenous communities on project design and mitigation measures. Therme Canada noted that it has partnered with Mississaugas of the Credit First Nation to explore social, economic, and cultural opportunities. This engagement would provide a framework to address any adverse effects that may arise.

The Spa Project is not likely to cause adverse effects on the health, social, and economic conditions of Indigenous peoples.

### Current Use of Lands and Resources for Traditional Purposes

Therme Canada and IO indicated that there are no anticipated impacts to the current use of lands and resources for traditional purposes from the Spa Project construction and operation.

Mississaugas of the Credit First Nation and the Huron-Wendat Nation did not indicate any concerns about potential changes to their current use of lands and resources.

Effects on fishing has not been raised as a concern. Effects to fish will be managed as described above in the section on *Fish and Fish Habitat*.

TC noted it anticipates compliance with the *Canadian Navigable Waters Act* will be required, due to the near-shore lake infilling and construction of a bridge connecting the island to the mainland. However, TC is of the view that potential adverse effects to navigation can be readily mitigated through appropriate construction practices and bridge design. If an authorization is required under the *Canadian Navigable Waters Act*, TC will conduct a pre-consultation assessment to determine the potential for the project to cause adverse impacts to Aboriginal and/or treaty rights as recognized and affirmed by section 35 of the *Constitution Act, 1982*.

The *Canadian Navigable Waters Act* and *Fisheries Act* provide a framework to address potential adverse effects to current use of lands and resources for traditional purposes, including navigation and fish resources.

### Physical and Cultural Heritage, and Structures, Sites or Things of Historical, Archaeological, Paleontological or Architectural Significance

The West Island is an artificial island constructed approximately 50 years ago. Therme Canada and IO indicated that there are no known structure, sites, or things of archaeological or paleontological significance in proximity to the Spa Project site.

MCM indicated that the Stage 1 and Stage 2 archaeological assessment reports required by the *Ontario Heritage Act*, Part VI, did not identify adverse effects to structures, sites, or things of historical, archaeological, or architectural significance to Indigenous peoples. A Marine Archaeological Assessment

was also completed for all Ontario Place water lots and recommended no further archaeological assessment. Findings of these assessments were shared with potentially impacted Indigenous communities. MCM also noted that an Ontario Place-wide Heritage Impact Assessment is being prepared, as required by section 25.2 of the *Ontario Heritage Act*. This will assess the potential impact of the proposed removal and demolition of buildings and structures and will include Indigenous consultation.

Mississaugas of the Credit First Nation did not indicate any concerns about potential impacts on physical and cultural heritage or on structures, sites, or things of historical, archaeological, paleontological, or architectural significance. The Huron-Wendat Nation did not have any specific comments about the Spa Project, but noted they have archaeological interest in the area and are interested in being consulted in any archaeological work should the Spa Project be designated.

The *Ontario Heritage Act* provides a framework to address potential adverse effects to physical or cultural heritage, or to structures, site, or things of historical, archaeological, paleontological, or architectural significance to Indigenous communities. The Agency will share this report and correspondence from Huron-Wendat Nation with MCM who administers the *Ontario Heritage Act*.

## Changes to the environment on federal lands, outside of Ontario, or outside of Canada

There are no federal lands or federal water lots expected to be affected by the Spa Project.

### Transboundary Effects

The Agency is of the view that the Spa Project is not likely to cause adverse effects to the outside of Ontario, or outside of Canada. Any adverse effects would be addressed through project design and the application of mitigation measures.

The Spa Project is not located near any provincial or international borders and is not expected to impact air or water quality outside of Ontario or Canada.

## ***Ontario Place Underground Parking Garage Project***

### Fish and Fish Habitat

The Agency is of the view that the Garage Project is not likely to cause adverse effects to fish and fish habitat, as defined in subsection 2(1) of the *Fisheries Act*, taking into account the project design, application of standard mitigation measures, and existing legislative mechanisms.

IO does not anticipate any adverse effects on fish as there are no in-water works or shoreline works required for construction of the garage. IO indicated that it would implement several best management practices to ensure fish are not impacted, including erosion and sediment control measures, managing excavated materials to avoid runoff, integrating spills management, and using best practices for dewatering.

DFO noted that it does not anticipate adverse effects on fish or fish habitat due to the Garage Project and does not anticipate that an authorization under the *Fisheries Act* would be required.

Provincial regulatory oversight provides a framework to address potential effects to fish and fish habitat related to changes in surface water. MECP advised that IO may be required to apply for an Environmental

Compliance Approval under the *Ontario Water Resources Act* for infrastructure related to stormwater management and subsurface sewage disposal. IO may also be required to apply for a Permit to Take Water or Registrations if they take more than 50,000 litres per day from surface and groundwater sources for construction dewatering and/or domestic use. This does not apply if the Garage Project is supplied by a source already permitted, such as a municipal supply.

The application of standard mitigation measures and the *Ontario Water Resources Act* provide a framework to address potential adverse effects to fish habitat, including effects related to water quality.

## Migratory Birds and Species at Risk

The Agency is of the view that the Garage Project is not likely to cause adverse effects to migratory birds and species at risk, as defined in subsection 2(1) of the *Migratory Birds Convention Act, 1994*, and Schedule 1 of the *Species at Risk Act*, taking into account the project design, application of standard mitigation measures, and existing legislative mechanisms.

IO indicated that there may be temporary adverse impacts on migratory birds during project construction as some migratory birds may nest in existing vegetation or human-made structures within the project site limit. However, IO noted that it does not anticipate long-term impacts due to the small scale of vegetation removals and minor loss of breeding habitat. IO advised that it would implement best management practices to address effects to migratory birds, including restricting any vegetation removals and redevelopment of exterior areas of structures with potential nesting areas, or removal of features on structures with nests or potential nesting, to between August 31 and April 1 of any year. In the case that timing windows cannot be respected, bird exclusion measures would be installed outside (ideally prior) to the breeding season. IO also indicated that that migratory birds that would make use of the existing parking lot during construction could make use of other spaces at Ontario Place that would remain open during the construction period, including Trillium Park.

IO also indicated that it does not anticipate any adverse impacts on migratory birds during the operation and maintenance of the Garage Project as the garage will be underground, and the existing site is an asphalt parking lot.

ECCC indicated that migratory birds could be affected by sensory disturbance (light, noise, vibration) or increased mortality from collisions with construction vehicles, but the *Migratory Birds Convention Act, 1994*, provides a framework to address potential adverse effects. ECCC administers and enforces that Act, including relevant regulations and guidelines, which prohibit the harming of migratory birds, their nests and/or their eggs.

IO noted that it does not anticipate adverse effects to species at risk during the construction and operation of the Garage Project. IO noted that Chimney Swifts and Barn Swallow, both threatened species, have been observed over and above the site boundary in flight, feeding, or foraging. However, there is no roosting, nesting, or critical habitat present within the site limit for either species.

ECCC administers and enforces the *Species at Risk Act* (SARA), which protects threatened and endangered species and their critical habitat, including Chimney Swifts and Barn Swallow. ECCC noted that the Garage Project is not on federal lands, that there are no SARA orders in place, and that there is no critical habitat for any species on site. ECCC advised, however, that a SARA permit could be required in the (unlikely) event that individuals or residences of migratory bird species at risk would be affected by project activities. MECP noted that environmental authorizations under Ontario's *Endangered Species Act, 2007* (ESA), which addresses adverse effects to provincially listed species at risk located on non-federal

lands, may be required. While MECP did not identify specific species at the Garage Project site to which ESA protections would apply, ECCC noted that the majority of SARA-listed threatened and endangered species that are currently understood to have potential or confirmed presence in the project area are also listed as threatened or endangered under the ESA and thus would be subject to protection provisions of the ESA.

The project design, application of standard mitigation measures, and the *Migratory Bird Convention Act, 1994*, *Species at Risk Act*, and *Endangered Species Act, 2007*, provide a framework to address potential adverse effects to migratory birds and migratory bird species at risk.

## Indigenous Peoples

The Agency is not aware of any evidence to suggest that the Garage Project would be likely to cause adverse impacts on Indigenous peoples, as defined in section 2 of the *Impact Assessment Act*. This would include potential impacts resulting from any change to the health, social, and economic conditions of Indigenous peoples, the current use of lands and resources for traditional purposes, physical and cultural heritage, or on any structure, site, or thing that is of historical, archaeological, paleontological, or architectural significance to Indigenous peoples. The Agency is of the view that existing legislative mechanisms applicable to the Project and ongoing engagement provides a framework to address potential impacts to Indigenous peoples.

Since 2021, IO has engaged Alderville First Nation, Curve Lake First Nation, Hiawatha First Nation, Kawartha Nishnawbe First Nation, Mississaugas of the Credit First Nation, Mississaugas of Scugog Island First Nation, and Six Nations of the Grand River as part of its Public Work Class Environmental Assessment for the Ontario Place Revitalization. IO also invited and participated in discussions with additional Indigenous communities, organizations, and urban Indigenous groups to review conceptual and recommended designs, including the Huron-Wendat Nation and the Métis Nation of Ontario.

The Garage Project is included in the MOI Public Work Class Environmental Assessment. IO advised that it has received comments about potential impacts on species at risk and concerns about tree-clearing.

## Health, Social, and Economic Conditions of Indigenous Peoples

IO did not identify any anticipated changes to the health, social, and economic conditions of Indigenous peoples due to the construction and the operation of the Garage Project. Mississaugas of the Credit First Nation and the Huron-Wendat Nation did not indicate any concerns about potential changes to their health, social, or economic conditions.

IO indicated that it will continue to consult Indigenous communities on project design and mitigation measures. This ongoing consultation would provide a framework to address any adverse effects that may arise.

The Garage Project is not likely to cause adverse effects on the health, social, and economic conditions of Indigenous peoples.

## Current Use of Lands and Resources for Traditional Purposes

IO does not anticipate any impacts to current use of lands and resources for traditional purposes from the Garage Project construction and operation.

Mississaugas of the Credit First Nation and the Huron-Wendat Nation did not indicate any concerns about potential changes to their current use of lands and resources.

The Garage Project is not likely to cause adverse effects on the current use of lands and resources for traditional purposes.

### Physical and Cultural Heritage and Structures, Sites or Things of Historical, Archaeological, Paleontological or Architectural Significance

IO indicated that there are no known archaeological or paleontological structures or sites of significance in proximity to the Garage Project.

MCM indicated that the Stage 1 and Stage 2 archaeological assessment reports required by the *Ontario Heritage Act*, Part VI, did not identify adverse effects to structures, sites, or things of historical, archaeological, or architectural significance to Indigenous peoples. A Marine Archaeological Assessment was also completed for all Ontario Place water lots and recommended no further archaeological assessment. Findings of these assessments were shared with potentially impacted Indigenous communities. MCM noted that an Ontario Place-wide Heritage Impact Assessment is also being prepared, as required by section 25.2 of the *Ontario Heritage Act*. This will assess the potential impact of the proposed removal and demolition of buildings and structures and will include Indigenous consultation.

Mississaugas of the Credit First Nation did not indicate any concerns about potential impacts on physical and cultural heritage or on structures, sites, or things of historical, archaeological, paleontological, or architectural significance. The Huron-Wendat Nation did not have specific comments about the Garage Project, but noted they have archaeological interest in the area and are interested in being consulted in any archaeological work should the Garage Project be designated.

The *Ontario Heritage Act* provides a framework to address potential adverse effects to physical or cultural heritage, or to structures, site, or things of historical, archaeological, paleontological, or architectural significance to Indigenous communities. The Agency will share this report and correspondence from Huron-Wendat Nation with MCM who administers the *Ontario Heritage Act*.

### Federal Lands

There are no federal lands or federal water lots expected to be affected by the Garage Project.

### Transboundary Effects

The Agency is of the view that the Garage Project is not likely to cause potential adverse effects outside of Ontario, or outside of Canada. Any adverse effects would be addressed through project design and the application of mitigation measures.

The Garage Project is not located near any provincial or international borders and is not expected to impact air or water quality outside of Ontario or Canada.



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## Potential adverse direct or incidental effects

Direct or incidental effects refer to effects that are directly linked or necessarily incidental to a federal authority's exercise of a power or performance of a duty or function that would permit the carrying out, in whole or in part, of a project, or to a federal authority's provision of financial assistance to a person for the purpose of enabling that project to be carried out, in whole or in part. The Agency is not aware of any federal funding that may be provided for the Projects and the Projects are not located on federal lands.

### *Ontario Place Spa Complex Project*

The Spa Project, as described, may require the exercise of federal powers, or the performance of federal duties or functions as follows:

- Authorization for Harmful Alteration Disruption or Destruction (HADD) of Fish Habitat by Fisheries and Oceans Canada under paragraphs 34.4(2)(b) and 35(2)(b) of the *Fisheries Act* will likely be required for works, undertakings or activities that would result in death of fish or harmful alteration, disruption, or destruction of fish habitat; and,
- Approval for In-Water Works from Transport Canada under the *Canadian Navigable Waters Act* may be required for activities to construct, place, alter, rebuild, remove, or decommission a major work that is on any navigable water that may interfere with navigation. Further, a notification of work may be required for minor work that is on any navigable waterways.

The Agency does not anticipate any potential direct or incidental effects related to the aforementioned federal powers, duties or functions.

### *Ontario Place Underground Parking Garage Project*

The Garage Project, as described, does not appear to require the exercise of federal powers, or the performance of federal duties or functions; as such, the Agency does not anticipate any potential direct or incidental effects for the Garage Project.

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## Public concerns

Between April 13, 2023, and October 23, 2023, 32 letters were received from members of the public expressing concern with both the Spa Project and the Garage Project. The public concerns known to the Agency include those noted in the letters and from information provided by the requester.

The concerns related to the Projects include:

- effects on fish and fish habitat, migratory birds, and federally listed species at risk;
- greenhouse gas emissions and climate change;
- other impacts of tree removal;
- effects to water quality;
- effects to traffic levels;
- impacts to built heritage;

- concerns regarding the use of public land for commercial purposes and reduced public access to the site for recreational activities; and
- concerns around opportunities for public participation in the redevelopment process.

The above public concerns, where pertinent to adverse effects within federal jurisdiction or adverse direct or incidental effects, would not have warranted designation under subsection 9(1) of the IAA as the project design, application of standard mitigation measures, and existing legislative and regulatory mechanisms provide a framework to address potential adverse effects.

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## Potential adverse impacts on the rights of Indigenous peoples

The Projects are located within Treaty 13 territory, in the traditional and treaty territory of the Mississaugas of the Credit First Nation and in an area of significant interest to the Huron-Wendat Nation. Mississaugas of the Credit First Nation hold Aboriginal and treaty rights, including unextinguished rights to water, in the area of the proposed projects, and Huron-Wendat Nation has inherent rights protected by section 35 of the *Constitution Act, 1982*.

Mississaugas of the Credit First Nation identified that they have been working with the Government of Ontario and Therme Canada to understand potential impacts on their rights and interests and seek accommodations and that, to date, these processes have met their expectations. The Huron-Wendat Nation did not have any specific comments about either Project but noted that they have archaeological interest in the area and are interested in being consulted in any archaeological work should either Project be designated.

Along with project design and the application of standard mitigation measures, existing legislative mechanisms applicable to the Projects provide a framework to address any potential impacts to Indigenous peoples. Indigenous consultation would be required for any federal authorization that may be issued for the Projects under the *Fisheries Act*, *Species at Risk Act*, or *Canadian Navigable Waters Act*.

The Agency is not aware of any evidence to suggest that the Projects would be likely to cause adverse impacts on rights that are recognized and affirmed by section 35 of the *Constitution Act, 1982* and is of the view that existing legislative mechanisms applicable to the Projects provide a framework to address potential impacts to the rights of Indigenous peoples.

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## Other considerations

### Greenhouse Gas Emissions

#### *Ontario Place Spa Complex Project*

The requester expressed concern that the Spa Project would result in greenhouse gas (GHG) emissions related to energy consumed for heating and operations and asserted that the Spa Project may hinder the Government of Canada's ability to meet its commitments in respect to climate change.

The TRCA advised that land filling and excavation activities may result in GHG emissions. ECCC advised that the broader construction and operation of the Spa Project could result in GHG emissions.

Therme Canada indicated that it will review how its site operations contribute to GHG emissions over the course of the Spa Project. Therme Canada noted that it is targeting LEED Platinum for the Spa Project, as well as the City of Toronto's "Toronto Green Standard" Tier 2 standard. To support this, Therme Canada is exploring low GHG energy solutions, including geothermal, deep lake, and renewable natural gas with local partners, and indicated that it will conduct energy studies as part of the design process.

#### *Ontario Place Underground Parking Garage Project*

The requester expressed concerns that the Garage Project may result in GHG emissions related to transportation of visitors to Ontario Place and asserted that the Garage Project may hinder the Government of Canada's ability to meet its commitments in respect to climate change.

ECCC noted that the construction, operation, and decommissioning of the Garage Project may result in GHG emissions.

IO indicated that, while the increased parking availability provided by the Garage Project could enable more single-occupant vehicle trips to the Garage, the parking garage includes bus loading areas, parking for zero-emission vehicles and bicycles, and the wider Ontario Place revitalization integrates transit improvements and active transportation. IO anticipated that this shift towards public and active transit options will lead to a reduction in single-occupant vehicle travel to the site. IO indicated that this is expected to reduce GHG emissions and ensure that the Garage Project is in line with provincial climate targets.

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## Regional and strategic assessments

There are no regional or strategic assessments pursuant to sections 92, 93, or 95 of the IAA that are relevant to the Projects.

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## Conclusion

### *Ontario Place Spa Complex Project*

To inform its analysis, the Agency sought and received input from Therme Canada, Infrastructure Ontario, relevant federal authorities and provincial ministries, the City of Toronto, the TRCA, and potentially affected Indigenous communities. In addition, the Agency considered concerns in the letters sent to the Minister by the public and by the requester, Ontario Place for All Inc.

The Agency also considered whether the Spa Project may cause adverse impacts on the rights of Indigenous peoples that are recognized and affirmed by section 35 of the *Constitution Act, 1982*. The Agency did not receive any information to suggest there would be potential effects to Aboriginal and treaty rights due to the Spa Project, and is of the view that existing legislative mechanisms, which include consultation with Indigenous communities, provide a framework to address any potential impacts.

Existing federal legislative mechanisms include the *Canadian Navigable Waters Act*; the *Fisheries Act*; the *Migratory Birds Convention Act, 1994*; and the *Species at Risk Act*. Existing provincial legislative mechanisms include the *Endangered Species Act, 2007*; the *Environmental Assessment Act*; the *Ontario Heritage Act*; and the *Ontario Water Resources Act*.

The Agency is of the view that the Spa Project is likely to cause adverse effects on fish and fish habitat and may cause effects to migratory birds (including migratory bird species at risk), but that the project design, the application of standard mitigation measures, and existing legislative mechanisms (Annex 1) provide a framework to address potential adverse effects.

### *Ontario Place Underground Parking Garage Project*

To inform its analysis, the Agency sought and received input from Infrastructure Ontario, on behalf of the Ontario Ministry of Infrastructure, as well as relevant federal authorities and provincial ministries, the City of Toronto, the TRCA, and potentially affected Indigenous communities. In addition, the Agency considered concerns in the letters sent to the Minister by the public and by the requester, Ontario Place for All Inc.

The Agency also considered whether the Garage Project may cause adverse impacts on the rights of Indigenous peoples that are recognized and affirmed by section 35 of the *Constitution Act, 1982*. The Agency did not receive any information to suggest that there would be potential effects to Aboriginal and treaty rights due to the Garage Project, and is of the view that existing legislative mechanisms, which include consultation with Indigenous communities, provide a framework to address any potential impacts.

Existing federal legislative mechanisms include the *Migratory Birds Convention Act, 1994*, and the *Species at Risk Act*. Existing provincial legislative mechanisms include the *Endangered Species Act, 2007*; the *Environmental Assessment Act*; the *Ontario Heritage Act*; and the *Ontario Water Resources Act*.

The Agency is of the view that the Garage Project is not likely to cause adverse effects within federal jurisdiction, nor adverse direct or incidental effects, taking into account by the project design, the application of standard mitigation measures, and existing legislative mechanisms (Annex 1).

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# ANNEX I: Existing Legislative Mechanisms

## Federal Legislative Mechanisms

### *Canadian Navigable Waters Act*

Transport Canada (TC) administers the *Canadian Navigable Waters Act* (CNWA), through the Navigation Protection Program. The CNWA applies to an owner of work(s) on navigable waters; interfering with navigation in Canadian navigable waters; and/or planning something that will affect navigation in navigable waters. The CNWA ensures consideration of Indigenous knowledge and traditional use of the waters. The CNWA has a process to notify the public and allows Canadians to have a say in projects that affect their right to travel on a waterway. TC maintains an online registry of projects and approvals under the CNWA.

### *Fisheries Act*

The Fish and Fish Habitat Protection Program of Fisheries and Oceans Canada (DFO) reviews projects for their impacts to fish and fish habitat by ensuring compliance with the *Fisheries Act*, and *Species at Risk Act*. Through this program, DFO may provide information to a proponent in order to avoid and mitigate the negative impacts of a project.

A *Fisheries Act* Authorization may be required if a project is likely to cause harmful alteration, disruption, or destruction to fish habitat and/or is likely to result in the death of fish.

Consideration of the issuance of a *Fisheries Act* Authorization includes consultation with Indigenous communities. The *Fisheries Act* gives explicit consideration under section 2.4, where the Minister of Fisheries, Oceans and the Canadian Coast Guard must consider any adverse effects that the decision (under paragraphs 34.4(2)(b) and 35(2)(b)) may have on the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*. The precise nature of DFO's consultation activities is dictated by developing a shared understanding with each respective community and determining a mutual path forward. Feedback from Indigenous communities would be incorporated into DFO's assessment of impacts, and contribute to methods used to mitigate, offset, and monitor impacts within the bounds of DFO's mandate.

If granted, a *Fisheries Act* Authorization would include legally binding conditions for avoidance, mitigation, and offsetting requirements commensurate with project impacts. Monitoring to validate impacts and verify efficacy of mitigation measures and offsetting are also part of Authorization conditions.

Environment and Climate Change Canada (ECCC) administers and enforces subsection 36(3) of the *Fisheries Act*, which prohibits the deposit of deleterious substances into waters frequented by fish or to any place, under any conditions, where they may enter waters frequented by fish.

### *Migratory Birds Convention Act, 1994*

The *Migratory Birds Convention Act, 1994*, protects migratory birds and their eggs and nests wherever they occur, regardless of land tenure. The *Migratory Birds Convention Act, 1994*, prohibits the disturbance or destruction of migratory bird nests and eggs. It also prohibits the deposit of harmful substances into waters

or areas frequented by migratory birds or into a place from which the substance may enter such waters or such an area.

### *Species at Risk Act*

The purposes of the *Species at Risk Act* (SARA) are to prevent wildlife species in Canada from disappearing, to provide for the recovery of wildlife species that are extirpated (no longer exist in the wild in Canada), endangered, or threatened as a result of human activity, and to manage species of special concern to prevent them from becoming endangered or threatened.

SARA recognizes that biodiversity and species at risk management in Canada is a shared responsibility among the levels of government. SARA applies throughout Canada on federal and provincial public lands, and private lands. However, the authorities and obligations under SARA vary depending on land tenure. On non-federal lands, SARA is a backstop where provincial legislation or provincial protections are inadequate to protect listed species at risk. SARA provides a framework for federal action and sets out authorities and tools to be exercised by the Minister of Environment and Climate Change, the Minister of Fisheries and Oceans or the Governor in Council to support the protection and recovery of species at risk across Canada. These tools include emergency orders where necessary to protect a listed species.

## Provincial Legislative Mechanisms

### *Endangered Species Act, 2007*

The *Endangered Species Act, 2007*, provides for authorizations and conditional exemptions for activities that could adversely impact an endangered or threatened species at risk or its habitat. Authorization may be required for activities that could adversely impact terrestrial species at risk listed under the *Endangered Species Act, 2007*. The Ontario Ministry of the Environment, Conservation and Parks (MECP) is responsible for administering the *Endangered Species Act, 2007*. MECP may appoint enforcement officers to ensure compliance with the *Endangered Species Act, 2007*, through inspections and stop orders, including a Species Protection Order or a Habitat Protection Order. Failure to comply may result in fines and imprisonment.

### *Environmental Assessment Act*

The *Environment Assessment Act* (EAA) provides the framework for the provincial environmental assessment (EA) process. An EA is a study of the potential effects and related mitigation measures of a proposed project on the environment, defined as including bio-physical impacts to the natural environment (air, land, water, plant, and animal life), non-biophysical social, economic, and cultural conditions, as well as an existing building, structure, machine or other device or thing made by humans. A class EA is a document that sets out a standardized planning process for classes or groups of activities and applies to projects that are carried out routinely and have predictable environmental effects that can be readily managed. Projects defined within a class environmental assessment require no further environmental approval under section 5 of the *Environmental Assessment Act*, conditional upon being planned according to the procedures set out in the document and not being subject to a Part II Order. In March 2022, the Government of Ontario posted a Notice of Commencement of a Category “C” Public Work Class EA for the

broader Ontario Place revitalization project.<sup>3</sup> The EA includes site preparation activities for the Spa and Garage projects and the construction and operation of the Garage Project. The Ontario Ministry of Infrastructure (MOI) Public Work Class EA is a planning tool that consists of procedures that allow MOI to comply with requirements of the EAA using a streamlined approach. These procedures are designed to ensure that the MOI considers the potential effects of its projects on the environment (i.e., completes an environmental assessment) before deciding how to proceed. The comment period on the final draft Environmental Study Report closed on September 2, 2023, and the final Environmental Study Report will be published in fall 2023, concluding the Public Work Class EA. As private sector-led developments are not subject to the EAA, the Public Work Class EA does not include the construction and operations of the Spa Project.

### *Ontario Heritage Act*

The Ontario Ministry of Citizenship and Multiculturalism (MCM) enforces Part VI of the *Ontario Heritage Act*. This portion of the act determines priorities, policies, and programs for the conservation of archaeological sites. MCM's Archaeology Review Officers review archaeological reports to ensure compliance with the *Ontario Heritage Act*. MCM or the prescribed public body requesting consent is responsible for public and/or Indigenous consultation and shall include that information in the consent request. Failure to comply with the *Ontario Heritage Act* may result in fines and imprisonment.

### *Ontario Water Resources Act*

The *Ontario Water Resources Act* provides for the conservation, protection and management of Ontario's water and its efficient and sustainable use in order to promote Ontario's long-term environmental, social, and economic well-being.

An Environmental Compliance Approval (ECA) may be required for activities listed under subsection 53(1) of the *Ontario Water Resources Act*, including sewage works and stormwater management. ECAs are a permission that allows businesses to operate their facility or site with environmental controls that protect human health and the natural environment. Business owners who plan to carry out activities that have the potential to impact the public or natural environment must get an ECA before they can construct, operate, or upgrade a facility or site in Ontario.

A Permit to Take Water, pursuant to the *Ontario Water Resources Act*, is required to take more than 50,000 litres of water per day from the environment, including lakes, streams, rivers, ponds, and groundwater sources. The Permit to Take Water includes requirements to assess impacts to surface and groundwater quantity and quality due to project activities. The permit places limits on the quantity and duration of water taking and requires reporting. Additional conditions could include monitoring requirements, seasonal restrictions, modifications to discharge locations, and remediation. The permitting process requires Indigenous and public consultation.

The *Ontario Water Resources Act* is enforced at the provincial level through inspections, and non-compliance results in offences and penalties, including fines.

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<sup>3</sup> Infrastructure Ontario (2022). <https://engageopdev.wpengine.com/wp-content/uploads/2022/03/Ontario-Place-Category-C-Class-EA-Notice-of-Commencement.pdf>