



Impact Assessment
Agency of Canada

Ontario Region
600-55 York Street
Toronto ON M5J 1R7

Agence d'évaluation
d'impact du Canada

Région de l'Ontario
600-55 rue York
Toronto ON M5J 1R7

October 3, 2023

Sent by email

Correspondence to Federal Directors

Rob Clavering, Environment and Climate Change Canada
Thomas Hoggarth, Fisheries and Oceans Canada
Vera Haslett, Transport Canada

Dear colleagues:

**Subject: Designation Request for the Proposed Ontario Place Spa
Complex under the *Impact Assessment Act***

On September 18, 2023, the Minister of Environment and Climate Change (the Minister) received a request to designate the proposed Ontario Place Spa Complex (the physical activity / activities referred to as the Project), proposed by Therme Canada (the Proponent) under subsection 9(1) of the *Impact Assessment Act* (IAA).

The Proposed Project

The Project would be located near Toronto, Ontario. The Project involves the construction and operation of a commercial spa complex, including the construction and operation of a 61,000 square meter spa facility on West Island, a 22,000 square meter reception building on the mainland, 12-acre extension of the footprint of West Island through near-shore lake infilling, a multipurpose bridge connecting the island to the mainland, private outdoor space, publicly accessible walking paths, and connection to an underground parking garage, about which you will receive another letter. The Project as proposed is not a designated project as described in the *Physical Activities Regulations*.

Designation Request

Under subsection 9(1) of the IAA the Minister may, by order, designate a physical activity that is not prescribed in the *Physical Activities Regulations*. The Minister may do this, if, in the Minister's opinion, the physical activity may cause adverse effects within federal jurisdiction or adverse direct or incidental effects (resulting from federal decisions, including funding), or public concerns related to those effects warrant the designation. In accordance with subsection 9(4) of the IAA, it is expected that the Minister will respond, with reasons, to the request by December 27, 2023.

Canada 

However, as per the limitation of subsection 9(7) of the IAA, the Minister must not make the designation if (a) the carrying out of the physical activity has substantially begun;¹ or (b) a federal authority has exercised a power or performed a duty or function conferred on it under any Act of Parliament, other than the IAA, that could permit the physical activity to be carried out, in whole or in part.

The Impact Assessment Agency of Canada (the Agency) will review information to determine whether substantial physical works have begun, or if a federal authority has exercised a power or performed a duty or function under an Act of Parliament other than the IAA.

The Agency will review information about the Project; any concerns expressed from the public (that the Agency is aware of) and Indigenous communities; expert advice from federal authorities and input from provincial ministries in order to inform the Minister on whether the Project should be designated.

If the Project were to be designated, in order to proceed with the Project, Therme Canada would be required to submit an Initial Project Description to the Agency, thereby commencing the planning phase under the IAA. In this case, the planning phase would include the Agency determining whether a federal impact assessment is required.

Additional information regarding the process for designation requests can be found at the following link: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/designating-project-impact-assessment-act.html>

Seeking Federal Authority Advice

The Agency is requesting that you complete and provide the attached form by **October 18, 2023**.

In the coming days, a Registry page for the Project (Reference 85951) will be available on the Canadian Impact Assessment Registry Internet site. Please use designationontario@iaac-aeic.gc.ca to provide the Agency with information regarding this file. This email address will also be posted on the Project's Registry page.

.../3

¹ <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/guidance-interpreting-substantially-begun-subsection-9-7-and-substantially-begin-subsections-70-1-70-3.html>

Important Note: All records produced, collected or received in relation to the designation request process – unless prohibited under the *Access to Information Act* or *Privacy Act* – will be considered public and may be released. Should you wish to provide any comments or documents that contain confidential or sensitive information that you believe should be protected from release to the public, please contact the Agency before submitting the information. Information marked as confidential will not be accepted without prior contact made with the Agency.

If you have any questions regarding the designation process or the response sheet, please do not hesitate to contact Ella Myette, A/ Project Manager at 416-559-3960 or the above-noted email address.

Sincerely,

<Original signed by>

Anjala Puvananathan
Director

Enclosure: Federal Authority Advice Record – Designation Request
under the IAA

c.c.: David Zeit, Transport Canada
Fisheries Protection Program, Fisheries and Oceans
Canada

Enclosure: Federal Authority Advice Record – Designation Request under the IAA
Response due by October 18, 2023
Ontario Place Redevelopment: Spa Complex Project

Department/Agency	Fisheries and Oceans Canada
Lead Contact	William Glass
Full Address	867 Lakeshore Rd Burlington, ON L7S 1A1
Email	William.glass@dfo-mpo.gc.ca
Telephone	289-527-1228
Alternate Departmental Contact	Sara Eddy Sara.eddy@dfo-mpo.gc.ca

-
1. Has your department or agency considered whether it has an interest in the Project; exercised a power or performed a duty or function under any Act of Parliament in relation to the Project; or taken any course of action (including provision of financial assistance) that would allow the Project to proceed in whole or in part?

No

-
2. Is it probable that your department or agency may be required to exercise a power or perform a duty or function related to the Project to enable it to proceed?

Yes, it is probable that DFO will need to issue a *Fisheries Act* Authorization related to this project for it to proceed. A Fisheries Act paragraph 35(2)(b) Authorization will be required if the project is likely to cause the harmful alteration, disruption, or destruction to fish habitat and/or a Fisheries Act paragraph 34.4(2)(b) Authorization if the project is likely to result in the death of fish. As described, the project will require authorization under the Act.

DFO also 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. This project may require a SARA permit as aquatic species at risk are found in the vicinity of the project location.

-
3. If your department or agency will exercise a power or perform a duty or function under any Act of Parliament in relation to the Project, will it involve public and Indigenous consultation?

Should DFO consider issuing a Fisheries Act s.34.4(2)(b) and/or 35(2)(b) authorization for the project, consultation with Indigenous groups would be undertaken.

4. Is your department or agency in possession of specialist or expert information or knowledge that may be relevant to any potential adverse effects within federal jurisdiction caused by the Project or adverse direct or incidental effects stemming from the Project?

DFO can provide specialist or expert information or knowledge on assessment of impacts on fish and fish habitat and aquatic species at risk. The Department may provide information to the proponent in order to avoid and mitigate the negative impacts of the proposed works, undertakings or activities. DFO will be able to evaluate the potential implications to our mandate as more details on the proposed project activities become available and are provided to DFO as part of the review process.

5. Has your department or agency had previous contact or involvement with the Proponent or other parties in relation to the Project?

No.

6. From the perspective of the mandate and area(s) of expertise of your department or agency, does the Project have the potential to cause adverse effects within federal jurisdiction or adverse direct or incidental effects as described in section 2 of the IAA? Could any of those effects be managed through legislative or regulatory mechanisms administered by your department or agency? If a licence, permit, authorization or approval may be issued, could it include conditions in relation to those effects?

DFO has reviewed the available project information. Based on this information, the Project is likely to result in the harmful alteration, disruption or destruction of fish habitat and/or the death of fish. As such, the project is likely to require authorization under the Fisheries Act. If an authorization were to be issued, it would include conditions in relation to the aforementioned effects.

7. Does your department or agency have a program or additional authority that may be relevant and could be considered as a potential solution to concerns expressed about the Project? In particular, the following issues have been raised by the requestor or are described in section 2 of the IAA:
- fish and fish habitat, including matters related to surface and groundwater,
 - migratory birds, including matters related to vegetation and habitat,
 - federally listed species at risk,
 - effects on Indigenous people of Canada, including on physical and cultural heritage, the current use of lands and resources for traditional purposes, or any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, or on communities' health, social or economic conditions,
 - adverse changes to the environment that would occur on federal lands, including federal water-lots, and lands outside Ontario or Canada, including transboundary effects of greenhouse gas emissions as well as air emissions.

If a *Fisheries Act* Authorization is required, the authorization process through the Fish and Fish Habitat Protection Program may involve Indigenous consultation. This consultation may include consultation and/or accommodation on potential impacts to Indigenous peoples of Canada. These potential impacts may include current use of lands and resources for traditional purposes, physical and cultural heritage, and/or any structure site or thing that is of historical, archaeological, paleontological or architectural significance.

If adverse impacts to federally listed species at risk are anticipated, the project may also require a permit under the Species at Risk Act.

8. Does your department or agency have information about the interests of Indigenous groups in the vicinity of the Project; the exercise of their rights protected by section 35 of the *Constitution Act, 1982*; and/or any consultation and accommodation undertaken, underway, or anticipated to address adverse impacts to the section 35 rights of the Indigenous groups?

Yes, Fisheries and Oceans Canada anticipates that the Indigenous groups in the vicinity of the Project will likely be interested in the Project. If a Fisheries Act Authorization is required, the authorization process may involve Indigenous consultation and/or accommodation to address adverse impacts to the section 35 rights of the Indigenous groups.

9. If your department has guidance material that would be helpful to the Proponent or the Agency, please include these as attachments or hyperlinks in your response.

William Glass

Name of departmental / agency
responder

A/ Team Leader, Coastal and Marine Regulatory Reviews

Title of responder

October 18, 2023

Date