

Performance Audit

# Ontario Place Redevelopment

// Independent Auditor's Report



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# 1.0 Audit at a Glance

## // Why We Did This Audit

- Successive governments have planned to revitalize the Ontario Place site. In 2017, a Call for Submissions (CFS) process was launched to seek a tenant on the West Island. That process was terminated without a decision following a change in government. In 2019, the Province initiated a Call for Development (CFD) process to seek a private-sector partner (or partners) to redevelop Ontario Place.
- There has been significant public interest in how the CFD process was managed and how the anchor tenants were chosen.
- There has also been public concern about the environmental impacts of redeveloping the Ontario Place site and the proposed changes to the historical nature of the property.

## // Our Conclusion

Our audit found that the Ministry of Infrastructure (MOI), in conjunction with Infrastructure Ontario (IO), did not design and conduct the CFD and the resulting redevelopment of Ontario Place in accordance with the published CFD process, and best practices for large-scale, modern land-use development projects.

We found that the CFD process and realty decisions were not fair, transparent or accountable to all participants as would be required by the Realty Directive, the CFD document, and best practices. There were many instances where the rules and guidelines outlined in the CFD document were not followed. For example, despite published guidance that contact with government officials was prohibited during the open period, some participants were invited to meet with government officials and high-ranking political staff during the CFD open period.





Throughout the CFD process, minutes of meetings with participants were not kept. As a result, we were not able to assess whether participants had equal access to the information that was shared during the meetings.

We also found that the assessment process used a qualitative scoring framework and criteria that were not finalized until after the submission deadline. In addition, criteria were assigned no relative weight, leading to uneven scoring of submissions by assessors. Also, we found instances where individual assessors' scores were very different from each other and in some cases were altered after the assessors' consensus meetings.

We found that the CFD envisioned two different types of bids: a comprehensive site-wide solution; or multiple single tenants. The same criteria were used to score these vastly different solutions. As well, the full implications of the provincial costs of each solution were not provided to decision-makers when IO and the Ministry of Heritage, Sport, Tourism and Culture

Industries (MHSTCI) recommended that the Province take on the role of Master Developer. These costs were not known at this time.

We found that the social and environmental benefits and costs of redevelopment were not factored into the assessment framework or considered in the redevelopment, including in the lease negotiations with anchor tenants. Neither IO nor MOI sought input from the public until August 2021, after the tenants had already been announced.

Key environmental assessments will not be conducted on the Ontario Place site even though many concerns were raised by the Toronto City Council and the Toronto and Region Conservation Authority. With the passage of the *Rebuilding Ontario Place Act, 2023*, the government exempted future government-led development on the site from having to be assessed.

IO and MOI accepted all but one of their directed 19 recommendations.

## // What We Found

### **The Total Estimated Costs to the Province for the Ontario Place Redevelopment Have Increased Significantly by \$1.8 Billion Since the Call for Development Was Issued**

- Prior to finalizing the CFD, in December 2019, IO's projected total site readiness costs to the Province for the redevelopment ranged from \$335 million to \$424 million (see **Figure 1**).
- As of February 2024, with the inclusion of the design and construction of the Ontario Science Centre (over \$700 million), public realm (over \$500 million) and parking (over \$280 million), and with a \$346.9 million increase in site servicing costs, IO projected the total cost of the redevelopment project to be \$2.237 billion. The total estimated costs of redevelopment have not been approved by the government.

#### » **Recommendation 1**

### **Costs to the Province Totalling Over \$950 million (Excluding the Science Centre) Were Not Fully Considered in the Assessment of Comprehensive Versus Partial Site Solutions**

- As Master Developer, the Province bears the costs to develop the public realm (over \$500 million for parks, paths, roads, facilities, landscaping, etc.), parking (over \$280 million) and the last mile to connect public transit from Exhibition Place to Ontario Place (over \$60 million). These costs totalled over \$950 million in IO's February 29, 2024, estimate.
- Neither the December 11, 2019, briefing materials for the Minister's Office and Premier's Office, nor the January 30, 2020, submission to the Cabinet's Priorities and Planning Committee considered or highlighted these potential costs, as many were unknown at that time.
- We found that seven of the 10 comprehensive site-wide submissions included a design for the public realm, three of which included a provision to pay for the public realm. Seven included a parking solution, three of which included a provision to pay for parking. And five included a design for the last mile, two of which included a provision to fund the last mile to transit. While committing to pay for these features, some also did request a larger investment from the Province for site servicing or lower revenue-sharing arrangements with the Province.

#### » **Recommendation 1**

**Figure 1: Projected Total Costs to the Province for the Ontario Place Redevelopment, 2019, 2021 and 2024**

Source of data: Infrastructure Ontario

Capital Investment	Estimate (\$ millions)		
	December 11, 2019	March 23, 2021	February 29, 2024
Metrolinx last mile	33.0–54.0	50.0	>60
Soil remediation/management*	50.0	48.5	–
Site servicing	12.0–45.0	70.0	391.9
Shoreline repair/flood mitigation*	20.0–30.0	50.0	–
Roads*	10.0–25.0	15.0	–
On-site investigative due diligence and environmental work/approvals	5.0–10.0	10.0	–
West Island demolition	5.0–10.0	10.0	40.4
Lakefill	Up to <200.0	–	–
Ontario Science Centre (design and build)	–	–	>700
Public realm and parks	–	50.0	>500
Parking structure	–	280.0	>280
Early works	–	17.0	38.6
CSO-1 only (Therme-impacted)	–	–	>25
Government contribution to Therme shoreline and Therme public realm	–	–	>20
Off-site works	–	–	>10
Land acquisition (land/water exchange lands only)	–	–	>10
Government contribution to Live Nation shoreline	–	–	5.0
Habitat compensation	–	–	0.6
Art relocation	–	–	0.4
Other rehabilitation	–	25.0	–
Soft costs and other	–	119.0	–
<b>Total costs</b>	<b>335.0–424.0</b>	<b>744.5</b>	<b>2,237.0**</b>

\* These costs were combined under site servicing costs in 2024.

\*\* The estimated costs of redevelopment of Ontario Place had not been approved by Treasury Board at the time of our audit.

## // What We Found

### **The Estimated Cost of Relocating the Ontario Science Centre to Ontario Place Has Increased by Nearly \$400 Million from the March 2023 Business Case That Recommended the New Building**

- According to a March 2023 business case, approved by the Treasury Board in April, IO estimated that maintaining the Ontario Science Centre (OSC) at the existing Don Mills site would cost the Province \$1.304 billion in Net Present Value over a 50-year period, whereas designing, building and maintaining a new OSC at Ontario Place would cost \$1.047 billion over the same period. Relocation was presented as a savings, therefore, of \$257 million.
- As of November 2023, based on the latest available cost information, the total cost estimate for building and maintaining the new OSC at Ontario Place increased by \$397 million (or 47%) from the Treasury Board approved budget in April 2023. If these costs are added to the \$1.047 billion above, the total is now \$1.444 billion.
- The increase is due to higher design and construction costs (\$224 million), lifecycle and maintenance costs (\$93 million), and ancillary costs (\$80 million) because of scope changes to the building and cost escalations.

#### **» Recommendation 1**

### **Contrary to CFD Rules, Participants Met with Staff from the Minister's Office and Premier's Office During the Open Period**

- Contrary to the protocol outlined in the CFD, three participants attended meetings with staff from the Minister's Office and the Premier's Office early in the open period in June and July 2019.
- Later in the open period, all participants were offered a meeting with the Minister's Office and Premier's Office. Meetings were held with 18 participants, including the original three again.

#### **» Recommendation 9**

## // What We Found

### **Contrary to CFD Rules, Some Participants Had Direct Access to an Infrastructure Ontario Executive**

- The CFD document stated that “No communication with government staff or appointed officials is permitted during the Call for Development process.”
- We found a Vice President (VP) at IO, responsible for conducting the financial assessments, communicated directly with Therme Canada (Therme) and other participants during the CFD open period.
- The VP at IO exchanged nine emails and held one call with Therme’s legal counsel on media interest about Therme’s involvement in the CFD process, an introduction to the transaction advisor and an invitation to an event at the legal counsel’s firm.
- We also found that the Chairman of one of the participants (Participant B) requested that the VP call his personal cellphone. Email correspondence showed that this call occurred. In another instance, email correspondence showed that the VP spoke to the Director of another participant (Participant E).
- By communicating with only some participants during the open period, in contravention with the CFD, there is a risk that the process is not perceived as transparent, accountable and fair to all participants.

#### » **Recommendation 9**

### **The Ontario Place CFD Process Was Not Required to Follow Typical Procurement Law or Directives**

- The Ontario Place redevelopment was categorized as a real estate transaction and subject to the Province’s Realty Directive. It was categorized as a broker-led process that would result in a real estate transaction to lease land. As a result, the CFD process was not designed to follow procurement best practice, procurement law or the Ontario Public Service (OPS) Procurement Directive.
- The CFD process required participants to sign a non-disclosure agreement (NDA) and complete a participation form that contained unusual disclaimers such as: “The province may select a party which did not submit a response to this Process to Seek Development Concepts or whose response did not meet the requirements.” This is contrary to the CFD and the Realty Directive, both of which strive to be an accountable and transparent process.



## // What We Found

- A few participants told us that, as a result of the terms above, they did not invest a significant amount of time and resources in developing their submissions as the outcomes of the process were not well defined.

### » Recommendation 3

#### **One Third of the Assessment Criteria Used to Assess Participants Were Not Disclosed to Them**

- The CFD assessment framework outlined four “primary areas of consideration” that were further broken down into nine objectives and 28 assessment criteria. Nine of the 28 assessment criteria were not in the CFD, so participants were not aware of them when bidding.

### » Recommendation 4

#### **The Assessment Process Was Irregular, Subjective and Not Always Followed**

- The four “primary areas of consideration” were not assigned weights, meaning that the overall final assessment of participant submissions was a matter of the subjective judgment of the evaluators.
- The results of the scoring varied significantly. For 20% of the technical objectives, at least one assessor scored a particular submission as “high”, while at least one other assessor scored the same submission as “low”.
- We reviewed all individual assessor score cards and found 126 instances (or 11%) where an objective was not scored by the assessor. All assessors were required to score all nine objectives prior to the consensus meeting.
- One assessor did not score any of the criteria for Therme on his submission prior to the consensus meeting.

### » Recommendation 5

## // What We Found

### **After the IO November 5 Briefing to Staff from the Minister's Office and the Premier's Office, Triple Five Group (Triple Five) Was Asked to Substantially Revise Its Submission and Resubmit**

- Triple Five's submission was assigned a consensus score of "low" on all nine objectives during the consensus meeting. In the consensus assessment workbook, the lead assessor wrote that there was insufficient detail in the submission to properly assess it, and subsequently changed the scoring to "unable to assess."
- After the close of the CFD, following the briefing to the MHSTCI Minister's Office and Premier's Office on November 5, 2019, a VP from IO reached out to this participant to obtain substantially new information on its submission to allow for a re-assessment.
- On December 3, 2019, the participant's lawyer emailed IO, submitting an "enhanced version" of its presentation 70 days after the CFD submission deadline.
- On December 11, 2019, IO presented Triple Five to staff from the Minister's Office and the Premier's Office as the primary comprehensive site-wide solution option with four alternative comprehensive site-wide solution partners, despite the other comprehensive site-wide submissions scoring higher. They then recommended the multi-partner option as the preferred approach over the comprehensive site-wide solution.

#### » **Recommendation 6**

### **Publicly Disclosed Details of Therme's Investment Show Double the Capital From What Was in Its CFD Submission**

- On October 3, 2024, the Province publicly released the terms of its lease with Therme, and its news release stated that Therme will now be making \$700 million in upfront capital investments. As recent as February 2024, IO's analysis showed that Therme's investment was about \$350 million which is what was stated in its original submission. Of the \$700 million capital investments, \$500 million will go to build the Therme facility and \$200 million will support an approximately 16-acre public realm. Originally only about \$10 million was for the public realm.
- According to IO, Therme confirmed in writing on October 2, 2024, one day prior to IO releasing the details of the lease, that their estimated capital expenditure was now \$700 million. Despite this written confirmation, in Therme's lease agreement with the Province, there is no obligation for Therme to make any capital investment. In contrast, the Province's lease agreement with Live Nation states that a minimum capital investment be made by Live Nation.

## // What We Found

- The Province's October 3, 2024, press release also noted nearly \$2 billion in estimated revenue contributions from Therme to the Province over the duration of the 95-year lease. These contributions consist of \$1.1 billion in rent payments and \$855 million in common area maintenance (CAM) payments. The present value (that is, the concept of today's dollars being worth more than tomorrow's because of inflation) of the rent payments is only about \$163 million, or about 15% of the total nominal amount of \$1.1 billion.
- The CAM payments, which are costs for lawn maintenance, snow removal and other miscellaneous costs, do not represent a benefit to the Province. The Province will be incurring these costs and recovering the costs from Therme.
- Based on the 2019 revenue and expense projection and the new investment announced by Therme, we calculated that they will break even (their return on their capital investment) around year 21 of operations. This break even does not consider their financing costs, taxes, profit margin, lifecycle costs for the building, etc.

### » **Recommendation 14**

#### **Negotiated Lease Terms Include Significant Penalties for the Province but Allow for Early Termination**

- The lease agreement with anchor tenant Therme includes a payment of \$30 million in liquidated damages if the Province does not meet certain site readiness deadlines, such as interim utilities services (utilities necessary for Therme during the construction period) or initial environmental obligations. However, prior to meeting the site readiness obligations, the agreement allows the Province to terminate the lease for convenience and pay \$30 million for exercising this right.
- The interim utilities services deadline passed on December 31, 2023 but the agreement includes a one-year cure period that extends the deadline to December 31, 2024. At the time of our audit, IO was in discussions with Therme on when the interim utility services will be met.

### » **Recommendation 13**

## // What We Found

### There Was No Public Engagement Prior to or During the CFD

- No public consultations were held prior to the design and release of the CFD that could have informed a vision for Ontario Place, the overall plan for the site, or the criteria for evaluating participant proposals.
- Between August 30, 2021 and September 12, 2023, after the selection of Ontario Place's anchor tenants, MTCS and IO held a total of 17 consultations with the public and other stakeholders on a variety of topics, such as the use of the site and the environmental impacts of the redevelopment. In IO's summary of these public engagements, a key sentiment was "why now and what's the purpose; why [wasn't the] public consulted on partner selection."

#### » Recommendation 2

### Province Exempted Ontario Place Redevelopment from Obligations Under the *Environmental Assessment Act*, the *Environmental Bill of Rights, 1993* and the *Ontario Heritage Act*

- On December 6, 2023, the government passed the *Rebuilding Ontario Place Act, 2023* (Act), which exempts the Province from any further obligations under the *Environmental Assessment Act*. For example, any changes to plans for the public realm will no longer be subject to an environmental assessment. Any future government-led developments related to the Ontario Place site, such as parking or the OSC, will also not be subject to an environmental assessment. This Act also exempts the entirety of the Ontario Place site from any obligations under the *Ontario Heritage Act*.
- The *Rebuilding Ontario Place Act, 2023* also exempted the Province from *Environmental Bill of Rights* (EBR) consultation requirements. This meant that the Ministry of Infrastructure did not have to consult the public under the EBR or consider the public's feedback before the Act was passed, even though the Ministry expected the Act to have environmentally significant implications.

#### » Recommendations 18 and 19



## 2.0 Background

### 2.1 History of Ontario Place

Ontario Place, an award-winning park on Toronto's waterfront, holds fond memories for many of the province's residents and visitors. Construction of the site began in 1969, when three man-made islands were created using landfill left over from expansions to Toronto's subway system and construction of the financial district's Commerce Court office complex.

The initial construction costs reached \$29 million and featured state-of-the-art landscaping and architecture. The park's 155 acres included an accessible waterfront with access to the marina, a beach and multiple entertainment options. In 1971, when it opened to the public, Ontario Place included attractions such as:

- » the Cinesphere – a sphere housing the world's first permanent IMAX theatre;
- » the Forum – a concert venue with a capacity of 9,500;
- » the Pods – spherical structures constructed over the water that housed educational displays, multi-media exhibitions and restaurants; and
- » boutiques, shops, food kiosks and pubs scattered across the park.

A Children's Village on the East Island opened soon after, in 1972. The Children's Village had many child-friendly activities, such as a water-play area and climbing equipment. Then, in 1978, a waterpark was added featuring Canada's first waterslide, for which the spiral stair structure still stands to this day.





The “Ontario North Now” exhibit was built on the West Island in 1980. Its interconnecting silo-like buildings showcased life in Northern Ontario, including a simulation of the northern lights and displays of northern wildlife.

In the decades that followed, various rides and attractions were removed and added throughout the park.

In 1990, the Ontario Place Corporation (OPC), a provincial Crown agency, was incorporated under the *Ontario Place Corporation Act R.S.O. 1990* (OPC Act) to create a provincial agency to govern the operations of Ontario Place.

In 1995, the Province decided to demolish the Forum and replaced it with the Molson Amphitheatre funded by Molson Breweries and MCA Concerts, since renamed Budweiser Stage. The venue is still in operation today and has a capacity of 16,000. The current lease agreement with Live Nation expires on December 31, 2030.

Attendance at Ontario Place declined over time. Throughout the 1970's it attracted approximately 3 million annual visitors. By 1989, that number had fallen to 2.1 million, and then to one million in 2005. During its last year of operations, 2011, there were 563,000 visitors.

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Throughout the 1970's Ontario Place attracted approximately **3 million** annual visitors. By 1989, that number had fallen to **2.1 million**, and then to **one million** in 2005.

## 2.2 There Have Been Various Past Plans to Renew Ontario Place

In July 2010, a Request for Information (RFI) was issued by OPC to seek engagement with stakeholders and members of the public regarding the renewal of Ontario Place. The RFI asked qualified respondents to propose creative and innovative ideas to rejuvenate the park. The corporation received 35 submissions to the RFI.

In 2011, additional technical consultations were held between the then Ministry of Tourism, Culture and Sport (MTCS) and relevant stakeholders (for example, Aquatic Habitat Toronto, Toronto Port Authority, Toronto Island Airport Authority, Toronto Transit Commission, Ministry of Infrastructure, Waterfront Toronto, Ministry of the Environment and the City of Toronto). These meetings did not result in any actions.

In February 2012, the Province closed the waterpark, amusement rides and the Cinesphere, and announced that the 155-acre site would be redeveloped. From 2012 to 2017, a section of the grounds remained open as a public park and the amphitheatre continued to be used as a concert venue. During this time, the Ontario Place marina also remained open. The site was used for the 2015 Pan American Games and Canada 150 celebrations.

During this period, the government launched a website and phone number to gather suggestions from the public for a revitalized Ontario Place. A Minister's Advisory Panel was also created, as discussed in **Section 2.2.1**.

### 2.2.1 2012 Minister of Tourism, Culture and Sport's Advisory Panel Report

The Minister's Advisory Panel on Ontario Place Redevelopment was assembled in March 2012 and was chaired by John Tory, at the time a private citizen who later became the Mayor of the City of Toronto during both the 2017 CFS and the 2019 CFD. The Minister of Tourism, Culture and Sport requested that the panel:

- » provide strategic advice to the government to move forward with a full revitalization of Ontario Place;
- » provide input into a new vision for the OPC; and
- » help set parameters with the government regarding public and private sector roles and expectations.

The panel's report drew from the public consultations and RFI process undertaken in July 2010 in order to provide guidance for an RFP for a revitalized site.

The panel “looked at an extensive range of past studies and analyses that provided a framework and a foundation” for revitalization. It leveraged the expertise and experience of the panel members and heard “directly from the people of Ontario at a public town hall” held in June 2012.

The panel also received dozens of submissions and presentations by stakeholders on key themes discussed at the public town hall.

- » **Access:** The public realm must be accessible by transit and by foot. Access to and from Exhibition Place is also necessary. Access to public space and the water’s edge should be free and should be for everyone to enjoy, from children to seniors.
- » **Integration:** The public realm must consider integration with the natural surroundings (water, land and air) and celebrate the four seasons.
- » **Programming:** Ontario Place should be Ontario’s canvas to showcase creative programs, arts and entertainment. It should include activities like festivals and concerts and represent the cultural diversity of Toronto and Ontario. Arts, science, environmental and other learning programs are essential, including youth engagement activities and workshops.
- » **Recreation:** Include walking promenades, benches, shade and rest areas, urban gardens, splash pads and other water features, public art, skating rinks, and sports facilities for all seasons.
- » **Green Space:** A place that is open and evokes its natural surroundings, including green spaces where people can gather, hear music, share great food and relax.
- » **Environmental Sustainability:** Ensure eco-friendly elements, green roofs, natural landscaped elements and renewable energy features.
- » **Retail and Business:** A place where locals and visitors can eat great food and shop year-round, whether it’s an outdoor farmer’s market or indoor shopping.
- » **Multi-use:** A place, complex or community centre to accommodate events and venues for arts, sports, learning and more.
- » **Architecture and Design:** Showcase iconic architecture and sustainable design that retains some of the heritage of the site. Ensure “good way-finding” and connectivity, especially connectivity with the waterfront.
- » **Financial Sustainability:** Examples can include revenue from leases, residential development, retail, parking revenue, bonds, corporate sponsorships and/or hotels. Selling advertising space or corporate naming rights could be considered. Ensure that revenue generators do not take away from public accessibility and public enjoyment of the site and waterfront.

The Minister's Advisory Panel report published in July 2012 to MTCS included 18 recommendations on how to move forward with an Ontario Place revitalization. The recommendations envisioned: a year-round site with barrier-free access for all; a site that respected and enhanced the natural beauty of the surroundings by protecting sightlines to the water; a site that respected and celebrated the natural landscape; limited residential development (no more than 10–15%); a mixed-use community that could include space for commerce and business (corporate headquarters, hotel, cafés, retail); the ideal site for a research or education centre for excellence; and a range of entertainment and cultural activities.

Following this, in 2013 and 2014, MTCS hosted three in-person public meetings to gather feedback on the conceptual design, themes of identity/connectivity, and features of Trillium Park and the William G. Davis Trail, both on the East Island. The public was given an opportunity to learn more about and comment on a proposed Class Environmental Assessment (EA) required for the construction of the park and trail.

## 2.2.2 Types of Procurements

When seeking vendors or solicitations, there are a number of different procurement methods that can be used by the requesting party. Procurements can be multi-step processes depending on the type of procurement. The most basic form of procurement is commonly done through a Request for Expression of Interest, which is used to gather information about supplier interest, capabilities and qualifications. They do not typically qualify a potential supplier.

Another common procurement strategy is an RFI. An RFI is issued to gather information on the potential products or services available in the market. It often contains a preliminary description of the issue that needs to be addressed. RFI's do not typically pre-qualify a potential supplier and do not influence their chances in a subsequent opportunity.

In some procurements, a Request for Pre-Qualification (RFQ) is used to pre-qualify a short list of participants based on an assessment of their technical qualifications and capabilities. When an RFQ is used, only the qualified participants are allowed to participate in any related Request for Proposals (RFP).

An RFP is a common procurement strategy used to solicit suppliers for the delivery of products or services or to provide detailed options and solutions. It usually contains a pre-defined scope of work request, numeric evaluation criteria that considers many factors, including qualifications, resumés of teams, approach, understanding of the project and price.

The redevelopment of Ontario Place was categorized by IO as a real-estate transaction rather than a procurement. As a result, the 2017 CFS (see **Section 2.2.3**) was not subject to the OPS Procurement Directive. The categorization of a real-estate transaction was later supported by external legal advice in May 2018. The 2019 CFD (see **Section 2.2.4**) also used this opinion. Our review of other large waterfront developments (discussed in **Section 4.3.2**) found that they proceeded as procurements.





### 2.2.3 Call for Submissions in 2017

On July 7, 2017, the government announced it was seeking an “innovative partner” to redevelop Ontario Place’s West Island. MTCS retained IO to design and manage a customized Call for Submissions (CFS) process. The stated objective of the process was to “solicit development concepts from the market that could strike a balance between delivering the vision for the West Island with developing an economically viable concept requiring minimal subsidies from government.”

IO received 24 responses to the CFS in September 2017. The submissions were assessed against three assessment criteria: “Alignment with the Government’s Vision”; “Robustness and Viability of Proposed Concept”; and “Qualifications and Experience of the Team.” IO led a four-person assessment team that included representatives from MTCS and OPC. All submissions were assessed against the three criteria. “Alignment with the Government’s Vision” was the criteria used for selecting submissions for next steps. Following consensus meetings, the assessment team briefed the MTCS executives, MTCS Minister’s Office and Chair of the OPC Board on the outcomes. Ten submissions were assessed as having moderate to high alignment with the government’s vision and 12 were eliminated due to low alignment. Two submissions did not provide sufficient information to assess alignment with vision.

In November 2017, a summary of the assessment process was provided to Treasury Board. Following this briefing, IO was directed to hold due diligence discussions with all 10 of the moderate to high alignment submissions as well as the two submissions requiring further information. Subsequently, one participant withdrew its proposal.



That December, IO held due diligence meetings with the remaining 11 participants. Based on the assessment done earlier and the due diligence meetings, IO identified three potential anchor tenants. As shown in **Figure 2**, some participants that were short listed in the 2017 CFS also responded to the 2019 CFD.

**Figure 2: Short-Listed Participants for Ontario Place Redevelopment, 2017 and 2019**

Prepared by the Office of the Auditor General of Ontario

2017 Call for Submissions (West Island Only)	2019 Call for Development
<ul style="list-style-type: none"> <li>● » <b>Therme Canada</b><sup>1,2</sup></li> <li>» <b>Écorécrcéo Group</b><sup>2</sup></li> <li>● » <b>Participant A</b><sup>1,3</sup></li> <li>» <b>Ontario Live</b><sup>1,3</sup></li> <li>● » <b>Participant D</b><sup>1,3</sup></li> <li>» <b>Participant V</b></li> <li>» Participant II</li> <li>» Participant JJ</li> <li>» Participant KK</li> <li>» Participant LL</li> <li>» Participant MM</li> </ul>	<ul style="list-style-type: none"> <li>● » <b>Therme Canada</b><sup>1,2</sup></li> <li>● » <b>Écorécrcéo Group</b><sup>2</sup></li> <li>● » <b>LiveNation Entertainment</b><sup>2</sup></li> <li>» <b>Ontario Live</b><sup>1,3</sup></li> <li>» <b>Participant D</b><sup>1,3</sup></li> <li>» <b>Participant A</b><sup>1,3</sup></li> <li>» Participant B<sup>3</sup></li> <li>» Triple Five<sup>3</sup></li> <li>» Participant M<sup>3</sup></li> <li>» Participant O<sup>3</sup></li> <li>» Participant P<sup>3</sup></li> <li>» Participant R<sup>3</sup></li> <li>» Participant Z<sup>3</sup></li> </ul>

**[bold]** Participated in both the 2017 Call for Submissions and 2019 Call for Development.

● Selected as anchor tenant in that year

1. Indicates anchor tenants or potential anchor tenants for 2017.

2. Indicates anchor tenant for 2019.

3. Indicates participant or partner for future discussions in 2019.

In April 2018, the CFS process was paused, pending a scheduled election. **Appendix 1** highlights key events for Ontario Place over the period 2010–2019.



#### 2.2.4 New Call for Development in 2019

In its November 2018 Fall Economic Statement, the newly elected Government of Ontario signalled its intention to redevelop Ontario Place.

The government's vision for the site, as described in an MTCS news release by the Minister dated January 18, 2019, was to make Ontario Place "an impressive attraction that could include exciting sport and entertainment landmarks, public parks or shopping. We could also have places for recreation, for people to come together and to hear great music at the existing amphitheatre." The government then initiated an early Expression of Interest process, led by IO and the Ministry, to collect ideas from potential participants for the redevelopment of Ontario Place.

The vision included in the May 2019 Call for Development (CFD) stated: "A world-class year-round destination that would attract local, provincial and international visitors—with potential landmarks such as sports and entertainment attractions and retail. These landmarks could be complemented by recreational facilities, public space / parks, and the existing amphitheatre."

To achieve this vision, on May 28, 2019, the government announced a CFD entitled "Toronto Waterfront Opportunity." **Appendix 2** provides a detailed timeline for the 2019 CFD process, which was the focus of this audit, and **Appendix 3** provides a visual overview of the CFD process.

#### 2.2.5 Change of Ministry Oversight for Ontario Place Redevelopment

Prior to May 2022, MTCS retained oversight responsibility for the redevelopment of Ontario Place. IO, an agency of the Ministry of Infrastructure (MOI), provided advisory services to MTCS on the Ontario Place redevelopment project. A formal Letter of Direction from the Minister of Infrastructure to the Chair of IO was sent on April 4, 2019.

In May 2022, responsibility for Ontario Place redevelopment was transferred from MTCS to MOI. The division, relevant records and division staff responsible for the redevelopment moved to MOI.

MTCS had oversight responsibility of OPC, which was directly responsible for managing operations at the park. The corporation was wound up through an Order in Council on June 9, 2023. As a result, the operational functions of OPC were transferred to MOI on January 1, 2024.

## 2.2.6 Recent Legislation

On December 6, 2023, the *New Deal for Toronto Act, 2023*, received royal assent. Embedded in this act was the *Rebuilding Ontario Place Act, 2023* (Act), which provides the Province with new authority specific to the redevelopment of the Ontario Place site. Notably, the Act:

- » states that if the Lieutenant Governor in Council considers it necessary or desirable to facilitate construction at the Ontario Place site, the Lieutenant Governor in Council may make regulations imposing limits and conditions on the power of the City of Toronto;
- » exempts the Ontario Place site from the *Environmental Assessment Act*, which requires that potential environmental effects be considered before a development project begins (see **Section 4.9.1**);
- » exempts the Ontario Place site from the *Ontario Heritage Act*, which allows municipalities and the Minister of Citizenship and Multiculturalism to designate property of cultural heritage value or interest (see **Section 4.9.4**);
- » states that no cause of action can arise against the Province, IO, any current or former member of the Executive Council or any current or former employee, officer or agent of or advisor to the Province or IO regarding any action taken under the Act and no costs, compensation or damages, including for loss of revenues or loss of profit, are owing or payable to any person, and no remedy, including but not limited to a remedy in contract, restitution, tort, misfeasance, bad faith, trust or fiduciary obligation, any equitable remedy or any remedy under any statute; and
- » empowers the Minister of Infrastructure to issue a Minister's Zoning Order (MZO) for the Ontario Place site (see **Section 4.9.5**).





## 3.0 Audit Objective and Scope

Our audit objective was to assess whether MOI, in conjunction with IO, has effective systems and procedures in place to:

- » design and conduct the CFD and the resulting redevelopment of Ontario Place in accordance with applicable legislation, policies and best practices; and
- » negotiate lease terms and contract agreements with successful participants with due regard for social, environmental and economic benefits and costs.

Our audit focused on MOI's and IO's effectiveness and due diligence in the planning and execution of the Ontario Place redevelopment, including the CFD process to solicit proposals for redevelopment, and the assessment and selection of the preferred participants.

The scope of our audit mainly focused on the period between July 2018 to October 2024.

For more details, see our [Audit Criteria](#), [Audit Approach](#) and [Audit Opinion](#).



## 4.0 What We Found

### 4.1 Cost of the Redevelopment to the Province

#### 4.1.1 The Total Estimated Costs to the Province for the Ontario Place Redevelopment Have Increased Significantly by \$1.8 Billion Since the Call for Development Was Issued

On December 11, 2019, IO briefed the MTCS Minister's Office and Premier's Office. IO stated the projected total site readiness costs to the Province for the redevelopment ranged from \$335 million to \$424 million. This included up to \$200 million for lakefill. At the time, IO noted that further due diligence was required to verify the magnitude of the estimated costs. On January 30, 2020, these costs were presented to Cabinet's Priorities and Planning Committee, which finalized the approach to the redevelopment. The costs presented did not include estimates for the potential cost to the Province for the development of the public realm or parking in certain scenarios as they were unknown at the time.

As seen in **Figure 1**, the total cost to the Province for the redevelopment of Ontario Place, as of February 2024, is now estimated at \$2.237 billion, including the costs of the new OSC, estimated at over \$700 million (over \$500 million for design and construction, over \$19 million for administrative costs, and over \$140 million for non-P3 costs). Excluding the OSC, the new estimate is \$1.53 billion, which is an increase of \$1.1 to \$1.2 billion from the initial estimate in December 2019.

The majority of the increase is related to the additional costs of adding the public realm, parks, a parking structure and the OSC, as well as increased costs for site servicing. Inflationary pressures have also impacted the cost of redevelopment.

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The total cost to the Province for the redevelopment of Ontario Place, as of February 2024, is now estimated at **\$2.237 billion**, including the costs of the new OSC, estimated at over \$700 million.



#### 4.1.2 Costs to the Province Associated with Developing the Public Realm Are Estimated at Over \$500 Million

As a consequence of taking on the Master Developer role, the Province bears responsibility for the cost of developing the public realm areas of Ontario Place (parks, paths, beaches, piers, roads, facilities, landscaping, etc.). As of February 2024, the estimated cost of developing the public realm was over \$500 million.

In a February 28, 2019, briefing to the MTCS Minister's Office, Premier's Office and Cabinet Office, IO outlined two approaches for the Ontario Place redevelopment:

- » selecting a single private-sector partner to act as Master Developer with a comprehensive site-wide solution for redeveloping all of the Ontario Place site; or
- » selecting multiple private-sector partners with partial site solutions with the Province acting as Master Developer.

The comprehensive site-wide solution was thought to bring the most benefits and less risk to the government as it would not have to co-ordinate all the parties involved.

The CFD document stated the government's preference was for a comprehensive site-wide solution, but that smaller-scale creative and bold concepts would also be considered for portions of the site.

In a briefing presented to MTCS Minister's Office and Premier's Office on November 5, 2019, after completing the assessment of the CFD submissions, IO concluded that "no single submission met the government's desire for a comprehensive site-wide solution."

According to IO's assessment, there was no comprehensive site-wide submission that was highly aligned with the vision, demonstrated project viability with a proven track record of success, could be delivered by the identified team and offered significant positive benefits to the Province. Consequently, IO recommended selecting several partners to deliver partial site solutions, with the Province acting as Master Developer. They felt the advantage was more control and faster development.

According to IO, the intention of these briefings was to present a summary of all submissions and confirm short-listed participants. It was not to seek approvals on government capital contributions. Capital requirements were not known at this time. Designs for the public realm and commercial terms with partners or related government obligations were not confirmed.

In its financial assessment of CFD submissions, IO did not factor in public realm costs. Costs to the Province for the public realm were not identified as an objective or criterion of the assessment process. The consensus assessment notes, the three successful partial site participants (Therme, Live Nation and Écorécreo) and the overall assessment report did not mention the potential additional costs to the Province of developing the public realm.

As seen in **Figure 3** when we reviewed the CFD submissions we found that seven of 10 comprehensive site-wide submissions included a design for the public realm. Of the seven comprehensive site-wide submissions that included the public realm in their submissions, three included the costs for public realm while four did not provide cost details on the public realm.

As seen in **Figure 1**, the cost of the public realm is estimated to be over \$500 million in IO's February 2024 projection. The design and scope of the public realm was based on public consultations which occurred after the selection of the anchor tenants (see **Section 4.2.1**).

The cost estimates above are only for construction and do not include the costs to operate and maintain the public realm. MOI was not able to provide us with an estimate of the operating and maintenance costs of the public realm.

At the time of our audit, the estimated costs of the public realm had not been approved by Treasury Board.

### 4.1.3 The Province May Pay Over \$400 Million to Provide Parking

As of May 2024, the cost to the Province, as Master Developer, of providing parking facilities for tenants was estimated by IO to be from \$280 to over \$400 million.

**Figure 3: Commitments of Comprehensive Site-Wide Solution Submissions**

Prepared by the Office of the Auditor General of Ontario

Submission	Parking	Public Realm	Last Mile Connection
Participant A	✓	✓	✓
Participant B	✓	✓	✓
Ontario Live	✓	✓	✓
Participant D		✓	
Participant E	✓	✓	
Participant F	✓		
Participant G			
Participant H	✓		✓
Participant I		✓	
Triple Five	✓	✓	✓
<b>Total</b>	<b>7</b>	<b>7</b>	<b>5</b>



Seven of the 10 comprehensive site-wide CFD submissions included participant-funded parking solutions. Of these seven comprehensive site-wide submissions that included participant-funded parking, three included specific cost information related to their parking commitment.

Some of the partial site submissions also included parking solutions, including Therme's CFD submission, which committed to finance, build and operate a parking structure. This was assessed as a positive in terms of "Site Optimization" and "Benefits to the Province." Both of these objectives were scored as being in high alignment.

Even though some participants proposed to pay for parking, and were assessed on that basis, in December 2020, IO recommended that the government manage the parking solution for all of Ontario Place. IO stated that a tenant-funded and managed parking solution would require co-ordination among tenants with competing interests. For example, if the parking solution was controlled by one of the tenants, they could set rules or conditions for other visitors or charge different prices. IO also noted that a government-built parking structure at Ontario Place would be an opportunity to generate revenue for the Province. The provision of parking by the Province was approved by Treasury Board on March 19, 2021.

As seen in **Figure 4**, as of May 2024, IO had recommended two parking facility options to government decision-makers, along with an estimated cost for each option. There were seven different parking options. Cost estimates for these options ranged from about \$140 million (180 spots) to \$1.3 billion (1,892 spots). Cost estimates per parking spot ranged from \$162,000 per spot (1,812 spots) to up to \$444,000 per spot (180 spots).

At the time of our audit, the estimated costs of parking had not been approved by Treasury Board and government had yet to decide on the type of parking that would be constructed or its location. In July 2024, IO had expressed concerns about the significant costs of building an underground parking solution at Exhibition Place.

Neither the December 11, 2019, "Ontario Place Call for Development Options" document used by IO to brief the Minister's Office and Premier's Office nor the January 30, 2020, submission to the Priorities and Planning Committee of Cabinet referred to the cost of developing the public realm, parking or the last mile solution to connect Exhibition Place with Ontario Place to inform their decision.

#### 4.1.4 Costs Also Increased Since March 2021 Treasury Board Approval

On March 23, 2021, MHSTCI (MTCS was changed to MHSTCI in October 2019) provided a new budget, which included new projections for site demolition, utilities servicing and site readiness.

**Figure 4: Parking Solution Options Presented to Government, May 2024**

Source of data: Infrastructure Ontario

Description	Estimated Number of Parking Spots	Total Capital Cost (\$ million)	Financial Benefits (nominal revenue net of capital costs and operating costs and breakeven years)
Single-level parking below OSC basement level	180	>140	
Five-level below-grade parking at Ontario Science Centre site	1,892	>1,300	
Two-level below-grade parking south of BMO field, Exhibition Place	2,125	>800	
Value engineered below-grade (four-level) parking at Ontario Science Centre Site	1,862	>975	
Single-level below-grade parking across parking lot 1 at Ontario Science Centre	390	>200	
<b>Three-level above-grade parking at Exhibition Place and one-level below-grade structure at Ontario Science Centre site</b>	<b>1,812</b>	<b>&gt;400</b>	<b>1,750 35 years</b>
<b>Four-level above-grade parking structure at Exhibition Place</b>	<b>1,903</b>	<b>&gt;280</b>	<b>2,018 28 years</b>

Note: According to IO's analysis of parking options, the two recommend approaches will result in breakeven of 35 years and 28 years respectively and are expected to generate positive nominal revenues net of capital and operating costs of \$1.75 billion and \$2.02 billion respectively. The analysis was done for revenue generated over 80 years. Highlights denote the two short-listed options. The options and related costs have not been approved by Government.

The projected total costs to the Province for the redevelopment were estimated up to \$745 million (for site demolition, utilities servicing, site readiness, site access improvements, public realm and parking). See **Figure 1** for details on the March 2021 estimated costs. As a result of changes in project scope and construction cost inflation, the same costs in February 2024 were estimated to be nearly \$1.53 billion (excluding the OSC-related costs).

We found that between March 2021 and February 2024 some of the largest increases were in the following areas:

- » The cost of the public realm increased from \$50 million to over \$500 million
- » Site servicing costs increased from \$70 million to \$391.9 million.
- » Costs for demolition on the West Island increased from \$10 million to \$40.4 million.
- » Costs for early works for restoring the Pods and Cinesphere increased from \$17 million to \$38.6 million.

IO told us that public realm costs increased because “early estimates prior to a fixed design may have reflected early concepts including a basic park or Trillium Park level of design” and “estimates may not have taken into consideration the considerable site rehabilitation requirements, including flooding, contamination, and design improvements informed by due diligence reports and the iterative design process following significant stakeholder engagement.”



According to IO, the estimates were not intended as a total project cost budget given the preliminary nature of the design and discussions. For example, the \$70 million cost estimate for site servicing was a preliminary estimate based on a conceptual solution and informed by discussions with the City of Toronto.

#### **4.1.5 Potential Costs to the Province for Phase 2 of Ontario Place Are Still Unknown**

In a May 2020 Treasury Board submission, MHSTCI noted that “The approach to Phase 2 is currently under consideration and contemplates the development of a large-scale entertainment destination on a portion of the East Island and mainland.”

In its December 11, 2019, briefing to the MHSTCI Minister’s Office and the Premier’s Office, IO stated that the government would be responsible for lagoon in-fill on the East Island for a larger-scale tenant for the future phase. At the time of our audit, this phase of the project and its potential costs to provincial taxpayers was unknown.

#### **4.1.6 Costs of New Ontario Science Centre at Ontario Place Have Increased by Nearly \$400 Million**

IO included a recommendation to relocate the OSC to Ontario Place as part of a December 11, 2019, briefing to the MHSTCI Minister’s Office and Premier’s Office about the Ontario Place CFD.

As mentioned in our 2023 report on Science Centres, the decision to relocate the OSC was informed by a cost/benefit analysis contained in a March 2023 business case completed by IO. The analysis compared the net present value of revenues and costs over a 50-year period (2023/24–2072/73) for two options: (A) remain at the current location; or (B) downsize and relocate to Ontario Place. According to this financial analysis, remaining onsite would cost the Province \$1.304 billion, while the cost of relocating would be \$1.047 billion, a savings, therefore, of \$257 million. The design and construction capital portion of these costs was \$321.2 million.

As of November 2023, based on the latest available cost information, the total cost estimates for the new OSC at Ontario Place have increased by \$397 million (47%) from the Treasury Board-approved budget in April 2023. The newest cost estimates by IO suggest it is more expensive to relocate the OSC than what was estimated seven months earlier. If these costs are added to the \$1.047 billion above, the total is now \$1.444 billion.

The costs have increased by \$223.7 million due to higher design and construction costs, which now total \$544.9 million, or a 70% increase. There was also an increase of \$93 million due to higher lifecycle and maintenance costs, and an increase of \$80 million in ancillary costs.

According to IO, \$105.2 million of the increase in design and construction costs is due to additional scope changes such as building a tunnel and ground-level connection to the Pods, excavation and

structural foundation work, and an additional basement level that will provide a below-ground loading dock. About \$57.5 million of the remaining cost increases in design and construction are due to landlord improvements and enhancements to the Cinesphere. Another \$61 million is due to cost escalations.

Of note, costs of rehabilitating and remediating the existing OSC site would also have increased. At the time of our audit, the estimated costs of relocating the Ontario Science Centre had not yet been approved by Treasury Board.

#### 4.1.7 Planning Continues for Ontario Science Centre Relocation to Ontario Place

IO issued an RFP to select a planning, design and compliance consultant for the new OSC project on June 22, 2023. The consultant contract, which totalled \$5 million, was awarded to the single bidder on December 1, 2023. According to the Province, detailed planning and design is underway to develop output specifications for the new facility. It is expected to be completed by early 2025.

On May 9, 2024, an RFQ was posted to pre-qualify up to three vendors that will be invited to submit bids on the RFP for the construction of the new OSC facility. The RFQ has closed and is in the evaluation stage, as of September 2024. The RFP is planned to be released in January 2025. The new building is expected to open in 2029.

#### Recommendation 1

We recommend that MOI, in collaboration with IO:

- provide Cabinet and Treasury Board with the full cost implications of alternatives in their business cases for informed decision-making (such as the full costs of alternative options to the Province if taking on the role of Master Developer versus having a comprehensive site-wide solution); and
- when budgeting site servicing costs, as part of the business case, include a full assessment of the costs plus a contingency.

For the auditee's responses, see **Recommendations and Auditee Responses**.

## 4.2 Public Engagement Prior to Call for Development

The CFD stated that the government was “...seeking a visionary partner (or partners) with ideas to deliver transformation change.” As noted in **Section 2.2.1**, the Ontario public had many ideas and suggestions on the Ontario Place site, but these were not incorporated in the project.

Aside from the limited engagement on Trillium Park and William G. Davis Trail, no public input was sought from June 2012 to August 2021 about how to revitalize Ontario Place as a whole.

Ontarians still attempted to offer their ideas. From January 2019, when the government announced an Expression of Interest process (later termed the CFD), whereby potential participants could submit a proposal for consideration, until May 2019 when the CFD was launched, MTCS received approximately 200 unsolicited emails with suggestions for Ontario Place.

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Aside from the limited engagement on Trillium Park and William G. Davis Trail, no public input was sought from June 2012 to August 2021 about how to revitalize Ontario Place as a whole.

The following key priorities emerged from the unsolicited emails:

- » year-round, free public access, specifically waterfront access;
- » family-friendly green space;
- » no casino or residential uses;
- » the re-use of the Pods and Cinesphere; and
- » educational programming and spaces, such as wildlife learning and Indigenous history.

Our jurisdictional scans of other large-scale waterfront developments and discussions with Waterfront Toronto show that public consultation could have informed the vision for Ontario Place, the overall plan for the site and the criteria for evaluating development proposals. Taking what the public wanted into consideration from the beginning would have made the process more open and transparent to the public and could have prevented many of the issues, lawsuits, media attention, etc. that have occurred. Between September 2019 and June 2024, the government has spent \$8.5 million on legal fees associated with the 2019 CFD, MZO, lease negotiations and associated work.

An NDA restricted CFD participants from seeking public consultation. This limited participants' ability to see whether their ideas resonated with the public that ultimately would be paying their revenues. The NDA stated that “No Participant shall make any public comment, respond to questions in a public forum, or carryout any activities to publicly promote or advertise their qualifications, interest in or participation” in the CFD process.



A senior official from MTCS who took part in the CFD process told us that MTCS considered the results of the public engagement that had been completed in July 2012, which were documented in the Ontario Place Revitalization Minister's Advisory Panel report.

There is little evidence, however, that this earlier public consultation informed any of the decision-making for the 2019 CFD design or process. For example, free public access (especially to the waterfront), family-friendly green spaces and environmental sustainability were key priorities of the public and none of these were reflected in the government's vision as put forward in the CFD.

Instead, the CFD project team, made up of representatives from IO, MTCS and the transaction advisor, received strategic direction during the planning process from the MTCS Minister's Office, Premier's Office and Cabinet Office in a February 28, 2019, workshop.

In the workshop, the following direction was given to the project team.

- » Beyond either maintaining Trillium Park or an equivalent footprint across the 55-acre land asset, creation of additional public park land is not expected/required.
- » Unfettered public access to the site or waterfront is not required.
- » Reasonable requests for lakefill and marina modifications (and/or relocation) will be considered.
- » Access to the site could be gated/ticketed.

The strategic direction goes against public feedback noted in the 2012 Minister's Advisory Panel: namely, "Ontario Place and its waterfront must be accessible — an open door — and completely barrier-free to all who visit".



Earlier feedback from the public noted a desire to respect and enhance the natural beauty of the surroundings by protecting sightlines to the water; respect and celebrate the natural landscape; and build in environmental sustainability with eco-friendly elements, green roofs and natural landscaped elements. By contrast, with the introduction of the *Rebuilding Ontario Place Act, 2023* and the enhanced MZO, the Province has the ability to exempt future government-led developments on the Ontario Place site from environmental assessment, the City of Toronto's planning process and noise restrictions, and any heritage requirements under the *Ontario Heritage Act*. See **Section 4.9.4** for a detailed discussion.

The fact remains that given the public outcry and the protest organizations that have arisen in the wake of the CFD process, the decision to choose the anchor tenants, including the OSC relocation, could have better been informed and might have been better accepted by public consultation and outreach.

#### 4.2.1 Public Engagement After Selection of Anchor Tenants

Between August 30, 2021, and September 12, 2023, which was after the selection of Ontario Place's anchor tenants, MTCS and IO held a total of 17 consultations with the public and other stakeholders on a variety of topics, such as the use of the site and the environmental impacts of the redevelopment. See **Appendix 4** for a list of the 17 public consultations held. In addition, consultations with Indigenous communities took place throughout the same period.

In IO's summary of these engagements, it documented that a key theme was "why now and what's the purpose; why public wasn't consulted on partner selection."

#### Recommendation 2

To ensure future public infrastructure projects are accepted and meet the needs of the public, we recommend that MOI, in collaboration with IO, assess and implement best practices in public and stakeholder engagements throughout the planning and development of projects on provincially owned lands. Public engagement is a best practice utilized by peers and alleviates unnecessary legal challenges, public media communications issues.

For the auditee's responses, see **Recommendations and Auditee Responses**.

### 4.3 Design of the Call for Development Process

In a January 18, 2019, news release announcing the redevelopment of Ontario Place, the provincial government declared it was open to an early intake of concepts and unsolicited proposals before launching a formal process in the spring.

IO decided to employ a transaction advisor to conduct the CFD process. It used a second stage request from pre-qualified firms to select a transaction advisor from competing bids. On February 7, 2019, IO contracted with the selected party who also had a subcontractor to provide transaction advisory services related to the CFD. The subcontractor was a commercial real estate consultant who acted as a broker for the CFD process.

The responsibilities of the transaction advisor, among other things, were to develop and assist in the launch of the CFD, identify and market the opportunity to potential participants, manage communications and information requests, and provide weekly market updates and summaries or analysis of concepts, if required.

#### 4.3.1 Ontario Place Call for Development Was a Broker-led Process and Leases with Tenants Were Made Under the Realty Directive

IO categorized the Ontario Place redevelopment as “a broker-led process that would result in a real estate transaction to lease land” rather than a procurement. According to IO it was done to provide “the government with flexibility on the selection of participants and maximize market interest.” After the 2017 CFS process was completed, IO sought and received a legal opinion in May 2018 about the 2017 CFS process to confirm that it was appropriate to conduct it under the Realty Directive and that the Procurement Directive did not apply.

A procurement has a predefined set of rules and the processes that were deemed restrictive for both the CFD and CFS because the government wanted complete autonomy to select the participants rather than the selection being based on a pre-determined criteria assessment alone.

In the opinion of external legal counsel, the CFS was “...a non-binding proposal process to potentially identify one or more negotiation partners.” Counsel’s memo stated that since the process would not have procured goods and services and would not have created legal rights, it did not constitute a procurement. It also stated that procurement rules did not apply and the process was about the disposition of real estate property.

This legal opinion was relied upon by IO for the 2019 CFD. The CFD process was deemed to be a real estate transaction and not to be subject to procurement law or the OPS Procurement Directive. Rather, any decisions that would have flowed from the CFD as it pertained to the use of provincial realty would be subject to the Realty Directive.

The Realty Directive, amended in February 2019, has four principles that guide its application in real estate transactions:

1. "Realty decisions are transparent and accountable. High ethical standards are maintained, avoiding real or perceived conflicts of interest."
2. "The appropriate structures and processes are in place to support horizontal government-wide coordination of recommendations and decisions."
3. "The government's realty inventory is aligned with provincial interests, including consideration of social, environmental and economic purposes."
4. "Realty decisions are forward-looking, sustainable, and support a focused, efficient, flexible and agile realty portfolio across government, and advance government wide interests, including use of realty for public purposes."

As part of the February 2019 amendment, the first principle of the Realty Directive was changed to replace the "fair, open and transparent processes" with "realty decisions are transparent and accountable."

#### 4.3.2 Comparable Waterfront Developments Followed a Procurement Process and Were Not Real Estate Transactions

Unlike the Ontario Place redevelopment, other large-scale developments that are publicly funded and involve real estate transactions have proceeded as procurements. There are examples such as the development of Pier 8 by the City of Hamilton, Waterfront Toronto's (WFTO's) development at Quayside in Toronto and the Bronzeville Lakefront development in Chicago. **Figure 5** compares the procurement process of these waterfront developments with the CFD process for the redevelopment of Ontario Place.

**Figure 5: Comparable Waterfront Developments**

Prepared by the Office of the Auditor General of Ontario

Project Milestones	Pier 8 (City of Hamilton)	Quayside (Waterfront Toronto)	Bronzeville Lakefront (City of Chicago)	Ontario Place 2019 Call for Development (Province of Ontario)
Public engagement on development plan prior to choosing anchor tenant / development partner(s)	✓	✓	✓	✗
Request for qualification	✓	✓	✗	✗
Request for proposal	✓	✓	✓	✗
Fairness monitor	✓	✓	✗	✗
Criteria and scoring disclosed to participants	✓	✓	✓	✗

### **Pier 8 – City of Hamilton**

In 2015, the City of Hamilton commissioned a planning firm to conduct an urban design study for Piers 7 and 8 of its waterfront. The study included a concept plan illustrating what the entire development could look like at full build-out, including both public and private areas. The City of Hamilton conducted extensive public consultations, which informed its RFQ and RFP documents.

According to the City of Hamilton's Pier 8 Development Opportunity RFP C11-66-17, Process Strategy Review, the evaluation criteria for the proposal were informed by "extensive public consultation that suggested a desire from the public for a tilt towards maximizing benefits for people over maximizing the funds from sale." The strategy review document also noted that the City Council and staff "worked with the community to articulate a vision that reflected the desired outcomes from the public's perspective." In 2018, the Hamilton City Council confirmed the selection of the preferred participant after completing an RFP process. Currently the project is under development.

### **Quayside – Waterfront Toronto**

WFTO is an organization that, in collaboration with all three levels of government, oversees planning, design and construction of certain developments on Toronto's waterfront.

Prior to the procurement process for its Quayside development partner, WFTO undertook a precinct-planning process which included studies (for example, functional servicing report, transportation, community services, facilities) and held regular public engagements (for example, public meetings, open houses, stakeholder advisory meetings) to inform the precinct plan, as required by the City of Toronto Central Waterfront Secondary Plan. After the adoption of the precinct plan by Toronto City Council and implementing zoning bylaws, WFTO undertook a procurement process to select a developer for Quayside.

On March 10, 2021, WFTO released an international RFQ to identify potential development participants with the necessary experience, design portfolio and financial resources. A fairness monitor (the Right Honourable Beverley McLachlin) was engaged to oversee the procurement process.

On July 26, 2021, the RFP was issued by WFTO to four participants short listed from the 10 submissions received. On February 15, 2022, WFTO announced the selection of Quayside Impact Limited Partnership—led by Dream Unlimited and Great Gulf Group—as the preferred partner and began negotiations on a project agreement. The development plans for the site include two acres of green space, a rooftop urban farm and five residential towers, including at least 800 affordable housing units. The project is currently under development.

### **Bronzeville Lakefront – City of Chicago**

According to WFTO's research, the City of Chicago's waterfront is one of the best in the world, offering great amenities to tourists and locals. We reviewed one of the recent developments in the City of Chicago: Bronzeville Lakefront.



As part of the planning process for Bronzeville Lakefront, the City of Chicago commissioned an advisory report, created a redevelopment strategy and held regular public engagements (for example, public and stakeholder advisory meetings) to inform the procurement of the project.

In October 2016, the City of Chicago began the procurement process to select a developer for the initial phase of the Bronzeville Lakefront redevelopment with the release of an RFP. According to the RFP, the selected developer had to demonstrate an implementable development vision in line with the City's goals to connect the site with the City's street grid, generate jobs and create people-oriented amenities for the entire neighbourhood.

In July 2017, the City selected a team of local developers known as GRIT to purchase and develop the site. GRIT's proposed redevelopment plans were approved by multiple city commissions and committees, and in July 2021, received final City council approval. The development plans for the Bronzeville Lakefront project include up to 7 million square feet of commercial, institutional and mixed-income housing and over nine acres of new green space, bike facilities, sidewalks and utilities. At the time of our audit, the first phase of the project was under construction and the second phase was under development.

### 4.3.3 Important Decisions Were Not Made Prior to Launching the CFD

The CFD, designed to be "flexible", did not specify many aspects of the process used for the redevelopment of the Ontario Place site. There were many decisions that could have been made prior to launching the CFD. The submission assessment criteria, for example, were not finalized prior to launching the CFD (see **Section 4.4.1**). The CFD also did not specify who would act as the Master Developer, whether proposals that did not involve construction partnerships would be accepted, who was expected to pay for parking, who would be responsible for the public realm or whether the CFD process was intended to be the final method for selecting the anchor tenants.

We were told by participants, and we witnessed from the quality and depth of the submissions (one was only 12 pages long and another was only one page), that the process was not designed to lead to a concrete outcome. As a result, some participants did not invest in their CFD proposal as much as they would have done for an RFP, where a concrete outcome is presented. The CFD explicitly stated that the "Government may select one, none or multiple submissions as part of the process." These terms may have impacted the quality of bids.

The CFD contained the following notable terms and conditions:

- » "The Call for Development process is not a procurement of tender process and is not subject to tendering law duties."
- » "The Government may select one, none or multiple submissions as part of the process. All decisions are at the authority of Cabinet."
- » "At any time, the Government reserves the right to modify the terms of this Call for Development, including termination or extension of the process."

As part of the 2017 CFS process and the 2019 CFD process, participants were required to sign and execute participation forms and NDA's.

The 2019 participation form stated that: "The province may select a party which did not submit a response to this Process to Seek Development Concepts or whose response did not meet the requirements." Similarly, Section 6.0 of the 2017 CFS stated: "The Province may select a party which did not submit a response to this Call for Submissions or whose response did not meet the requirements of this Call for Submissions to advance."

The 2017 CFS noted that "the Submission and any accompanying documentation provided by a Participant shall become the property of the Province and shall not be returned." The 2019 participation form had a similar clause and also added, "the Province shall become the owner of all programming, concepts and ideas contained within such response and/or Submission and any accompanying documentation provided by a Participant, and the Province may use and reproduce such programming, concepts and ideas or any parts thereof howsoever the Province may choose without any liability of any nature or kind whatsoever to any Participant."

A few participants who submitted a proposal told us that because of the terms and conditions above they did not invest a significant amount of time and resources in responding to the 2019 CFD. Submissions ranged from as little as one page to those that included video and other graphics of participants' concepts in addition to their written submission.

#### 4.3.4 Call for Development Did Not Follow Best Practices

In the Ontario Place Call for Development Assessment Report, December 23, 2019, IO noted the CFD process "was designed to be fair, open and transparent through the application of best practices," including "pre-defined submission requirements to enable comparison across concepts; and the use of an objective Assessment Framework."

We noted that because the CFD was not classified as a procurement, it did not incorporate several best practices that could have made the process fair, open and transparent.

- » The CFD process did not include a fairness monitor. A fairness monitor is an independent third party engaged to observe a procurement and ensure the advertised process is followed and all parties are treated fairly and equally. Our observations on the CFD open period and assessment process are included in **Sections 4.6** and **4.4.2** respectively.
- » The CFD assessment framework (see **Appendix 5**) did not assign numerical scores or weight to assessment criteria, as discussed in **Section 4.4.1**. Procurements typically include numerically scored and weighted criteria that are disclosed to participants. The OPS Procurement Directive states that weighting must be established and disclosed for criteria/requirements.
- » Not all participants were selected for due diligence meetings. IO requested and

conducted due diligence meetings with only six participants in October 2019 to clarify information and/or confirm assumptions.

- » The OPS Procurement Directive states that ministries must ensure that all unsuccessful vendors who participated in the procurement are offered an opportunity for a debriefing. Here, we found that five unsuccessful participants requested debriefs from IO, but only two of them actually received a debrief.

As mentioned in the comparable waterfront developments, other procurement vehicles can be used to solicit ideas in stages to provide the government with flexibility in choosing partners for development. These include the following:

- » a Request for Information, which gathers general information about a prospective participant's capabilities, goods or services; this is usually a first stage of a procurement;
- » an Expression of Interest, which asks for participants to show they are interested in the engagement; and
- » a Request for Qualifications which can pre-screen participants to ensure they have the needed abilities to perform the work. The stages usually result in a final RFP that is a detailed proposal to be evaluated against detailed criteria.

### Recommendation 3

We recommend that IO:

- for future solicitations of government real estate developments, if a process is required to receive ideas and concepts, utilize a staged procurement approach (such as an RFI, an Expression of Interest, or an RFQ) prior to an RFP to solicit ideas and incorporate best practices into the process; and
- ensure major decisions regarding the process are made in advance of commencing the solicitation process that selects the final participant.

For the auditee's responses, see [\*\*Recommendations and Auditee Responses\*\*](#).

## 4.4 Assessment Framework for 2019 Call for Development Submissions

As spelled out in the CFD document, submissions were to be assessed on four primary areas of consideration:

- » Alignment with Government's Vision;
- » Team Qualifications and Expertise; and
- » Viability of Proposed Concept;
- » Benefits to the Province.

During working sessions on May 13, 2019, June 17, 2019, July 2, 2019, August 8, 2019, and August 21, 2019, staff from the MHSTCI Minister's Office, the Premier's Office and Cabinet Office provided input into components of the assessment framework. According to IO, the nature of the input provided was "to articulate government priorities for redevelopment and ensure that assessment objectives and criteria aligned with such priorities". While the CFD document was released on May 28, 2019, the assessment framework was not finalized until September 25, 2019, one day after the extended submission deadline. This was months after the CFD was launched, after submissions from participants had actually been received and one day after the extended submission deadline.

The same assessment framework was used to evaluate both comprehensive site-wide and partial site solutions. The four primary areas of consideration were divided into a total of nine objectives. These were scored qualitatively as being in "high", "moderate" or "low" alignment with the government's vision. Eight of the nine objectives were deemed technical objectives and one was considered financial.

The assessment framework listed 28 criteria for assessing the nine objectives. These 28 criteria were not scored. **Appendix 5** lists the four primary areas of consideration and their related objectives and criteria.

The assessment process involved a total of seven assessors who were led by a lead assessor, a Director at IO. Four of the assessors (two from MHSTCI and two from IO which included the lead assessor) assessed all eight technical objectives. Another assessor from IO was responsible for assessing the financial objective, but ultimately this was done by three individuals including the IO VP. Each of the assessors was required to complete an individual assessment workbook for all submissions.

Individual assessments began on September 30, 2019, and ended on October 28, 2019. After this, the assessment team met for consensus meetings on October 29 and 30, 2019 to reach a single unified rating for each submission.



#### 4.4.1 One Third of the Assessment Criteria Were Not Disclosed in the Call for Development

As noted, the CFD outlined four “primary areas of consideration” that were further broken down into nine objectives and 28 criteria. Our audit found that nine of the 28 assessment criteria were not included in the CFD document, and therefore not shared with participants. This was because the assessment framework and criteria were not finalized until September 2019, a few months after the CFD was released. [Appendix 5](#) and [Figure 6](#) list these missing criteria.

For example, submissions were assessed for “team cohesion.” Yet this criterion was not presented in the CFD. In their assessment workbooks, some assessors noted that participants did not address this category. Another example of missing criteria is for “timing” of construction and approvals. Without knowledge of the additional criteria, participants could not design their submissions to meet them, and could have scored poorly as a result.

**Figure 6: Criteria in Assessment Framework That Were Not Included in the Call for Development**

Prepared by the Office of the Auditor General of Ontario

Criterion	Assessment Considerations
<b>Compatibility</b>	Synergies with the overall Ontario Place site and congruence with existing uses (marina, [Live Nation Entertainment], Exhibition Place, etc.)
<b>Degree of access</b>	Degree of public accessibility on site
<b>Lake fill requirements</b>	Extent to which lake fill is required to realize concept (assessment framework considered submissions that proposed lake fill as a negative)
<b>Overall user experience</b>	Conditions that will influence visitors’ overall experience within the site, as well as consideration of the needs of users of all ages and ability levels (e.g., accessibility, washrooms, weather protection, wayfinding, crowd flow and mitigation, etc.)
<b>Timing</b>	Time until completion (approvals and construction) (Assessment framework considered submissions with a shorter time frame for obtaining approvals and completing construction as a positive)
<b>Process</b>	Reflects appropriateness of approval requirements (e.g., municipal approvals, Duty to Consult, environmental approvals) and reasonable time frame
<b>Program certainty</b>	Extent to which programming partners are identified/confirmed
<b>Team cohesion</b>	Reflected in reporting structure and articulated roles and responsibilities, as well as partners’ experience working together
<b>Financial and non-financial considerations to the Province</b>	Risk of additional capital and operating costs incurred by the Province, as well as unquantifiable risks (legal, reputational, environmental, stakeholder relations, etc.)

The “timing” and “team cohesion” criteria both negatively impacted the assessment of the comprehensive site-wide submissions. Comprehensive site-wide submissions required more approvals and longer construction schedules to implement a full-site plan. It is also harder to sufficiently prove “team cohesion” for a large comprehensive group compared to a single partner led partial-site solution. In IO’s briefings to the MHSTCI Minister’s Office and the Premier’s Office on November 5, 2019 and December 11, 2019, “speed of delivery” was noted as one key government priority that also favoured partial-site solutions (discussed in more detail in **Section 4.5.3**).

Having unclear or undisclosed assessment criteria in the CFD was contrary to an open, fair and transparent process. Comparing this to best practice, IO’s own procurement policy states that “evaluation criteria must be clearly disclosed in the procurement documents.” Using undisclosed criteria can penalize participants for failing to include information they were not aware they were being evaluated on. In our discussions with members of the assessment team, they stated that while there was no formal weighting, submissions with programming partners or construction firms were scored higher.

#### **Recommendation 4**

We recommend that IO finalize the assessment framework and related criteria prior to the public release of future solicitations of government real estate developments and disclose all criteria in the solicitation documents.

For the auditee’s responses, see **Recommendations and Auditee Responses**.

#### **4.4.2 The Assessment Process Was Subjective and Assessment Guidance Was Not Always Followed**

The training deck for assessors described the assessment framework as being designed to “...ensure consistency in the manner in which the assessment is carried out across the Assessment Team.”

We found that the assessment process relied solely on qualitative scoring. The nine project objectives were qualitatively scored by assessors as having a “high”, “moderate” or “low” alignment with the respective objectives. The 28 assessment criteria were not scored at all. The assessment was done against the objectives and not on a criterion-by-criterion basis. The framework advised assessors to take comprehensive notes to help them judge alignment with the CFD objectives.

Additionally, the four primary areas of consideration were not assigned weights, meaning that the overall final consensus assessment of participant submissions was itself a matter of subjective judgment for the assessment team. For example, in Écorécéo’s submission, one of the four primary areas of consideration was rated as “high” and three others were each rated as

“moderate”, but this submission was ranked higher overall than another submission (Participant O) with two “high” and two “moderate” scores.

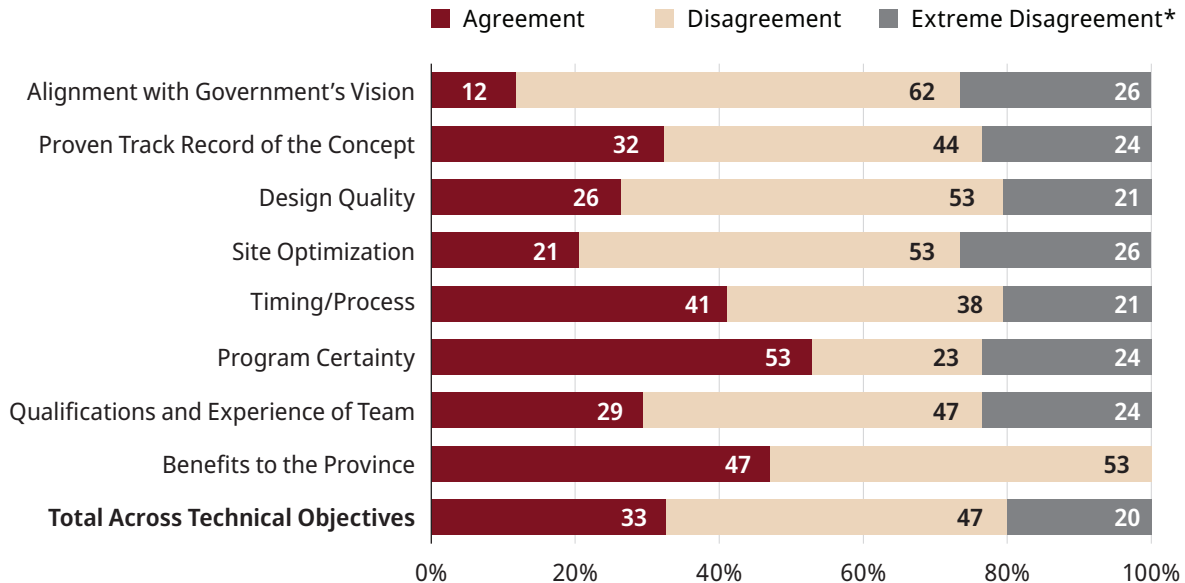
### Qualitative Scoring May Have Permitted Wide Variances in Assessment Evaluations

We also found instances of significant variations in the assessments of the technical objectives from one assessor to the next (as shown in **Figure 7**). Different assessors did not originally score the same submission the same way.

We calculated that for 20% of the technical objectives, at least one assessor scored the submission as having “high” alignment, while at least one other assessor had scored the same submission as having “low” alignment. Additionally, the objective “Alignment with Government Vision” was itself scored simultaneously as “high” and “low” for 9 (or 26%), of the participant submissions. **Figure 7** shows the alignment of scores between the individual assessors for the eight technical objectives. As seen in the figure, for seven of the eight objectives, there was significant disagreement between the assessors. At least one assessor scored the objective as high while another had scored the same objective as low.

**Figure 7: Variance in Assessment Team’s Scores Across Technical Objectives**

Prepared by the Office of the Auditor General of Ontario



\* Extreme disagreement indicates where at least one assessor rated a criterion as high and at least one other rated the same criterion as low.



#### 4.4.3 Assessors Deviated from Framework Guidance

We noted the following instances where assessors did not follow the procedures outlined in the assessment framework when they assessed submissions.

- » Although the assessment framework required assessors to take comprehensive notes, we discovered many instances where assessors had taken no notes.
- » In 126 instances (11% of the total), an objective was not assigned any rating by the assessor prior to the consensus meeting, based on the submitted workbooks. One assessor did not assign any ratings for Therme, who eventually was chosen as an anchor tenant.
- » Consensus meetings were held on October 29, and 30, where a consensus score was reached by the team on the overall assessment of the 34 submissions. However, on November 1, 2019, the lead assessor adjusted 25 of 306 consensus scores on individual objectives (see **Figure 8**). These adjustments represented changes to 8% of all scores. There were 19 improvements in assessments and six changes lowering the assessments. Fifteen of the 19 (79%) improvements in assessments were for submissions IO recommended for short list or presented as primary or alternative partners as comprehensive site-wide submission options to the MHSTCI Minister's Office and Premier's Office on December 11, 2019. Four adjustments related to the anchor tenants (three for Live Nation and one for Écorécréo), however the adjustments did not impact the final outcome. The lead assessor then sought and received approval from the assessment team for these new "calibrated" scores by November 4, 2019.
- » Financial assessments of individual submissions consisted of reviewing, among other things, the quality of the financial model, the participant's financial strength and the robustness of the documents submitted. According to the assessment framework, financial assessments were scheduled to be conducted prior to the consensus meetings. We found that the majority were not conducted until after the consensus meetings began on October 29, 2019.



**Figure 8: Participants Who Had Changes in Assessments from Consensus Scoring (October 30)→ to Calibrated Consensus Scoring (November 1)→ to Final Scores in Assessment Summary Report (December 23, 2019)**

Source of data: Infrastructure Ontario

Participant	Vision Alignment	Proven Success	Design Quality	Site Optimization	Timing and Approvals	Program Certainty	Financial Viability	Team's Ability to Deliver	Benefits to the Province
Écorécéo Group <sup>1</sup>	●/● → ● → ●	●	●	●	●	●	●	●	●
Participant M <sup>1,3</sup>	● → ● → ●	●	●	●	●	●	● → ● → ●	●	●
Live Nation Entertainment <sup>1</sup>	●	●	●	● → ● → ●	●	●	● → ● → ●	●	● → ● → ●
Participant AA	●	●	●	● → ● → ●	● → ● → ●	●	●	●	●
Ontario Live <sup>2,3</sup>	●	●	●	●	●	●	● → ● → ●	● → ● → ●	● → ● → ●
Participant BB	● → ● → ●	●	●	●	● → ● → ●	●	●	●	●
Participant H	●	●	●	●	●	●	●	● → ● → ●	●
Participant A <sup>3</sup>	●	●	●	●	●	●	●	● → ● → ●	●/● → ● → ●
Participant E	● → ● → ●	●	●	●	●	●	●	●	●
Participant P <sup>1,3</sup>	● → ● → ●	●	●	●	●	●	●	●	●
Participant R <sup>1,3</sup>	●	●	●	● → ● → ●	●	●	● → ● → ●	●	● → ● → ●
Participant B <sup>2,3</sup>	●	●	●	●	●	●	●	● → ● → ●	● → ● → ●
Participant Y	● → ● → ●	●	●	●	●	●	●	●	●
Participant Z <sup>1,3</sup>	●	●	●	● → ● → ●	●	●	●	●	● → ● → ●
Participant D2,3	●	●	●	●	●	●	●	●	●/● → ● → ●
Triple Five Group <sup>2,3</sup>	● → ● → ●	● → ● → ●	●	●	●	● → ● → ●	●	● → ● → ●	● → ● → ●
Participant O <sup>1,3</sup>	●	●	● → ● → ●	●	●	●	●	●	●
Participant Q <sup>1</sup>	● → ● → ●	●	●	●	●	●	●	●	●

**Legend:** ● - High ● - Mid ● - Low

1. Recommended by IO as a potential partner under IO's preferred multi-partner option to the MHSTCI Minister's Office and Premier's office on December 11, 2019.

2. Presented by IO as a potential primary partner or alternative primary partner under the single-partner option to the MHSTCI Minister's Office and Premier's office on December 11, 2019.

3. Recommended by MHSTCI as potential partners for further discussions to Cabinet's Priorities and Planning Committee on January 30, 2020.



### **Some Proponents Were Selected for Short List or Further Discussions Despite Ranking Lower Than Others**

We were told that “Alignment with Government’s Vision” was a key factor in the overall ranking of submissions. For example, as seen in **Figure 9**, Participant W’s submission was judged “moderate” in vision alignment with three “low” scores on the remaining criteria and still ranked higher than Participant Z, AA and BB, with two “moderate” and two “low” scores, (since one of the two low ratings was in vision alignment).

We also found an example of one participant (Participant Z) being selected for future discussions despite ranking lower than eight others in the partial site solution rankings. This participant also scored “low” on vision alignment.

In another example, an anchor tenant was selected despite scoring lower on the four areas of consideration (one “high”, three “moderate”) than another participant with three “high” and one “moderate”. The higher-ranking participant was not selected, we were told, because the company did not have a construction background. We noted that having a construction background was not included as an assessment criterion in the CFD document.

#### **4.4.4 Due Diligence Meetings Were Conducted with Only Six of the 34 Participants**

During the assessment period, IO requested and conducted due diligence meetings with only six participants (including all three anchor tenants selected) in October 2019. These meetings were held to clarify information and/or confirm assumptions in their submissions such as forecasted rent, revenue sharing, footprint requirements, etc. Areas that required clarification were identified by the lead financial assessor and the lead technical assessor.

**Figure 9: Final Assessment Scores of Participants with Partial Site Solutions Per Assessment Summary Report, December 2019**

Source of data: Infrastructure Ontario

**Legend:** ● - High ● - Mid ● - Low

Participant	Final Assessment Score (December 23, 2019)				Recommendation to Priorities and Planning Committee of Cabinet (January 30, 2020)			
	Vision Alignment	Concept Viability	Team's Ability to Deliver	Benefits to Province	Confirmed for Short-list	Further Discussions Required	Further Discussions Required (Interim Programming)*	Not Short-listed
Therme Canada	●	●	●	●	✓			
Live Nation Entertainment	●	●	●	●	✓			
Participant M	●	●	●	●			✓	
Écorécéo Group	●	●	●	●	✓			
Participant O	●	●	●	●		✓		
Participant P	●	●	●	●			✓	
Participant Q	●	●	●	●				✓
Participant R	●	●	●	●			✓	
Participant S	●	●	●	●				✓
Participant T	●	●	●	●				✓
Participant U	●	●	●	●				✓
Participant V	●	●	●	●				✓
Participant W	●	●	●	●				✓
Participant X	●	●	●	●				✓
Participant Y	●	●	●	●				✓
Participant Z	●	●	●	●		✓		
Participant AA	●	●	●	●				✓

(Figure 9 continued)

Participant	Final Assessment Score (December 23, 2019)				Recommendation to Priorities and Planning Committee of Cabinet (January 30, 2020)			
	Vision Alignment	Concept Viability	Team's Ability to Deliver	Benefits to Province	Confirmed for Short-list	Further Discussions Required	Further Discussions Required (Interim Programming)*	Not Short-listed
Participant BB	●	●	●	●				✓
Participant CC	●	●	●	●				✓
Participant DD	●	●	●	●				✓
Participant EE	●	●	●	●				✓
Participant FF	●	●	●	●				✓
Participant GG	●	●	●	●				✓
Participant HH	●	●	●	●				✓

\* indicates potential partner for interim programming during redevelopment without open procurement.



According to IO, only these particular participants were selected because their submissions performed the most strongly on the “Alignment with Government’s Vision” objective and IO had questions about their submissions. We found that there were four additional participants who also received a high score for “Alignment with Government’s Vision” who were not selected for due diligence meetings.

In contrast, as part of the 2017 Call for Submission, IO held due diligence meetings with all 11 participants (one withdrew from the process) that were assessed as having moderate to high alignment with the government’s vision. In the 2019 CFD, 23 of 34 submissions were assessed as having moderate or high alignment with the government’s vision but only six were selected for due diligence meetings.

Offering some participants due diligence meetings, prior to selection, and not others may give these participants an advantage over the others and is contrary to best practices.

Due diligence meetings were held on October 22 and 24, 2019, before the individual assessments were completed (October 28, 2019) and before the consensus meetings occurred on October 29 and 30, 2019, as the new information was incorporated in the assessment calibration.

There were no minutes that indicated what was discussed at these meetings, and no record was kept afterward about how due diligence concerns were addressed.

## Recommendation 5

We recommend that IO, for future solicitations of government real estate developments:

- assign weight to criteria in the solicitation document;
- ensure that all assessors score submissions based on these assessment framework in accordance with the assessment guidance;
- ensure that all individual assessments are completed prior to consensus meetings;
- select participants based on assessments and rankings assigned;
- ensure that all assessors document their rationale for the score they assign to respective submissions; and
- provide clear guidance in the assessment framework on the required verification of proposals submitted by participants and the process requirements for considering the timing of the verification.

For the auditee’s responses, see [\*\*Recommendations and Auditee Responses\*\*](#).

## 4.5 Communication with Government Decision-Makers

On November 5, 2019, after the assessment and due diligence was completed, IO briefed the MHSTCI Minister's Office and the Premier's Office on the results of the assessment of submissions. This briefing included a preliminary review of how each submission performed against three key areas identified by the government as priorities: "Vision Alignment", "Cost to Province" and "Speed of Delivery" (see **Figure 10**). These priorities were different than the four areas of consideration disclosed in the CFD: "Vision Alignment", "Concept Viability", "Team's Ability to Deliver" and "Benefits to Province".

### 4.5.1 After the November 5, 2019 Presentation to MHSTCI Minister's Office and Premier's Office, Some Participant Scores Were Changed

We found that scores for individual objectives had been revised for five submissions, four partial site solutions and one comprehensive site-wide solution, after the November 5, 2019, briefing to the MHSTCI Minister's Office and Premier's Office. This was despite the fact that consensus scores had been reached by the assessment team on October 30, 2019, and calibrated by the lead assessor on November 1, 2019. After calibration, review and written approval was provided by all assessment team members.

The revised scores did not affect the outcome for four of the five participants, but Triple Five received increases to scores on five of the nine objectives, which resulted in Triple Five being presented as the primary (top-ranked) comprehensive site-wide submission. We discuss this further in **Section 4.4.2**.

**Figure 10: Preliminary Performance Against Government Priorities, as of November 5, 2019**

Source of data: Infrastructure Ontario

**Legend:** ● - High ● - Mid ● - Low ● - indicates anchor tenant for 2019

	Vision Alignment	Cost to Province	Speed of Delivery
<b>Comprehensive Submissions</b>	Participant A	●	●
	Participant B <sup>1</sup>	●	●
	Ontario Live <sup>1</sup>	●	●
	Participant D	?	?
	Participant E	?	●
	Participant F	●	●
	Participant G	?	?
	Participant H	●	●
	Participant I	?	?
	Triple Five <sup>2</sup>	?	?
<b>Partial-Site Submissions</b>	<b>Therme Canada<sup>1</sup></b>	●	●
	<b>Live Nation Entertainment<sup>1</sup></b>	●	●
	Participant M <sup>1</sup>	●	●
	<b>Écorécréo Group<sup>1</sup></b>	●	●
	Participant O	●	●
	Participant P	?	●
	Participant Q	?	●
	Participant R	●	●
	Participant S	●	●
	Participant T	●	●
	Participant U	●	●
	Participant V	●	●
	Participant W	●	?
	Participant X	?	?
	Participant Y	?	●
	Participant Z	●	●
	Participant AA	●	●
	Participant BB	●	●
	Participant CC	●	●
	Participant DD	●	●
	Participant EE	?	●
	Participant FF	●	●
	Participant GG	●	●
	Participant HH	●	●

? – indicates IO was unable to complete the assessment based on information provided.

1. Asked to provide supplementary information at due diligence meetings on October 22 or 24, 2019, after the submission deadline.

2. Asked to provide new information not included in the submission after the submission deadline.

### After the November 5 Presentation, Triple Five Was Encouraged to Submit Additional Information

Triple Five's CFD submission achieved a consensus score of "low" on all nine objectives at the October 30 consensus meeting. In the consensus assessment workbook, the lead assessor subsequently wrote that there was insufficient detail in the submission to properly assess it, and changed the scoring from "low" to "unable to assess." This participant was not one of those selected for due diligence meetings (discussed in **Section 4.4.4**).

In the November 5, 2019, briefing materials, this participant's summary states that no information had been provided on key criteria and its assessment scores were listed as "Insufficient Information Provided to Assess." In itself, this was not unusual. As shown in **Figure 10**, 11 of the 34 CFD submissions included a scoring reference of "Insufficient Information Provided to Assess."

On November 8, 2019, a VP from IO reached out to Triple Five to request a call for clarification on submission details. None of the other 10 participants with "Insufficient Information Provided to Assess" were contacted.

From November 8 to 19, 2019, several calls and emails were exchanged between IO and Triple Five, in which IO requested that the participant add specific information to its submission that would make a re-assessment possible.

The IO VP asked Triple Five to provide:

- » parking requirements and proposed solutions;
- » minimum, maximum and preferred footprint required of the development;
- » expected landfill requirements;
- » government contributions required;
- » timelines; and
- » treatment of existing structures.

On November 20, one of the assessors, at the direction of the IO VP, updated Triple Five's scores in the consensus workbook. As seen in **Figure 11**, Triple Five's scores were upgraded for five of the nine objectives. On November 28, Triple Five submitted even more information to the IO VP on programming, footprint and gross floor area breakdown.

On December 3, Triple Five emailed the IO VP with a submission of an enhanced version of its presentation "as previously discussed." This was received 70 days after the September 24 CFD revised deadline for submissions.

**Figure 11: Final Assessments for Five Primary and Alternative Comprehensive Submissions Presented to MHSTCI by IO, December 23, 2019**

Source of data: Infrastructure Ontario

Legend: ● - High ● - Mid ● - Low

Participant	Vision Alignment	Concept Viability						Team's Ability to Deliver	Benefits to the Province
		Proven Success	Design Quality	Site Optimization	Timing and Approvals	Program Certainty	Financial Viability		
<b>Triple Five</b> Original Assessment* (not part of the assessment report)	●	●	●	●	●	●	●	●	●
<b>Triple Five</b> Revised Assessment (Primary Partner)	●	●	●	●	●	●	●	●	●
<b>Participant A</b> (Alternative Partner)	●	●	●	●	●	●	●	●	●
<b>Participant B</b> (Alternative Partner)	●	●	●	●	●	●	●	●	●
<b>Ontario Live</b> (Alternative Partner)	●	●	●	●	●	●	●	●	●
<b>Participant D</b> (Alternative Partner)	●	●	●	●	●	●	●	●	●

\* Scores based on the consensus workbook finalized on November 14, 2019.



### 4.5.2 Triple Five, with the Changed Scores, Was Presented as the Primary Comprehensive Site-Wide Solution Partner

A second briefing to the then MHSTCI Minister's Office and Premier's Office was held on December 11, 2019. The purpose of this briefing was to share the outcomes of the assessment process, present a recommendation and to seek direction on the approach for the redevelopment. At the briefing, while IO presented a multi-partner approach as the preferred option and presented a short list of potential primary partners as well as potential supplementary partners, IO also presented two other options (a multi-partner phased approach and a comprehensive site-wide solution) for government consideration.

IO presented Triple Five as the primary comprehensive site-wide solution partner, meaning the preferred or recommended tenant above all others if the government were to select a comprehensive site-wide solution (see **Figure 12**). IO also identified four alternative partners. We noted, however, that there were other comprehensive site-wide solution partners that ranked higher in some categories than Triple Five.

**Figure 12: Five Primary and Alternative Comprehensive Submissions Presented to the Minister of Heritage, Sport, Tourism and Culture Industries' Office and the Premier's Office by IO, December 11, 2019**

Source of data: Infrastructure Ontario

**Legend:** ● - High ● - Mid ● - Low ✓ - Objective met ✗ - Objective not met ? - Unable to assess

Participant	Four Objectives Outlined in CFD				Government Priorities Added for Presentation	
	Vision Alignment	Concept Viability	Team's Ability to Deliver	Benefits to Province	Speed of Delivery	Costs to Province
<b>Triple Five</b> (presented as primary single-partner)	*	*	*	*	*	*
<b>Participant A</b> (Alternative Partner)	✓	✓	✓	✗	●	●
<b>Participant B</b> (Alternative Partner)	✓	✗	✗	✗	●	●
<b>Ontario Live</b> (Alternative Partner)	✓	✗	✗	✓	●	●
<b>Participant D</b> (Alternative Partner)	✓	?	✗	?	?	?

\* Presented as primary single-partner, but did not provide their scores or ranking.

In the briefing materials, IO noted that there were many drawbacks in Triple Five's submission, such as:

- » "Any perceived engagement outside of process may result in judicial review."
- » "High likelihood of delays in construction as evidenced by partner's track record."
- » "Low alignment with City's and public's vision for site – high risk of appeals."
- » "High risk. Partner currently under investigation by CRA [Canada Revenue Agency]."
- » "May be required to buy out of LN [Live Nation] lease."
- » "Level of investment is unclear."
- » "More than 40%...is office [space] which does not support vision."

IO also assessed their design quality, site optimization, timing and approvals, and financial viability as "low" as seen in **Figure 11**.

In a competitive CFD, no participant should be allowed to submit new information after the submission date. This is a standard best practice procurement rule. Section 5.2.1 of the CFD document clearly stated: "Submissions must be made by the Submission Deadline identified in the Timeline in Section 5.2.2."

Triple Five was presented as the primary comprehensive site-wide solution, along with some of the reasons not to choose them; this was not the case for the other higher-scoring comprehensive site-wide solutions. This resulted in the best comprehensive site-wide solution not being presented to decision-makers.

## Recommendation 6

We recommend that IO follow its guidelines for future solicitations of government real estate developments to ensure fairness for all participants by:

- not allowing participants to submit information after the submission deadline;
- not changing the scoring of participants' submissions after a consensus score has been reached; and
- recommending the highest scoring participant as the primary partner to undertake the development.

For the auditee's response, see **Recommendations and Auditee Responses**.

### 4.5.3 Multi-Partner Approach Presented as the Preferred Option by IO

During the design phase of the CFD, in a February 28, 2019, briefing to the MHSTCI Minister's Office and the Premier's Office, IO had presented a general overview of the options for the development and noted that the Province as the Master Developer option "retains significant risks (commercial, market and interface) risks," which results in less value for money unlike a single master developer (comprehensive site-wide solution) where risks are transferred and partners can assess and price risks and rewards more effectively. It also said that with government as the Master Developer, it retains responsibility of the site and could result in the longest possible timeline.

At the November 5, 2019, briefing to the MHSTCI Minister's Office and Premier's Office on the results of the assessment of the CFD submissions, IO noted that based on their preliminary assessment, no single Master Developer is well positioned to meet all the government's key objectives ("Alignment with Vision", "Appropriate Benefits to the Province" and "Delivery Speed/Certainty").

Based on the preliminary assessment of submissions, IO recommended a government-led development as likely being fastest due to clear uses of the site, and would result in good control over design and vision and better rental opportunities. The briefing also noted that, proceeding with a government-led approach, did not preclude the government from competitively selecting a development partner at a later date following the initial phase of the development when the value of the site would be much greater due to the advancement of the anchor tenants.

At the December 11, 2019, briefing to the MHSTCI Minister's Office and Premier's Office, IO continued to recommend that the government take a multi-partner approach to the redevelopment of Ontario Place rather than the comprehensive site-wide solution.

The briefing compared a multi-partner approach, a phased multi-partner approach and a single-partner approach. It identified the risks and provided the timelines for each option. IO recommended a multi-partner single phase approach, but noted that the multi-phase approach would allow the Province to pursue a future lagoon in-fill on the East Island as a Phase 2 opportunity for a larger-scale tenant.

One consequence of taking a multi-partner approach was that the Province became the Master Developer. A Master Developer is responsible for overseeing all key aspects of the site, including preparing the site for construction and providing the key infrastructure such as public realm.

The additional costs and implications of them to the Province associated with the multi-partner approach were not presented at both briefings as the related costs were not known. As noted in **Section 4.1.2**, as a consequence of the Province taking on the Master Developer role, the Province bears responsibility for developing the public realm, which is estimated to cost over \$500 million.

The eight "primary" partners recommended by IO in the December 11, 2019, briefing included three anchor tenants, Therme, Live Nation and Écorécéo, along with the OSC. IO also

recommended six potential “supplementary” partners that could be considered by government through future lease negotiations.

As noted earlier, the briefing also identified Triple Five as the primary single partner, if the government selected a comprehensive site-wide solution, and four other participants as alternative single partners. A further 19 participants were not recommended for any further discussion. **Figure 2** provides a comparison of the short-listed participants for the Ontario Place redevelopments in 2017 and 2019.

In contrast to the recommendation made by IO to go with a single-phase multi-partner approach, on December 19, 2019, the Premier’s Office approved a multi-partner approach with a phased development. This approach would allow for a larger-scale future development on the East Island. MHSTCI presented this approach to the Cabinet’s Priorities and Planning Committee (Cabinet Committee) for approval on January 30, 2020.

#### 4.5.4 Phased Multi-Partner Approach Was the Only Option Presented to Cabinet

The general terms and conditions of the 2019 CFD document stated that “The Government may select one, none, or multiple Submissions as part of the process. All decisions are the authority of the Cabinet.”

We found that the phased multi-partner approach was the only approach presented to the Cabinet Committee in MHSTCI’s January 30, 2020, submission. MHSTCI’s presentation to the Committee stated that a “phased approach helps ensure market confidence as we manage material, technical and political issues related to Ontario Place Development,” including ensuring that the Province has “sufficient time to make necessary investments to ready the site” and by providing “additional time to generate market interest from major global players for participation in future phases of redevelopment.” MHSTCI’s presentation included a large area available on the East Island for a Phase 2 development opportunity in the future.

MHSTCI provided the committee with a list of three prospective anchor partners for Phase 1 of the development, 10 additional participants for further discussion during future phases of development and a list of 21 participants that were excluded from further consideration.

The single partner comprehensive site-wide solution was not shared with the Cabinet Committee. Also, the additional costs to the Province associated with the multi-partner approach were not presented to the Cabinet Committee.

According to the CFD document, all decisions were to be made by Cabinet; however, the Cabinet Committee did not receive all of the options and analyses for all of the options in order to make the final decision. In essence, the MHSTCI Minister’s Office and Premier’s Office had agreed in principle on the approach for the redevelopment of Ontario before taking the decision to the Cabinet Committee as was outlined in the CFD.

The Cabinet Committee endorsed the phased multi-partner approach. On May 21, 2020, the Treasury Board and Cabinet authorized MHSTCI to proceed with a phased multi-partner approach and approved the negotiation mandate for leases with the three proposed anchor tenants (Therme, Live Nation and Écorécéo). No funding was approved at that time.

**Figures 9** and **13** show the assessment for all 34 CFD participants and MOI's recommendations for each submission. At the time of our audit, there were no formal announcements on future phases of the Ontario Place redevelopment.

**Figure 13: Final Assessment Scores of Participants with Comprehensive Site Solutions Per Assessment Summary Report, December 23, 2019**

Source of data: Infrastructure Ontario

Legend: ● - High ● - Mid ● - Low

Participant (as presented by IO)	Final Assessment Score (December 23, 2019)				Recommendation to Priorities and Planning Committee of Cabinet (January 30, 2020)	
	Vision Alignment	Concept Viability	Team's Ability to Deliver	Benefits to Province	Further Discussions Required	Not to be Short-listed
Participant A	●	●	●	●	C	
Participant B	●	●	●	●	C	
Ontario Live	●	●	●	●	C	
Participant D	●	●	●	●	✓	
Participant E	●	●	●	●		✓
Participant F	●	●	●	●		✓
Participant G	●	●	●	●		✓
Participant H	●	●	●	●		✓
Participant I	●	●	●	●		✓
Triple Five (revised)	●	●	●	●	✓	

C – denotes further discussion required on a particular component of the comprehensive submission (for example, one hotel partner from the group).

### Recommendation 7

For future decisions under the authority of Cabinet, we recommend that MOI present a complete analysis of all available options to Cabinet for its review and decision-making, including all of the potential costs.

For the auditee's responses, see [Recommendations and Auditee Responses](#).



#### 4.5.5 Speed of Delivery Considered a Key Factor in Selecting Multi-Partner Approach over Single Partner

As noted earlier, speed of delivery for the redevelopment was presented as a key government priority in IO's December 11, 2019, briefing deck to the MHSTCI Minister's Office and Premier's Office. The speed of delivery was considered in relation to four factors:

- » how quickly could development start;
- » could interim activation and activity be accommodated; and
- » how would it be phased over time;
- » how contentious and complex were approvals likely to be.

Under the three options, construction was expected to begin at different times.

- » **Multi-partner option:** Construction was expected to begin in 2021 for the East Island sports and music zone (with interim activity on East Island starting in 2020). IO noted that "proposed uses are supported by City and approvals are not contentious" and construction can begin soon.
- » **Multi-partner phased option:** Construction was projected to begin in 2023 for West Island waterpark and relocated OSC (with interim activity on East Island from 2020 to 2022). IO noted that "development approvals for lakefill, planning and construction permits, etc. Lakefilling typically requires 2-4+ years for approvals." These requirements, under the new *Rebuilding Ontario Place Act, 2023* and the eMZO, are no longer necessary.
- » **Comprehensive site-wide option:** No construction works or site preparation was expected until 2026, following approvals, with limited opportunity for interim activity between 2021 and 2025. IO stated that "4+ years for approvals based on partner's track record and lakefill requirement."

Despite not being one of the four primary areas of consideration outlined in the CFD (see [Appendix 5](#)), IO and MHSTCI considered speed of delivery (for example, how quickly can development start) a major factor in its decision-making process. Based on the prioritization of speed of delivery as one of the key factors, the single-partner approach was deemed not to meet the government's priority.

#### Recommendation 8

For all future major realty and infrastructure decisions, we recommend that MOI consider the overall impact on the public and long-term use of the public asset and not focus on one or more of many criteria such as speed of delivery or vision alignment, especially if they have been established after the procurement document has been issued.

For the auditees' responses, see [Recommendations and Auditee Responses](#).

## 4.6 Call for Development Open Period

On May 28, 2019, the CFD, “Toronto Waterfront Opportunity,” was publicly announced. The 42-page document outlined the government’s vision for redevelopment of Ontario Place and set out parameters for the proposal submission process.

The CFD set a deadline of August 10, 2019, for participants to ask clarifying questions and an overall deadline for proposal submissions of September 3, 2019.

Leveraging a network of contacts, the transaction advisor launched a global marketing campaign to solicit proposals from interested participants, namely, companies that would propose to redevelop part or all of the Ontario Place site. The CFD campaign involved an outreach to 800 targeted companies, the launch of a website and production of a promotional video.

A data room was set up with information about the history of Ontario Place, schematics and technical data, and information on duty to consult with Indigenous communities. Participants were able to request guided site tours and seek clarification through correspondence or meetings with the transaction advisor.

As part of their facilitation duties, the transaction advisor provided regular updates to IO, MTCS, and, on occasion, staff from the Minister’s Office and Premier’s Office.

### 4.6.1 Participants Met with Government and Political Staff, Contrary to the CFD

Section 5.2.1 of the CFD stated that: “No communication with government staff or appointed officials is permitted during the Call for Development process.” This is a best practice in such a process.

#### **Contrary to CFD Rules, Participants Met with Staff from the Minister’s Office and Premier’s Office During the Open Period**

We found that, contrary to the protocol outlined in the CFD, three participants attended meetings with staff from the Minister’s Office and Premier’s Office early in the open period. According to an internal assessment report, each of these participants met with staff from the MTCS Minister’s Office, Premier’s Office, IO, MTCS and the transaction advisor on June 14, 2019, July 23, 2019, and July 24, 2019.

Later, on August 7, 2019, and on September 6, 2019, the transaction advisor emailed participants to announce that they could “request a confidential information meeting with senior level government stakeholders to present any aspect of their development concept, or other areas of concern in respect of any of the requirements for their Submission.”

Based on the email correspondence we reviewed, staff at the MTCS Minister’s Office, Premier’s Office and IO discussed sending this notice to participants during a meeting that was held

on August 6, 2019. “We are seeking to do two things with this memo per the bullets: i) allow participants to ask for a meeting with senior level representatives to present their concept and any initial concerns; and ii) signal the need for teams to push for identified programmers [and] partners.”

Following the August 7, 2019, notice, 10 additional meetings were held with participants offering comprehensive site-wide solutions. We noted that the September 6, 2019, email added the proviso: “This meeting is not mandatory and is intended only for those Participants making a comprehensive submission who have not previously met with Government regarding the Ontario Place Call for Development opportunity.” Despite this disclaimer, five out of the eight meetings held in September were with participants proposing partial site solutions. In addition to the 10 meetings in August, eight more meetings were held in September.

Neither MTCS nor IO could provide us with attendee lists for these meetings, and no meeting materials or minutes were kept. Without a record of the questions asked or the information that was shared, the transaction advisor would not have been able to ensure all participants were provided with the same information for purposes of their submissions. Our Office used calendar invites from our email review to compile the list of attendees. **Figure 14** provides a list of all 21 meetings held with government officials during the open period.

### **Contrary to CFD Rules, Some Participants Had Direct Access to an Infrastructure Ontario Executive**

We found that a VP at IO had communicated directly with at least two participants during the CFD open period, which is against the CFD’s stated process. This VP was involved in the design, execution and assessment of the CFD submissions. He had direct reports who were assigned to the assessment team

Documentation we reviewed shows that the VP communicated with participants on several occasions:

- » From May 28, 2019, to September 24, 2019, the VP exchanged nine emails with a lawyer representing Therme. The VP and Therme’s lawyer also spoke on the telephone on July 22, 2019. We are unable to determine what was discussed during this call. Examples of correspondence included discussions about media interest about Therme’s involvement in the CFD process, introduction to the transaction advisor, an invitation to an event at legal counsel’s firm, and to set up a phone call.
- » On August 23, 2019, an executive from Participant B emailed the VP to request a call. Based on email correspondence, we have confirmed that the call occurred.
- » On September 3, 2019, email correspondence showed that the VP spoke to the Director of Participant E.

**Figure 14: Meetings Held During CFD Open Period Between the Participants and Staff from the MTCS Minister's Office and the Premier's Office, MHSTCI Staff, IO Staff and Transaction Advisor**

Prepared by the Office of the Auditor General of Ontario

	<b>Date of Meeting (2019)</b>	<b>Participant</b>	<b>Government Attendees* (number)</b>
1.	June 14	<b>Participant D</b>	Premier's Office Staff (2) IO (1) Transaction Advisor (1)
2.	July 23	<b>Participant B</b>	Premier's Office Staff (3) Minister's Office Staff (1)
3.	July 24	<b>Therme Canada</b>	Premier's Office Staff (3) Minister's Office Staff (1) IO (1) Transaction Advisor (1)
Transaction advisors send August 7 notice to participants allowing meetings with government stakeholders.			
4.	August 22	Live Nation Canada	Premier's Office Staff (1) Minister's Office Staff (2) IO (1)
5.	August 22	<b>Participant B</b>	Premier's Office Staff (1) Minister's Office Staff (2) IO (1)
6.	August 22	Participant H	Premier's Office Staff (1) Minister's Office Staff (2) IO (1)
7.	August 22	Participant Q	Premier's Office Staff (1) Minister's Office Staff (2) IO (1)
8.	August 22	Participant U	Premier's Office Staff (1) Minister's Office Staff (2) IO (1)
9.	August 22	<b>Therme Canada</b>	Premier's Office Staff (1) Minister's Office Staff (2) IO (1)
10.	August 26	Participant G	Premier's Office Staff (1) Minister's Office Staff (2) IO (1)
11.	August 26	Participant P	Premier's Office Staff (1) Minister's Office Staff (2) IO (1)
12.	August 26	Participant T	Premier's Office Staff (1) Minister's Office Staff (2) IO (1)

	<b>Date of Meeting (2019)</b>	<b>Participant</b>	<b>Government Attendees* (number)</b>
13.	August 26	Participant EE	Premier's Office Staff (1) Minister's Office Staff (2) IO (1)
Transaction advisors send an additional notice on September 6 to participants about meetings with government stakeholders.			
14.	September 10	<b>Participant D</b>	Premier's Office Staff (3) Minister's Office Staff (2) Transaction Advisor (1) IO (1) MTCS staff (4)
15.	September 16	Participant BB	Premier's Office Staff (2) Cabinet Office Staff (2) Minister's Office Staff (3) IO (2)
16.	September 16	Participant DD	Premier's Office Staff (2) Cabinet Office Staff (2) Minister's Office Staff (3) IO (2)
17.	September 16	Participant FF	Premier's Office Staff (2) Cabinet Office Staff (2) Minister's Office Staff (3) IO (2)
18.	September 17	Participant A	Premier's Office Staff (2) Cabinet Office Staff (2) Minister's Office Staff (3) IO (2)
19.	September 17	Ontario Live	Premier's Office Staff (2) Cabinet Office Staff (2) Minister's Office Staff (3) IO (2)
20.	September 17	Participant R	Premier's Office Staff (2) Cabinet Office Staff (2) Minister's Office Staff (3) IO (2)
21.	September 17	Participant X	Premier's Office Staff (2) Cabinet Office Staff (2) Minister's Office Staff (3) IO (2)

**[bold]** – indicates that participant had two meetings.

\* Based on calendar invitations. Neither the Ministry nor IO were able to provide attendance records as these were not kept.



The CFD itself, as mentioned above, and the principles of the Realty Directive state that, “Realty decisions are transparent and accountable. High ethical standards are maintained, avoiding real or perceived conflicts of interest.”

By communicating with participants during the open period, in contravention with the CFD document, there is a risk that the process is not perceived as transparent, accountable and fair to all participants.

Similarly, the Institute for Public Procurement advocates setting a single point of contact for participants prior to submission as a global best practice, to decrease the likelihood of the inappropriate sharing of information, the appearance of impropriety and the potential for protest from participants.

Some participants had access to the IO VP while others did not; this is in contravention of the CFD’s stated process that said “No communication with government staff or appointed officials is permitted during the Call for Development process.” This rule was added to the design of the CFD to ensure fairness and transparency for all participants, yet it was not followed.

### **Recommendation 9**

We recommend that for future solicitations of government real estate developments, IO:

- adhere to any of the protocols identified in Call for Development or other such solicitation documents to maintain the integrity of the process;
- ensure that all participants are given the same information by maintaining minutes, including lists of attendees, for all meetings held to support transparency and prove that no undue information was being given to create an advantage for a real estate or procurement participant; and
- enforce that, during the open period, government staff should not be in contact with participants regarding a Call for Development, Realty Directive or a procurement, to ensure transparency.

For the auditee’s responses, see **Recommendations and Auditee Responses**.

## **4.6.2 Submission Deadline Was Extended Three Business Days Before the Original Deadline**

The CFD process was launched on May 28, 2019, with a submission deadline of September 3, 2019. Participants had 14 weeks to develop their submissions.

On August 28, 2019, three working days before the submission deadline, participants were notified that the deadline had been extended to September 24 with three working days left to go on the original bid deadline. The extension provided an additional 21 days to submit proposals.

Based on our review, 30 of 34 participants (about 88%) took advantage of the extended deadline. Correspondence we reviewed between participants and the transaction advisor showed:

- » On August 27, one participant requested a two-week extension.
- » On August 28, representatives for Therme asked whether there would be an extension, indicating they had been told in an earlier meeting with the government that the deadline would be extended. The email stated: “We understand from the meeting recently with the government that the September 3 bid deadline will be extended.” As noted in **Section 4.6.1**, Therme’s meeting with government officials occurred on August 22, 2019, indicating that they had advance knowledge of the extension

On August 28, 2019, the transaction advisor emailed IO and claimed that “...based on our market engagement and feedback from potential participants, it has become increasingly clear that several participants would benefit from an extension to the submission deadline.”

In its email to IO, the transaction advisor did not state which participants or how many participants had requested an extension. That same day, IO notified all participants of a three-week extension. Four of the 34 participants chose to submit by the original September 3 deadline.

### Recommendation 10

We recommend that for future solicitations of government real estate developments IO avoid deadline extensions when possible and, if needed for better response rates and quality, ensure deadline extensions are granted prior to the halfway point of the original deadline to allow fair and equitable treatment of all participants.

For the auditee’s responses, see [Recommendations and Auditee Responses](#).

### 4.6.3 Clarification Questions and Information Updates Occurred After Prescribed Questions Deadline

Section 5.15 of the CFD document states that participants may ask questions and seek clarifications via email prior to August 10, 2019, which is typical of an RFP process.

Questions received from participants on the @ontarioplacedevelopment.com domain were tracked on the information tracker, as were the responses to those questions. We reviewed the information tracker and found eight instances where a response was provided after the August 10 deadline, but before the deadline for question was extended on August 28, 2019.

In addition, between August 10 to August 28, political staff held 10 meetings with participants (discussed in **Section 4.6.1**). These meetings occurred before the deadline for questions was

extended to September 10, 2019. A further eight meetings were held between September 10 and September 17, prior to the close but after the extended deadline for questions (September 10).

The CFD also stated that if a participant's questions were deemed not commercially confidential, responses would be provided to all participants so as to ensure equal access to information. Responses to participant questions received via the Ontario Place website were added to the virtual data room hosted on a server, where participants had equal access to this information. The information that was shared during the meetings with government, as discussed in **Section 4.6.1**, was not included in the information tracker. According to IO, the questions asked at these meetings and the answers given were not shared because these meetings were confidential.

### **Recommendation 11**

We recommend that IO ensure that all information-sharing deadlines in future solicitations of government real estate developments are followed and all participants have equal access to non-commercially confidential information shared, in a timely manner, to provide an open, transparent and fair process for all participants.

For the auditee's responses, see **Recommendations and Auditee Responses**.

#### **4.6.4 Many Participants Had Not Signed Their NDA's Early in the Process**

From January 18 to May 27, 2019, IO issued 112 NDA's. We noted that 49 (44%) were executed and received after August 26, 2019, within one week of the September 3, 2019, deadline.

For example, one participant submitted its NDA on August 26, 2019, or about five business days prior to the original submission deadline. This participant provided a submission on the extended deadline of September 24, 2019.

The transaction advisor was tasked with managing the CFD data room, including administering and recording participant access to information. When we asked for those records, IO told us it did not have them and that the transaction advisor no longer had reporting capabilities for the data room. Since there was no record of who accessed the data room and when, we could not determine whether any participants were given access to the data room prior to signing their NDA.

#### **Information Was Shared with One Participant (Triple Five) Without a Signed Non-Disclosure Agreement and Participation Form**

Participants were required to submit a signed NDA and participation form in order to enter a submission for assessment (noted in **Section 4.3.3**). In our review of email correspondence, we found that the transaction advisor met with one participant, Triple Five, before it submitted an NDA and participation form.

The transaction advisor did not keep a record of what was spoken about in these meetings on August 23 and 26, 2019. The transaction advisor told us that the meeting was to share information about the CFD process and the Ontario Place site and its potential redevelopment. In an email on August 26, the transaction advisor recorded having had “long discussions with [Triple Five] Friday and today – asking a lot of pointed questions about what province will do, what could get built, etc.”

Triple Five did not submit its NDA and participation form until August 30, 2019. It then submitted a proposal one business day later, on September 3, 2019.

The transaction advisor had reached out to all four participants that had provided their proposals on the original September 3 deadline to inform them that they could resubmit their proposal up until the new September 24 deadline if they wished.

The transaction advisor emailed IO on September 5, 2019, to say that Triple Five would be staying with its September 3 submission, which was a 12-page Letter of Interest, and did not want to provide a concept submission. A concept would have provided details on their planned development, whereas the Letter of Interest only indicated willingness to participate in the process. In the same email, the transaction advisor noted that, through a call, Triple Five said there was “No need to meet with PO’s office [Premier’s Office]” because it had already spoken with a senior staff member in the Premier’s Office.

## Recommendation 12

For future solicitations of government real estate developments we recommend that IO:

- develop a cut-off point for participants to have signed their participation forms and NDA’s well in advance of any submission deadline;
- do not hold meetings with participants that have not signed an NDA, to ensure no violation of the rules have occurred;
- if meetings are held to provide information on the submission process, ensure information is shared equally with all participants; and
- when a data room is set up for these solicitations, ensure access is monitored and records are kept.

For the auditee’s responses, see [\*\*Recommendations and Auditee Responses\*\*](#).

## 4.7 Lease Agreements and Site Preparations

On July 27, 2020, IO executed an agreement with a leasing advisor to provide advisory services related to leases for the Ontario Place redevelopment. The vendor was selected through a request for services (RFS), which is an engagement for a specific assignment with vendors who are pre-approved through a master services agreement. This process included three participants who were all scored on technical aspects of their submission. The vendor was to “assist Infrastructure Ontario in negotiating favourable commercial terms with potential future tenants of Ontario Place, in the sports, entertainment and attractions spaces.”

They were required to support negotiations with participants to secure terms sheets and execute ground leases, and provide support depending on the type of approach that would be selected by government. The vendor was also required to conduct an appraisal/valuation of the lands based on a market-based comparable to inform the lease payments, revenue sharing agreements and lease durations.

In February 2021, the leasing advisor presented IO with a methodology that was later used to inform lease negotiations. The methodology provided benchmarks and examples of other similar leases, comparable financial feasibility and proposed rent terms. It also offered a number of approaches to determine land value, which would inform proposed rents.

Section 5.3.5 of the Realty Directive states that, “Where realty is being disposed of by lease or easement, it must be disposed of at the market rate.” The analysis conducted by the leasing advisor was used to determine the market rate to inform lease negotiations.

On March 23, 2021, Treasury Board authorized MTCS to execute lease negotiations with the three participants (Therme, Live Nation and Écorécéo). On August 5 and 6, 2021, IO began formal negotiations.

Prior to the execution of the leases with the participants, IO conducted additional financial due diligence on Therme and Live Nation. IO informed us that it did not gather financial information from Écorécéo as Écorécéo announced it was unable to reach an agreement with the Province on the terms of the lease in April 2022. Details of the withdrawal are discussed in **Section 4.7.4**.

On May 3, 2022, IO executed a 75-year lease agreement with Therme (75 years with an option to renew for an additional 20 years). While the Realty Directive provides guidance on the market rate of leases, it does not provide any guidance on the length of a lease. Under the obligations of the lease, the Province is responsible for obtaining certain permits and approvals for and getting the site ready for construction. The lease also requires the Province to build a parking facility with at least 1,800 parking spaces, of which, 1,600 would be dedicated for Therme.

The May 6, 2024, lease agreement with Live Nation is for a 30-year term with an option to extend for an additional 15 years. The lease terms allow Live Nation to operate events under licence on the lands outside the ground lease area. Similar to the lease with Therme, the Province is required





to complete surveys and obtain certain permits and approvals related to getting the site ready for construction. The Province also is to provide site readiness activities and 1,200 parking spaces within 750 metres of Ontario Place for all users.

#### **4.7.1 Negotiated Lease Terms Include \$30 Million Penalties for the Province, Allow for Early Termination**

The government's lease agreement with Therme includes a payment of \$30 million in liquidated damages if the Province does not meet certain site readiness deadlines, such as interim utilities services (utilities necessary for Therme during the construction period) or initial environmental obligations.

We found that at the time the lease was executed and the liquidated damages were negotiated IO had not yet developed a detailed site readiness project plan. According to IO, a preliminary estimated site servicing timeline was prepared in April 2021; this timeline was used to inform lease considerations. However, the April 2021 project plan did not include a detailed timeline for interim utility services or initial environmental obligations.

The government was required to complete interim utilities services and initial environmental obligations by December 31, 2023. Under the initial environmental obligations, IO was required to complete site assessments to identify whether any potential contaminants exist in the soil and groundwater. IO found contaminants and identified risk mitigation measures that have been accepted by the Ministry of Environment, Conservation and Parks (MECP). These measures are expected to be implemented during construction.

According to IO, during the lease negotiations, IO asked Therme what interim utility services would be required and Therme did not provide any concrete details. IO committed to the deadline of December 31, 2023, and the potential financial liability of \$30 million in case of breach of interim utility services, without first agreeing with Therme as to what was needed to meet the obligation.

The interim utilities services deadline includes a one-year cure period, thus extending the deadline to December 31, 2024. At the time of our audit, IO was in discussions with Therme on when the interim utility services will be met.

In October 2024, IO told us that the “technical project teams at the Province and at Therme are in discussions regarding specific interim utility capacity levels required by Therme in order to enable early site handover and to support a construction start date”. IO told us that it expected the discussions to conclude by December 31, 2024.

If Therme were to take the view that the Province is, or, is likely to become in default of its initial obligations, Therme has the ability to issue a conditional termination notice, and, if not cured within 180 days of receiving the notice, Therme could terminate the lease and the Province would be liable for the \$30 million in liquidated damages. The Province would have the ability to dispute any such notice and, at the time of the finalization of this report, no such notice had been issued by Therme.

If the conditional termination notice is not issued by Therme then, starting January 1, 2025 Therme may issue an invoice for liquidated damages in the amount of \$250,000 every 180 days up to a maximum of \$30 million.

However, if the Province is not able to complete the initial obligations (such as, initial environmental obligations or interim utility services), the lease allows the Province to terminate the lease for convenience and pay Therme \$30 million for exercising its termination right.

The lease with Live Nation does not contain similar site readiness provisions and corresponding liquidated damages as construction will not commence until 2027 at the earliest.

### **Discussions to Move Up Site Hand-Off to Therme by 11 months**

Based on our review of email correspondence, we found that IO is in active discussions to move the site hand-off date up by 11 months, to May 31, 2025, from the original hand-off date of April 30, 2026.

In an email dated February 1, 2024, the IO CEO stated “the province is prepared to advance site handover from April 2026 to May 2025 based on certain conditions.” On February 15, 2024, another IO executive noted:

“The province is obligated under the Therme lease to demolish structures, landscaping, and infrastructure on the West Island by April 2026. However, recent negotiations with Therme have resulted in a revised date of May 31, 2025 for site handover to Therme. To align with this revised timeline, options to expedite the procurement and construction processes have been explored given an estimated 9-12 months is required for construction.”





The executive further noted “the single sourcing [of West Island Demolition] is recommended as the preferred procurement option because it minimizes the risk of meeting the May 31, 2025 site handover commitment to Therme.”

Based on a memo to the IO Board of Directors dated April 19, 2024, we found that IO was directed by the government to “accelerate site handover and construction” following the “new deal” with the City of Toronto in late 2023.

If the site is handed over to the tenant earlier, once Therme has obtained its excavation permit, it would eliminate the Province’s ability to terminate the lease for convenience prior to fulfilling site readiness obligations. Should it choose to terminate the lease, the Province instead would be required to provide a five-year notice period after 10 years of operations. The obligation for Therme to pay rent would commence once the site is handed over.

On November 4, 2024, the government gave IO direction to terminate the exploration of early site handoff.

### **Recommendation 13**

For future solicitations of government real estate developments, we recommend that IO prepare detailed site readiness project plans with timelines prior to contractually committing to complete this work to ensure it meets the deadlines in agreements.

For the auditee’s responses, see **Recommendations and Auditee Responses**.

## 4.7.2 Publicly Disclosed Details of Therme's Lease Show Double the Capital Investment Than What Was in Its CFD Submission

On October 3, 2024, the Province of Ontario released details of its lease with Therme. Of note is Therme's capital investment, the expected tax revenues for the Province, and estimates of the expected number of visitors to the redeveloped Ontario Place.

In terms of Therme's capital investment, the Province's press release stated, "...\$700 million in upfront capital investments from Therme. Of these upfront capital investments, \$500 million will go to build the Therme facility and \$200 million will support approximately 16 acres of freely accessible public space, shoreline protection, publicly accessible gathering spaces, trails, parkland, gardens and a new beach."

We noted in other documents that this investment was expected to be \$350 million, namely in: Therme's CFD submission; a Treasury Board submission from April 2022, prior to the execution of Therme's lease; IO's February 2024 analysis; and an April 2024 Treasury Board submission, prior to the execution of the lease with Live Nation.

IO told us that "Therme confirmed in writing on October 2, 2024, their estimated capital expenditure was now \$700M." This confirmation occurred one day prior to the release of the lease details.

Despite this written confirmation, Therme's lease agreement or any other contract does not stipulate the minimum amount of the capital investment it must make. As a result of the *Rebuilding Ontario Place Act, 2023*, the lease agreement no longer needs to follow municipal permitting, which would also have ensured IO's ability to monitor the build.

This contrasts with the Province's lease agreement with Live Nation, which specifies a dollar amount as the minimum capital investment to be made by Live Nation.

As of February 2024, the Province's share of the costs related to the public realm was still expected to be over \$500 million (See **Section 4.1.2**). This investment will be on top of the potential \$200 million investment announced for the public realm by Therme.

### **Therme's Contributions as Disclosed Do Not Reflect Its Contribution in Today's Dollars**

The Province's October 3, 2024, press release noted nearly \$2 billion in estimated revenue contributions from Therme to the Province over the duration of the 95-year lease. These contributions consist of \$1.1 billion in rent payments and \$855 million in common area maintenance (CAM) payments.

The present value (that is, the concept of today's dollars being worth more than tomorrow's dollars because of inflation) of the rent payments is about \$163 million.

Additionally, the CAM payments, which are costs for lawn maintenance, snow removal and other miscellaneous costs, will be incurred by the Province. These costs will then be recovered from Therme. This results in a cost recovery, but not a revenue contribution to the Province.

The minimum rent is based on 3.5% of the fair market value of the land. There is an additional performance rent that starts in year six of operations based on 2.45% of admissions revenue. A rent ceiling of 8% of fair market value of the land is in place.

In contrast, the lease with Live Nation has a slightly higher minimum rent percentage of the fair market value of the land, with a similar rent ceiling after accounting for performance rent.

### **The Number of Jobs Created from the Construction and Operations of Therme's Facility Was Lower than Initially Projected**

The details released on October 3, 2024, included projections for tax revenue to the Province based on the number of jobs created during the construction and operations phases of the project.

The number of jobs was lower than those included in IO's March 2022 projections: 2,000 versus 3,290 during the construction phase, and 800 versus 848 during the operations phase. See **Figure 15** for additional details.

### **No Independent Verification of the Number of Visitors Expected at Therme's Facility**

The details released on October 3, 2024 included projections for the number of visitors per year to the redeveloped Ontario Place. The estimate of six million visitors each year is based on estimates that included Therme (1.7 million), as well as Live Nation (1.3 million), the OSC (1.0 million) and the park (2.0 million). Therme's 2019 projections, which were included in its submission, estimated 1.7 million visitors in Year 1 and up to 2.7 million visitors in Year 10. However, these projections and their related revenues were not subject to detailed due diligence apart from IO assessing their reasonableness against Therme's existing operations.

### **Return on Investment for Therme**

Based on the 2019 revenue and expense projection and the new investment announced by Therme, we calculated that they will break even (their return on their capital investment) around their 21st year. This break-even does not consider their financing costs, taxes, profit margin, lifecycle costs for the building, etc.



### Figure 15: Comparison of Benefits Between Treasury Submissions and IO Press Release in October 2024 for Therme Canada Lease

Prepared by the Office of the Auditor General of Ontario

	Treasury Board Submission April 2022	IO Press Release October 2024
<b>Projected Economic Benefits Generated During Construction</b>		
GDP	\$294 million	\$294 million
Provincial Tax Revenue	\$48 million	\$48 million
# of Jobs Created	3,290	2,000
<b>Expected Revenue for Province*</b>		
Rent – Including Performance Based Rent Based on projected Revenues starting in 2034	Nominal (Rent): \$1.09 billion	Nominal (Rent): \$ 1.1 billion
	Net Present Value (Rent): \$163.2 million	
Common Area Maintenance Costs – To Recover Costs Incurred	Nominal (CAM): \$949M	Nominal (CAM): \$855 million
	Net Present Value (CAM): \$148.6 million	
	Expected Costs Incurred: \$949M	
	Net Expected Revenue for the Province: NIL	
<b>Projected Economic Benefits Generated During Operations (Expected to start in 2029)</b>		
Annual GDP during Operations	\$128 million	\$128 million
Provincial Tax Revenue	\$17 million	\$17 million
# of Jobs Created	848	800
<b>Therme Canada Investments</b> (Note: There is no contractual obligation with the government for Therme to invest these amounts)		
Projected Capital Investment for the Design and Build	\$340 million	\$500 million
Investment in Public Realm	\$10 million	\$200 million
<b>Total</b>	<b>\$350 million</b>	<b>\$700 million (100% increase)</b>
<b>Other Key Information</b>		
<ul style="list-style-type: none"> <li>• In the April 2024 Treasury Board submission, MOI cited expected visitors of six million across the site.</li> <li>• In October 2024, IO publicly indicated that it expects six million visitors each year; visitors are based on estimates which include Therme (1.7 million), Live Nation (1.3 million), the OSC (1.0 million) and park visitors (2.0 million).</li> <li>• Based on Therme's 2019 projections included in its submissions, it estimates 1.6 million visitors in Year 1 and up to 2.7 million visitors in Year 10. These projections were not independently verified by IO.</li> </ul>		

Note: Estimates for projected tax revenue, and GDP impact have not been updated since the April 2022 Treasury Board submission.

\* Revenue Projections are based on analysis conducted by IO in February 2024.

### 4.7.3 Province to Pay Over \$60 Million to Relocate Sewer Pipes to Accommodate Therme Beach

The Province is expected to pay to relocate sewer pipes that could impact Therme's planned beach because these costs were not addressed in the lease agreement. To create a development-ready site, the Province as landlord is required to resolve an existing conflict between the Therme lease boundary and existing sewer pipes which encumber the Therme leased area.

There are four combined sewer outflows (CSO's) within the boundaries of Ontario Place. A CSO is municipal infrastructure that is designed to act as a relief valve to prevent sewer overloads.

The CSO modifications were not explicitly included in the scope of the original site servicing works in the Province's lease agreement with Therme because the CSO's were located on land owned by the City of Toronto (City). The *Rebuilding Ontario Place Act, 2023* transferred that land from the City to the Province. If the Province had identified the need for CSO modifications prior to finalizing the lease agreement, it could have negotiated cost-sharing with Therme.

In addition, while the land parcels on which all four CSO's are located are now owned by the Province, the sewer infrastructure itself is still owned by the City. As a result, as of October 2024, there was no long-term legal easement in place to allow the City of Toronto to access its infrastructure to service and maintain the CSO's. The absence of an easement could lead to operational issues and increased maintenance costs.

According to IO, the discharge point for one of these CSO's (CSO-1) directly impacts Therme's planned beach, and would need to be relocated or extended away from the site. A proposed interim solution is to shorten the length of the pipe. According to IO, the permanent solution would be to reroute the CSO outside of Therme's leased boundary.

According to preliminary estimates, the interim and permanent solutions for the CSO-1 modification and relocation could cost the Province a total of over \$40 million. This is almost \$10 million more than the figure of \$31.8 million included in the February 2024 cost estimate detailed in **Figure 1**.

CSO-2, a second discharge point, is expected to conflict with proposed underground construction. Remediation would cost the Province an additional estimated \$20 million. At the time of our audit, the exact nature of the conflict and the work required was still being determined. The costs relating to CSO-2 have not been included in the Province's most recent cost estimates.

#### Recommendation 14

We recommend that IO:

- negotiate terms in future lease agreements for the sharing of costs between the Province and lessee if new issues are identified after the agreement is finalized;

- include the estimated costs for CSO-2 in the Province's cost estimates for the redevelopment of Ontario Place; and
- negotiate a long-term legal easement with the City of Toronto to allow it access to municipal infrastructure at Ontario Place for servicing and maintenance.

#### 4.7.4 Anchor Tenant Withdrew from Negotiations

On April 19, 2022, Écorécéo informed IO that it would be withdrawing from the Ontario Place lease negotiations. IO told us Écorécéo's decision to terminate negotiations was the result of a number of considerations, including increased rental costs, insurance requirements and concerns about the impact on operations resulting from sound from the nearby Live Nation amphitheatre.

We reviewed the termination letter sent by Écorécéo to IO. It stated that "Écorécéo has determined that the most recent lease agreement does not allow us to have all the winning conditions required to enable us to develop a successful and viable project at Ontario Place, and thus the Tenant Condition (as defined in the OTL Term Sheet) cannot be satisfied." It noted that the lease payments, additional rent, property taxes and licence fee were significantly higher than the estimates that it had been provided in December 2020. The insurance coverage requirements were also nearly 10 times the standard for an adventure park. The costs were updated based on the work done by the leasing advisor in February 2021 (see [Figure 16](#)).

**Figure 16: Comparison of Cost Estimates Provided to Écorécéo Group, December 2020 and March 2022**

Prepared by the Office of the Auditor General of Ontario

	<b>Annual Cost December 2020 (\$)</b>	<b>March 2022 (\$)</b>
Minimum rent	537,500	537,500
Common area maintenance	76,200	481,549 to 741,736
Property tax	87,100	323,000
<b>Total*</b>	<b>700,800</b>	<b>1,342,049 to 1,602,236</b>
Licence Fees*	–	Lower of 4% of the Value of the Licensed Lands or 6% Participation Fee
<b>Cost relative to 2020</b>	<b>100%</b>	<b>192% to 229%</b>

\* In the 2020 the estimate the amount for the license fee had not been determined. In 2023, it was determined to be 4% of the Value of the Licensed Lands or 6% Participation Fee. However, calculations were not included in the estimated costs.

Écorécrcéo further cited a reduction in projected revenue due to other tenants offering previously exclusive services such as kayaks and stand-up paddle boards. In the end, Écorécrcéo concluded that the terms of the lease agreement would not enable them to develop a successful and viable project at Ontario Place.

### Recommendation 15

We recommend that IO ensure that potential tenants are provided with accurate tenant cost information early in the negotiations of future government real estate developments to allow them to make an informed decision about their participation in the process.

For the auditee's responses, see [Recommendations and Auditee Responses](#).

## 4.7.5 Early Works and West Island Demolition Were Awarded Without an Open Procurement

Site preparation work is being undertaken by the government in three phases: early works, site servicing and West Island demolition.

- » **Early Works:** Repairs to the existing pods, bridges and Cinesphere. The contract for early works was awarded via an RFP in February 2022 to Contractor A. This contract was cancelled in October 2023 and was added to the site servicing work of Contractor B.
- » **Site Servicing:** The renewal of services such as water and waste water, stormwater management, electrical telecommunications, and gas. The contract for site servicing was awarded to Contractor B via an RFP in May 2023.
- » **West Island Demolition:** Demolition of up to 31 existing structures and 819 trees, underground infrastructure / services, bridges and hard landscaping features on the West Island. This work was added to Contractor B's site servicing contract in April 2024 without an open procurement.

The contract for early works was terminated and added to the contract for site servicing due to significant delays. The work, initially scheduled to be completed by May 2023, was delayed by 10 months at the time of termination. IO noted, in its August 2023 internal briefing note, that Contractor A was unable to properly assess the total scope of the project, failed to provide a cost control plan, was unable to forecast total project costs, and failed to forecast environmental requirements impacting the project such as failure to install bird exclusion measures on the structures being repaired.

IO communicated its concerns to Contractor A in a letter dated February 16, 2023, about the project delays. We asked IO about the steps taken to monitor the project between February 2022, when the project was awarded, until February 2023, when the letter was sent. IO informed us it held discussions with Contractor A, which were documented through letters.

We learned that in October 2023 IO terminated the early works contract with Contractor A and gave the remaining work to Contractor B (through a non-competitive process). Contractor B had been hired in May 2023 for site servicing.

An April 2024 Treasury Board submission by MOI noted that significant market pressures since 2021 were impacting pricing and schedules and the delays in early works repairs were forecasted to overlap with the site servicing project, which would impede progress on the site servicing. Contractor A was paid \$32.9 million for the work completed. Upon termination, there were no penalties paid by IO. As of April 2024, the estimated cost for the remaining work on the early works project is \$64 million, which is in addition to the \$32.9 million already paid.

West Island demolition work, estimated by IO to cost \$31.5 million, was added to Contractor B's existing contract without an open procurement. The justification used by MOI in its April 2024 Treasury Board submission for not conducting an open procurement was that having a single company rather than multiple contractors working on site would "reduce potential site access issues," provide scheduling certainty, and achieve potential cost and time savings.

## Recommendation 16

For future government real estate developments we recommend that IO:

- ensure all contracted project work is properly scoped at the start of the project;
- avoid overlap and site optimization issues between contractors when multiple contractors are engaged on a site;
- monitor and document the progress of the contractor(s) throughout the project(s); and
- ensure competitive pricing is obtained for all work through an open procurement or other mechanism.

For the auditee's responses, see [\*\*Recommendations and Auditee Responses\*\*](#).





#### 4.7.6 The Minister of Infrastructure's Office Directed IO to Enter into Negotiations with Ontario Live in 2023 Despite Concerns About Its Submission

At the December 11, 2019 briefing to the MHSTCI Minister's Office and Premier's Office, IO recommended no further discussions with Ontario Live. However, in the submission to Cabinet on January 30, 2020 (**Section 4.4.5**), Ontario Live was included as one of the short-listed participants for further discussions.

On April 6, 2023, the Chief of Staff of the Minister of Infrastructure notified the CEO of IO and the Deputy Minister of MOI that Ontario Live had been identified as the preferred partner for establishing food and beverage services, public realm, site maintenance and management, and people-moving infrastructure on the East Island. The following week, on April 12 2023, IO provided a Letter of Intent to Ontario Live to begin exploring ideas for the revitalization of Ontario Place.

On July 11, 2023, Ontario Live provided IO with a draft term sheet for a project agreement related to a mixed-use development involving commercial operations and public amenity spaces. Specifically, the framework stated: "Ontario Live will develop the proposed commercial areas that will include the creation of a commercial village that will add value to and support the proposed park and other public amenity spaces. The commercial village will include constructing twelve restaurants, office space, and a marketplace, in addition to creating programming for special events."

On November 6, 2023, as part of a briefing presented by IO, it advised MOI that Ontario Live was not suited for the proposed development. IO recommended an open procurement because of issues with the partnership arrangement between the consortium and "no track record for delivery." Specifically, in its presentation to Ministry officials IO stated: "Analysis by IO has not yet demonstrated that OL [Ontario Live] has the expertise or capacity to manage and successfully deliver on the entire scope."

On July 5, 2024, IO notified Ontario Live that it was going to undertake competitive procurements for the scope of services contemplated as part of their exploratory discussions.

## 4.8 Due Diligence Conducted by Infrastructure Ontario

### 4.8.1 Financial Concerns Identified by IO Staff Prior to Execution of the Therme Lease Remained Unaddressed

We found that financial concerns about Therme Group (the parent company and guarantor of Therme) identified by a Senior Advisor at IO were not addressed prior to executing the lease with the Therme. A Senior Advisor at IO reviewed the 2019 and 2020 audited financial statements of Therme's parent company and guarantor and, in an April 21, 2022 email, pointed out that:

- » Therme Group had low liquidity and it was not cash flow positive;
- » Therme Group's equity value prior to December 31, 2019, appeared low, at less than one million euros; and
- » the financial strength of the Therme Group appeared weak, which would limit its ability to inject cash into the construction and Therme would ultimately need to raise capital.

The Senior Advisor's email was sent 12 days before the lease with Therme was signed, on May 3, 2022.

We asked IO whether any actions were taken to address the concerns raised by their Senior Advisor. IO noted that Therme's project at Ontario Place is expected to require Therme to either raise capital for the project or arrange third-party financing. This situation is recognized in the lease.

The lease between the Province of Ontario and Therme includes a financial test. The lease required Therme Group to have a net worth of \$100 million. An examination by IO of Therme Group's 2020 audited financial statements shows that Therme had met this financial test per the lease requirements.

On October 3, 2024, IO publicly released the lease agreement with Therme.

### 4.8.2 Assessors Did Not Confirm that Spas Presented as "Proof of Concept" Were Owned and Operated by Therme Group

As part of the assessment process, Therme's submission was given a "high" rating in the area of a proven track record of concept with the comment in the final consensus workbook that Therme had a "proven track record in delivering similar projects."

We found that there was no significant documented analysis or research on the information in Therme's submission done by the assessors, such as for revenue projections, costs, qualifications or experience.

We found that IO did not conduct due diligence to ensure that spas cited by Therme in its submission were in fact owned and operated by Therme Group. In its submission, Therme stated that “Therme Group has proven the success of its concept with six globally placed facilities under operation.” We reviewed the six spas and found five instances where the spa cited in the submission was not owned or operated by Therme Group.

In its 2019 submission, in order to showcase the team’s ability to deliver, Therme cited Therme Erding as one of the six spas. In a written response to our request to IO, Therme stated “Therme Erding is under the operational ownership of the Wund family. The Therme concept was initiated by the architect Josef Wund and resulted in the development of several projects in Germany including Therme Erding.” While we noted that Therme cited a close professional relationship between its CEO and Josef Wund, we noted that Therme did not own or operate Therme Erding and the ownership/operating experience in the submission was not accurate.

We reviewed Therme’s submission for the 2017 CFS. We noted that in its 2017 submission, Therme clearly stated that Therme Erding was owned and operated by another entity. We found no references to that information in the submission for the 2019 CFD.

We asked IO if it had reviewed Therme Group’s organizational structure. IO told us: “Regarding an assessment of Therme’s org structure, at the time of executing the lease, Therme Canada OP Inc. (the entity executing the lease) was a newly formed company with fewer than 10 employees, so there was no comprehensive org structure to be assessed.” IO also noted that “the Indemnity Agreement with Therme RTHG [parent company]” amounts to a backstop of “all Therme’s obligations under the Lease.”

**Appendix 6** provides details on the key events that occurred following the selection of tenants.

### **Recommendation 17**

We recommend that IO ensure substantial information supporting key selection criteria, such as a proven track record of concept, and financial viability, are verified through due diligence prior to the selection of preferred participants.

For the auditee’s responses, see **Recommendations and Auditee Responses**.

## 4.9 Province Exempted Ontario Place Redevelopment from Obligations under the *Environmental Assessment Act*, the *Environmental Bill of Rights, 1993* and the *Ontario Heritage Act*

During the course of the Ontario Place redevelopment, with the passage of the *Rebuilding Ontario Place Act, 2023* (Act), the Province exempted itself from legislative requirements to conduct environmental assessments, consult the public on potential environmental implications and preserve the cultural heritage of the site.

In addition, the Minister of Infrastructure issued an enhanced MZO for Ontario Place. This exempted the parts of the development that were under the City of Toronto's Official Plan from the City's municipal site plan control.

### 4.9.1 Environmental Assessments Not Required for Private-Sector Projects at Ontario Place

The *Environmental Assessment Act* sets out a planning and decision-making process so that potential environmental effects are considered (that is, assessed) before a project begins. Generally, this applies to provincial ministries and agencies, municipalities, and public bodies but does not apply to the private sector. As a result, only Province-led redevelopment activities on the Ontario Place site would have required environmental assessments; redevelopment activities conducted by the private-sector anchor tenants do not require environmental assessments, even though the tenants are leasing the land from the Province.

Our Office's 2016 report on Environmental Assessments noted that Ontario is the only Canadian jurisdiction in which environmental assessments are generally not required for private-sector projects. We therefore recommended that the Ministry of the Environment and Climate Change (now MECP) review and update the requirements in the act to ensure that projects with the potential for significant negative impact are assessed, regardless of whether the project is initiated by the public or private sector. While the Ministry has since made changes to its environmental assessment program, it has not expanded environmental assessment requirements for private-sector projects.

### 4.9.2 Environmental Assessments Identified Risks and Mitigation Measures, But Province Exempted Itself from Further Obligations under the *Environmental Assessment Act*

For the public-sector aspects of the Ontario Place redevelopment, two environmental assessments were completed. A Category B environmental assessment related to site servicing was conducted in July 2022 and a Category C environmental assessment (Environmental Study Report) was completed in November 2023 related to the public realm, the OSC and its associated parking options.



**Figure 17: Map of Ontario Place Showing Scope of Category C Environmental Assessment**

Source of data: Infrastructure Ontario



**Figure 17** shows portions of the Ontario Place site subject to the Category C environmental assessment.

A Category B environmental assessment is a screening process applied to undertakings with some potential for adverse environmental effects. As part of the Category B environmental assessment for the site servicing project, a seven-point, site-specific analysis was completed. The environmental assessment examined the existing land use status, environmental condition of the property, environmentally significant areas, distinctive environmental features, servicing capacity, heritage/cultural landscape, archaeological analysis and socio-economic effects.

The environmental assessment found that the use of heavy equipment and fuel on-site could result in spills that could impact soil or groundwater. It also found that the direct effects from physical removal or alteration of natural features for site servicing could contribute to the loss of vegetation and associated wildlife habitat.





IO has performed mitigation measures to address the risks associated with site servicing as outlined in the Category B Environmental Assessment report, including conducting regular environmental inspections, developing a soil management plan and engaging with various First Nations groups.

Projects subject to Category C undertakings have greater potential for significant environmental effects and require a public consultation program that must be documented in a corresponding Environmental Study Report.

The Category C environmental assessment conducted on the public realm found that there is a risk of soil erosion during construction, following vegetation and pavement clearing. The construction or operational activities may introduce or spread invasive species. It also found that construction activities may result in a change to the quality of the groundwater. Work along the shoreline is expected to affect food and foraging opportunities for species. The report noted that migratory and breeding bird species will be affected until vegetation is re-established and infrastructure is built. According to IO, these species are likely to find alternative habitat in surrounding areas such as Trillium Park, Coronation Park, and Tommy Thompson Park.

Similar to the Category B environmental assessment, the Category C environmental assessment also noted mitigation measures. For example, the contractor is required to clean all vehicles and equipment exposed to invasive plants prior to leaving the site. Soil from areas impacted by invasive vegetation is not to be stockpiled for reuse. Vegetation and tree removal and/or cleaning operations must be completed during a specified period, outside the breeding bird active nesting season. The report noted that mitigation measures will be incorporated as part of the design work on the public realm. This work was still underway at the time this report was finalized.

IO contacted the Toronto and Region Conservation Authority (TRCA) in March 2022 to request ongoing feedback on the Category C environmental assessment. Between March 2022 and January 2024, the TRCA also reviewed and provided input on the environmental assessment deliverables, such as the evaluation criteria and process, technical studies, mitigation and monitoring measures and programs, the recommended design, and the Category C Environmental Study Report. IO informed the TRCA that the Province will continue to work with the TRCA throughout the design and development stages related to the site servicing and the public realm.

On December 6, 2023, the government passed the *Rebuilding Ontario Place Act, 2023*, which exempted the Province from any further obligations under the *Environmental Assessment Act*. For example, any changes to plans for the public realm will no longer be subject to an environmental assessment. Also, any future government-led developments related to the Ontario Place site, such as parking or the OSC, will also not be subject to an environmental assessment.

### Recommendation 18

We recommend that IO ensure that:

- all measures to mitigate the risk of environmental harm identified in the environmental assessments associated with site servicing and the development of the public realm as part of the redevelopment of Ontario Place are implemented; and
- work continues with the TRCA during the design and development of the public realm and all feedback is addressed.

For the auditee's responses, see [Recommendations and Auditee Responses](#).

### 4.9.3 Province Exempted Itself from Public Consultation When Passing the *Rebuilding Ontario Place Act, 2023*

The *Environmental Bill of Rights, 1993* (EBR) recognizes that Ontarians have the right to participate in government decision-making about the environment, as well as the right to hold the government accountable for those decisions. Amongst other things, this law requires certain ministries, including MOI, to notify and consult the public about proposed acts, regulations, policies and instruments that are environmentally significant. Ministries must consider the public's comments before making a decision on the proposals and then give prompt notice of their decisions, including explaining whether, and how, public feedback affected the decision.

The Act exempts the Province from EBR consultation requirements. This meant that MOI did not have to consult the public under the EBR or consider the public's feedback before the Act was passed, even though MOI expected the Act to have environmentally significant implications. The Act gives the Minister of Infrastructure the power to make decisions under the *Planning Act* that could go against provincial policies aimed at protecting the natural environment, and that would not otherwise be permitted.

For further details on this finding and our recommendation to MOI, see our 2024 report on the Operation of the *Environmental Bill of Rights, 1993*.

#### 4.9.4 The Province Exempted Ontario Place Redevelopment from the *Ontario Heritage Act*

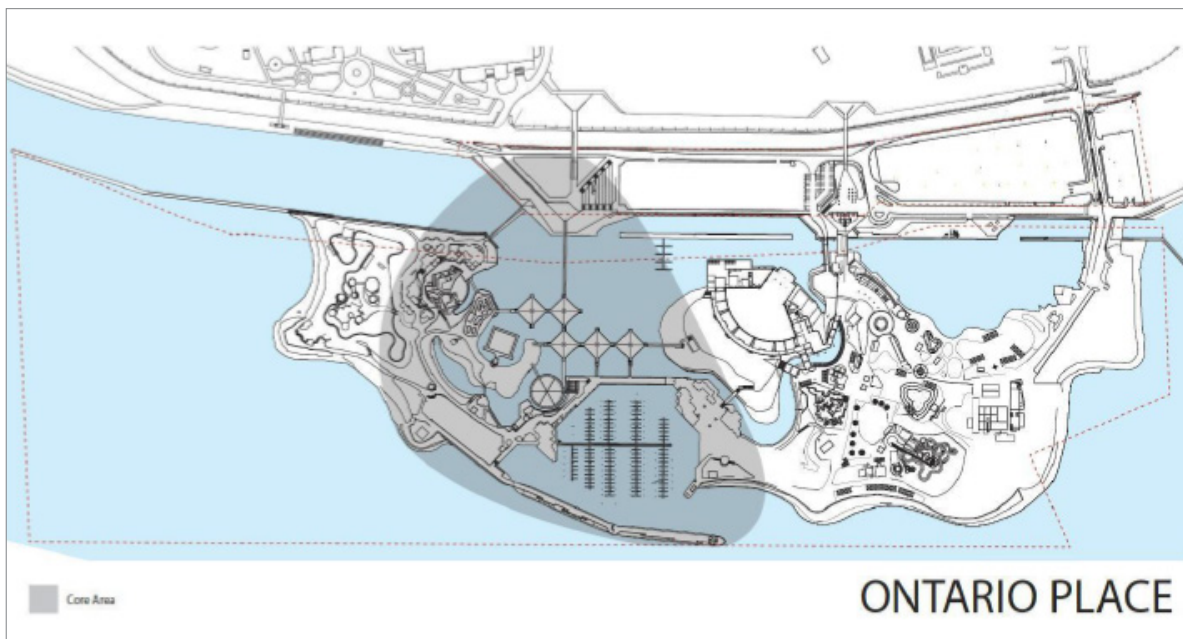
In 2013, the Government of Ontario recognized Ontario Place as a Provincial Heritage Property of Provincial Significance under the *Ontario Heritage Act*. On November 29, 2013, a Statement of Cultural Heritage Value was approved by the Deputy Minister of MTCS. The Statement identified several contextual and design attributes that contributed to the provincial cultural heritage value of Ontario Place, including the highly geometric architecture, designed localized microclimates and water features.

A portion of the Ontario Place site was designated as the Ontario Place Cultural Heritage Landscape (OPCHL). **Figure 18** provides an overview of the boundaries, as defined in the Statement of Cultural Heritage Value.

As noted in **Section 4.9.2**, IO undertook a Category B environmental assessment in July 2022 related to site servicing on the Ontario Place site. One of the mitigation measures resulting from that environmental assessment was the preparation of a Heritage Impact Assessment.

#### **Figure 18: Map of Core Built Heritage Area**

Source of data: Infrastructure Ontario



Note: Core Area includes Cinesphere, pavilion and crystalline and a three-village cluster set within naturalized landscape, canals, lagoons. It also includes the marina.

The Heritage Impact Assessment report was prepared for IO in December 2022 and updated in July 2023 by a consultant. It identified the potential impacts of site servicing on the heritage attributes of Ontario Place. The report found that:

- » the proposed trenching for new utilities throughout the property will impact the trees and landscaping;
- » there is the potential for indirect potential accidental impacts and potential vibration impacts to the adjacent trees or the trees in the vicinity of the trenching work;
- » there is the potential for impacts to the views and approach vistas, which are heritage attributes of OPCHL;
- » there is the potential for direct impacts on the designed landforms for the localized climate on the East Island surrounding the East Canal; and
- » there is the potential for impacts from the stockpiling of excavated materials.

The Heritage Impact Assessment suggested alternatives for consideration prior to the removal of trees, such as refining the site servicing trenching designs or relocating trees when their removal cannot be avoided.

According to IO, both of these options were considered. IO told us that there was limited flexibility to refine the site servicing designs. Further, while a number of trees were identified as potential candidates for relocation, it was determined that there would be a low probability of survival. If the alternatives were deemed not feasible, the report suggested additional mitigation measures.

There were no changes in the plans for tree removals. As of October 2024, 1,491 trees have been removed across the public realm, Live Nation and Therme project areas. The Province is planning on removing an additional 298 trees, for a total of 1,789 trees. Only 149 trees (or 8% of the original tree inventory at Ontario Place) will be conserved on the site. The government has committed to replanting trees on a 2:1 ratio. According to IO, the replacement ratio increases to 6:1 for trees over 30 cm in diameter.

Under the *Ontario Heritage Act*, a designation as a Property of Provincial Significance means that demolition of buildings or structures or any alteration of the property that is likely to affect the property's heritage attributes requires the consent of the Minister of Citizenship and Multiculturalism. While Minister's consent was granted in April 2022 for the West Island, it did not include the removal or demolition of structures on the West Island and consent was not obtained for other parts of the Ontario Place redevelopment project due to the passage of the *Rebuilding Ontario Place Act, 2023*.

A second site-wide Heritage Impact Assessment report was drafted by a consultant in October 2023. It identified the potential impacts of the redevelopment work on heritage attributes across the entire Ontario Place site, including tenanted areas such as the Therme and Live Nation project



areas. **Appendix 7** provides a list of adverse impacts and mitigation measures that were cited in the 2023 Heritage Impact Assessment report.

However, prior to the report being finalized, the *Rebuilding Ontario Place Act, 2023*, received royal assent. This Act exempts the entirety of the Ontario Place site from any obligations under the *Ontario Heritage Act*, meaning that ministerial consent is not required for alternations to the property, demolition/removal of buildings or transfer of a property. Compliance with the provincial Standards and Guidelines for Conservation of Provincial Heritage Properties would also not be required. Additionally, the Strategic Conservation Plan and Heritage Impact Assessment would not need to be implemented.

### Recommendation 19

We recommend that MOI finalize the site-wide draft 2023 Heritage Impact Assessment report and implement the mitigation measures identified, as a matter of best practice and to reduce the negative impact of the redevelopment on the heritage attributes of Ontario Place.

For the auditee's responses, see [Recommendations and Auditee Responses](#).

## 4.9.5 Use of Enhanced Minister's Zoning Order Overrides the City of Toronto's Planning and Public Consultation Processes

The Act gives the Province new authority that is specific to the redevelopment of the Ontario Place site. Under the Act, the Minister of Infrastructure is granted the power to issue Minister's Zoning Orders (MZOs) for the Ontario Place site.

In November 2022, IO submitted applications to the City for Official Plan and zoning bylaw amendments for Ontario Place development, including the West Island project led by Therme. In response to this submission, on March 23, 2023, a report issued by City staff raised concerns about the size and scale of the Therme facility on the West Island and the entrance pavilion located on the mainland. In September 2023, IO resubmitted its application to the City to address concerns raised about the size of the facility by reducing Therme building height by approximately 10m (25% of the previous height).

On May 17, 2024, the Minister of Infrastructure issued an enhanced MZO (eMZO) for Ontario Place, which established detailed development permissions and exempted the re-development from the City's municipal site plan control. As a result of the eMZO, the City cannot prevent the issuance of licences, permits or approvals for development at the Ontario Place site under its Official Plan.

## Recommendations and Auditee Responses

### Recommendation 1

We recommend that the MOI, in collaboration with IO:

- provide Cabinet and Treasury Board with the full cost implications of alternatives in their business cases for more informed decision-making (such as the full costs of alternative options to the Province if taking on the role of Master Developer versus having a comprehensive site-wide solution); and
- when budgeting site servicing costs, as part of the business case, include a full assessment of the costs plus a contingency.

### Ministry of Infrastructure Response

MOI accepts this recommendation and will leverage Ministry's existing best practices processes and information when available (submissions, written questions and answers, verbal discussion) to support the presentation of alternative options explored for decision makers.

### Recommendation 2

To ensure future public infrastructure projects are accepted and meet the needs of the public, we recommend that MOI, in collaboration with IO, assess and implement best practices in public and stakeholder engagements throughout the planning and development of projects on provincially owned lands. Public engagement is a best practice utilized by peers and alleviates unnecessary legal challenges, public media communications issues.

### Ministry of Infrastructure Response

MOI accepts this recommendation. When appropriate, MOI recognizes the value of public engagement and will continue to leverage available public and stakeholder input to support analysis of projects on provincially owned lands.

### Recommendation 3

We recommend that IO:

- For future solicitations of government real estate developments, if a process is required to receive ideas and concepts, utilize a staged procurement approach (such as a Request for Information, an Expression of Interest, or a Request for Qualification) prior to a Request for Proposal to solicit ideas and incorporate best practices into the process; and



- ensure major decisions regarding the process are made in advance of commencing the solicitation process that selects the final participant.

### Infrastructure Ontario Response

IO accepts this recommendation.

- IO introduced the Realty Development Solicitation Policy (approved by the IO Board of Directors in June 2024) which imposes best practices to competitive solicitations. IO is implementing this policy on all future solicitations related to government real estate development.
- IO will make efforts to ensure that all applicable and necessary due diligence for any future solicitation, has been performed and all major decisions about the process are made prior to launching the solicitation. IO is always subject to evolving government direction which can impact the terms and conditions of IO's solicitations. IO's Board of Directors will approve objectives and process for future solicitations related to government real estate development.

### Recommendation 4

We recommend IO finalize the assessment framework and related criteria prior to the public release of future solicitations of government real estate developments and disclose all criteria in the solicitation documents.

### Infrastructure Ontario Response

IO accepts this recommendation.

IO will make efforts to finalize the assessment framework and related criteria prior to the public release of future solicitations related to government real estate development and disclose all criteria in the solicitation documents. IO's Board of Directors will approve objectives and processes for future solicitations related to government real estate development.

### Recommendation 5

We recommend that IO, for future solicitations of government real estate developments:

- assign weight to criteria in the solicitation document;
- ensure that all assessors score submissions based on the assessment framework in accordance with the assessment guidance;
- ensure that all individual assessments are completed prior to consensus meetings;
- select participants based on assessments and rankings assigned;

- ensure that all assessors document their rationale for the score they assign to respective submissions; and
- provide clear guidance in the assessment framework on the required verification of proposals submitted by participants and the process requirements for considering the timing of the verification.

## Infrastructure Ontario Response

IO accepts this recommendation.

- IO will assign weighting to criteria, or establish minimum thresholds on individual criteria, as appropriate in future solicitations, and subject to government direction.
- IO will make efforts to ensure that all assessors score submissions in accordance with the assessment framework.
- IO will make efforts to ensure that all individual assessments are completed prior to consensus meetings.
- IO will identify qualified participants based on assessments and, where applicable, on rankings assigned.
- IO will make efforts to ensure that all assessors document their rationale for the score they assign to respective submissions.
- For future solicitations, IO will include a process by which verification of factual statements made in submissions can be considered by assessors.

## Recommendation 6

We recommend that IO follow its guidelines for future solicitations of government real estate developments to ensure fairness for all participants by:

- not allowing participants to submit information after the submission deadline;
- not changing the scoring of participants' submissions after a consensus score has been reached; and
- recommending the highest scoring participant as the primary partner to undertake the development.

## Infrastructure Ontario Response

IO accepts this recommendation.

IO is committed to ensuring that future solicitations related to government real estate development transactions comply with the Realty Development Solicitation Policy

- Other than in accordance with the solicitation documents and the assessment framework, or if directed by government, IO will not allow submissions of information after the submission deadline and will provide this advice to government.
- IO will not change the scoring of participants' submissions after a consensus score has been reached unless permitted under limited circumstances in the assessment framework and the Realty Development Solicitation Policy.
- IO will recommend the highest scoring participant as the primary partner. While the primary partner for certain solutions may be identified, IO will recommend the highest scoring participant for each aspect of the development as directed by government.

### Recommendation 7

For future decisions under the authority of Cabinet, we recommend that MOI present a complete analysis of all available options to Cabinet for its review and decision-making, including all of the potential costs.

## Ministry of Infrastructure Response

The Ministry of Infrastructure accepts the recommendation and will continue to leverage existing multi-channel processes (submissions, written questions and answers, verbal discussion) to support the presentation of viable alternative options explored for decision makers as is current standard practice.

### Recommendation 8

For all future major realty and infrastructure decisions, we recommend that MOI consider the overall impact on the public and long-term use of the public asset and not focus on one or more of many criteria such as speed of delivery or vision alignment, especially if they have been established after the procurement document has been issued.

## Ministry of Infrastructure Response

MOI accepts the recommendation and will continue to consider the known impact on the public and long-term use of the public assets when viable in the analysis provided to decision makers with relevant considerations and criteria at that time.

### Recommendation 9

We recommend that for future solicitations of government real estate developments, IO:

- adhere to any of the protocols identified in Calls for Development or other such solicitation documents to maintain the integrity of the process;
- ensure that all participants are given the same information by maintaining minutes, including lists of attendees, for all meetings held to support transparency and prove that no undue information was being given to create an advantage for a real estate or procurement participant; and
- enforce that, during the open period, government staff should not be in contact with participants regarding a Call for Development, or a procurement, to ensure transparency.

### Infrastructure Ontario Response

IO accepts this recommendation.

- IO will adhere to the Realty Development Solicitation Policy and issue solicitation documents to maintain the integrity of the process.
- IO will make efforts to ensure that information provided in meetings led by IO is made available to all participants. IO will make efforts to ensure lists of attendees is kept for all meetings with participants led by IO.

### Ministry of Infrastructure Response for Action Item # 3

MOI will continue to advise officials and political staff that they should conform with all prohibited contact provisions specified in solicitation documents.

### Recommendation 10

We recommend that for future solicitations of government real estate developments IO avoid deadline extensions when possible and, if needed for better response rates and quality, ensure deadline extensions are granted prior to the halfway point of the original deadline to allow fair and equitable treatment of all participants.

### Infrastructure Ontario Response

IO accepts this recommendation.

As a matter of practice, IO considers extensions on a case-by-case basis taking into account a number of factors, including the fair and equitable treatment of all participants and achieving appropriate competitive response.

**Recommendation 11**

We recommend that IO ensure that all information-sharing deadlines in future solicitations of government real estate developments are followed and all participants have equal access to non-commercially confidential information shared, in a timely manner, to provide an open, transparent and fair process for all participants.

**Infrastructure Ontario Response**

IO accepts this recommendation.

IO will ensure that all information sharing deadlines in future solicitations are followed and will share relevant information, as necessary, throughout the process, to ensure all participants have timely and relevant information sufficient to support a response to the solicitation.

**Recommendation 12**

For future solicitations of government real estate developments, we recommend that IO:

- develop a cut-off point for participants to have signed their participation forms and NDA's well in advance of any submission deadline;
- do not hold meetings with participants that have not signed an NDA, to ensure no violation of the rules have occurred;
- if meetings are held only to provide information on the submission process, ensure information is shared with all participants; and
- when a data room is set up for these solicitations, ensure access is monitored and records are kept.

**Infrastructure Ontario Response**

IO accepts this recommendation.

- IO will develop a cut-off point for participants to have signed NDAs in advance of submission deadlines, where NDAs are applicable.
- Where NDAs are applicable, IO will ensure its process documents include confidentiality provisions and avoid sharing of confidential information before signed NDAs and prohibit consideration of submissions from participants who have not complied with those confidentiality requirements or NDA if applicable. IO will make efforts to ensure a list of attendees is kept for all meetings with participants led by IO.
- IO will make efforts to ensure that access to a data room is monitored and records are maintained.

**Recommendation 13**

For future solicitations of government real estate developments, we recommend that IO prepare detailed site readiness project plans with timelines prior to contractually committing to complete this work to ensure it meets the deadlines in agreements.

**Infrastructure Ontario Response**

IO accepts this recommendation.

IO prepares and refines plans associated with the landlord works required to achieve the objectives of government real estate developments. Prior to making contractual commitments, IO will make efforts to ensure that all such plans show appropriate contingency in respect of time to mitigate the risk that government direction or unforeseen circumstances impact delivery timelines.

**Recommendation 14**

We recommend that IO:

- negotiate terms in future lease agreements for the sharing of costs between the Province and lessee if new issues are identified after the agreement is finalized;
- include the estimated costs for CSO-2 in the Province's cost estimates for the redevelopment of Ontario Place; and
- negotiate a long-term legal easement with the City of Toronto to allow it access to municipal infrastructure at Ontario Place for servicing and maintenance.

**Infrastructure Ontario Response**

IO accepts this recommendation.

- IO will include in future lease agreements how the parties will resolve new issues as they are identified.
- IO will work with MOI to ensure estimated costs for CSO-2 are included in future TB submissions.

**Ministry of Infrastructure Response for Action # 3**

MOI accepts this recommendation and will determine the necessary legal means to allow access to any municipal infrastructure remaining within the lands subject of Ontario Place Redevelopment, for servicing and maintenance.



**Recommendation 15**

We recommend that IO ensure that potential tenants are provided with accurate tenant cost information early in the negotiations of future government real estate developments to allow them to make an informed decision about their participation in the process.

**Infrastructure Ontario Response**

IO accepts this recommendation.

IO will make efforts to ensure sufficient tenant cost information is provided to participants as available and as appropriate to achieve the desired commercial outcome. It is the responsibility of the participant(s) to conduct due diligence on the commercial information provided.

**Recommendation 16**

For future government real estate developments, we recommend that IO:

- ensure all contracted project work is properly scoped at the start of the project;
- avoid overlap and site optimization issues between contractors when multiple contractors are engaged on the site;
- monitor and document the progress of the contractor(s) throughout the project(s); and
- ensure competitive pricing is obtained for all work through an open procurement or other mechanism.

**Infrastructure Ontario Response**

IO accepts this recommendation.

- IO prepares estimates of the cost and timeline associated with delivering landlord works based on the information known about those works at a given moment in time. IO will ensure that appropriate contingency is being carried to mitigate the risk that government direction (regarding scope) or unforeseen conditions impact the delivery of these works.
- IO will make efforts to avoid interface and optimization issues between contractors and continue to advocate for approaches to contracting which minimize overlap (as is possible).
- IO monitors and documents the progress of contractors through delivery – and will act in all cases where contractors are significantly underperforming.

- IO executes competitive procurements for all works unless proceeding with an already contracted partner minimizes interface risks. In these cases, IO will use mechanisms like the value validation framework to ensure they receive fair pricing.

### Recommendation 17

We recommend that IO ensure substantial information supporting key selection criteria, such as a proven track record of concept, and financial viability, are verified through due diligence prior to the selection of preferred participants.

### Infrastructure Ontario Response

IO accepts this recommendation.

IO will ensure that all issues flagged by assessors related to the track record or financial viability of participants, based on the information which is provided in submissions, are either resolved via consensus discussions, or investigated (including with the support of third parties) as needed.

### Recommendation 18

We recommend that IO ensures that:

- all measures to mitigate the risk of environmental harm identified in the environmental assessments associated with site servicing and the development of the public realm as part of the redevelopment of Ontario Place are implemented; and
- work continues with the TRCA during the design and development of the public realm and all feedback is addressed.

### Infrastructure Ontario Response

IO accepts this recommendation.

- Per *Rebuilding Ontario Place Act, 2023*, all completed environmental assessments at Ontario Place and associated mitigation measures are still in effect. As such, IO will follow the recommendations as laid out in the completed environmental assessments.
- IO has engaged the TRCA throughout the environmental assessment process and the preliminary design development of public realm. Building on this, IO will work with the TRCA to leverage its expertise to further advance the design of the public realm and explore how TRCA feedback could be addressed, where appropriate.

### **Recommendation 19**

We recommend that MOI finalize the site-wide draft 2023 Heritage Impact Assessment report and implement the mitigation measures identified, as a matter of best practice and to reduce the negative impact of the redevelopment on the heritage attributes of Ontario Place.

### **Ministry of Infrastructure Response**

MOI does not accept this recommendation and notes the site is exempt from the *Ontario Heritage Act*.

## Audit Criteria

In planning our work, we identified the audit criteria we would use to address our audit objectives (outlined in **Section 3.0**). These criteria were established based on a review of applicable legislation, policies and procedures, internal and external studies, and best practices. Senior management at the Ministry of Infrastructure and Infrastructure Ontario reviewed and agreed:

1. The design and implementation of the Call for Development process, and the resulting redevelopment plan complied with appropriate legislation, regulations, directives and standards.
2. The Call for Development process was fair, open, and transparent, and based on best practices that enabled the objective assessment of submissions.
3. Assessment of the submissions received in response to the Call for Development was conducted by qualified and impartial assessors. Individual assessments were used to arrive at mutual consensus among assessors based on an established criteria and methodology, and the process was well documented.
4. Decision-making resulting from the Call for Development was transparent and accountable, and informed by objective analysis. High ethical standards were maintained, avoiding real or perceived conflicts of interest.
5. Negotiated lease terms and resulting agreements were consistent with objectives outlined in the Call for Development and are in line with the submissions made by proponents.
6. The Call for Development process and the resulting plan for redevelopment gives due consideration to social, environmental and economic benefits and costs.

## Audit Approach

We conducted our audit between January 2024 and August 2024. We obtained written representation from Infrastructure Ontario (IO) and the Ministry of Infrastructure (MOI) that, effective November 27, 2024 and November 28, 2024 respectively, they had provided us with all the information they were aware of that could significantly affect the findings or the conclusion of this report.

As part of our audit work, we:

- » interviewed relevant staff from MOI and IO;
- » reviewed relevant documentation for the Call for Development (CFD) process, including planning, justification, and administration of the CFD open period, submission assessment, and submission selection;
- » obtained relevant calculations, assumptions, and backup documentation for the qualitative and quantitative costs and benefits for the redevelopment as a whole and individual component;
- » reviewed correspondence and interactions with participants through transaction advisors;
- » obtained and reviewed email records of relevant individuals from the Ministry of Tourism, Culture and Sport, MOI, IO, Minister's Office staff at MOI and MTCS, and Premier's Office staff;
- » spoke with external stakeholders and subject-matter experts, including the City of Toronto, Toronto and Region Conservation Authority, Waterfront Toronto, Transaction Advisors, Ontario Place for All, Ontario Place Protectors, other public interest groups and a sample of various participants; and
- » reviewed documentation from lease negotiations with Therme Canada, Live Nation Écorécéo and Ontario Live.



## Audit Opinion

To the Honourable Speaker of the Legislative Assembly:

We conducted our work for this audit and reported on the results of our examination in accordance with the Canadian Standard on Assurance Engagements 3001—*Direct Engagements* issued by the Auditing and Assurance Standards Board of the Chartered Professional Accountants of Canada. This included obtaining a reasonable level of assurance.

The Office of the Auditor General of Ontario applies Canadian Standards on Quality Management and, as a result, maintains a comprehensive system of quality management that includes documented policies and procedures with respect to compliance with rules of professional conduct, professional standards and applicable legal and regulatory requirements.

We have complied with the independence and other ethical requirements of the Code of Professional Conduct of the Chartered Professional Accountants of Ontario, which are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour.

We believe the audit evidence we have obtained is sufficient and appropriate to provide a basis for our conclusions.

December 3, 2024

A handwritten signature in black ink, appearing to read 'Spence', with a large, sweeping flourish at the end.

**Shelley Spence, FCPA, FCA, LPA**

Auditor General

Toronto, Ontario

## Acronyms

Acronym	Definition
CAM	Common area maintenance
CFD	Call for Development
CFS	Call for Submissions
CNEA	Canadian National Exhibition Association
CSO	Combined sewer outflow
EBR	<i>Environmental Bill of Rights, 1993</i>
IO	Infrastructure Ontario
MECP	Ministry of Environment, Conservation and Parks
MHSTCI	Ministry of Heritage, Sport, Tourism and Culture Industries
MOI	Ministry of Infrastructure
MTCS	Ministry of Tourism, Culture and Sport
MZO	Minister's Zoning Order
OPC	Ontario Place Corporation
OPS	Ontario Public Sector
OSC	Ontario Science Centre
OPCHL	Ontario Place Cultural Heritage Landscape
RFI	Request for Information
RFP	Request for Proposals
RFPQ	Request for Pre-Qualification
RFQ	Request for Qualifications
RFS	Request for Service
TRCA	Toronto and Region Conservation Authority
WFTO	Waterfront Toronto

## Glossary

Term	Definition
<b>Anchor tenant</b>	An anchor tenant acts as an attraction and occupies a significant amount of space within the development. The anchor tenants include Therme, Live Nation, and the OSC.
<b>Assessment Framework</b>	A guide for the assessment team with a set of objectives and criteria used to score a submission.
<b>Comprehensive site-wide solution</b>	A redevelopment proposal that includes the entire Ontario Place site (68 acres of land and 87 acres of water) as opposed to a submission which proposes to redevelop only a portion of the entire site.
<b>Common area maintenance</b>	A set of costs that are shared between tenants and landlord related to the upkeep and maintenance of lands, infrastructure and/or public amenities in the common areas on the site. Common examples include lawn maintenance, snow removal and other site-related activities.
<b>Conditional termination notice</b>	A notice indicating intent to terminate a contract based on specified conditions.
<b>Cost recovery</b>	The process of recouping costs through fees for services or projects.
<b>Development</b>	The construction and/or improvement of new or existing buildings, infrastructure and lands.
<b>Due diligence</b>	A phase of a process such as in a CFS, CFD, or procurement which involves doing additional work to verify, clarify aspects of a submission.
<b>Environmental assessment</b>	An evaluation of the potential environmental impacts of a proposed project, set out by the <i>Environmental Assessment Act</i> .
<b>Equity value</b>	The net worth of an asset or entity after deducting liabilities.
<b>Final Consensus Workbook</b>	A consolidated workbook containing the agreed-upon consensus scores for each CFD submission as well as combined assessor comments.
<b>Heritage attributes</b>	The physical features or elements that contribute to a property's cultural heritage value or interest, and may include the property's built or manufactured elements, as well as natural landforms, vegetation, water features, and its visual setting
<b>Indemnity agreement</b>	A contract where one party agrees to compensate another for specified losses.
<b>Legal easement</b>	A formal right allowing an individual or entity to use a portion of another's property for a specific purpose, such as access or utilities, without owning the property.
<b>Liquidated damages</b>	A pre-determined amount representing an estimate of damages that will be incurred by a party that are specified in a contract to be paid by the other party if it does not meet certain obligations specified in a contract.

Term	Definition
<b>Master service agreement</b>	A master service agreement sets terms between two parties: a contractor and a client. The parties agree to most of the terms that will govern all future construction work and agreements.
<b>Minister's Zoning Order</b>	A mechanism under Section 47 of the <i>Planning Act</i> that gives the Minister of Municipal Affairs and Housing the authority to override local planning authority to approve development. As a result of the <i>Rebuilding Ontario Place Act, 2023</i> this authority has been extended to the Minister of Infrastructure.
<b>Multi-partner approach</b>	Refers to an approach where multiple development partners are selected to enter into separate lease agreements to develop portions of the Ontario Place site rather than one sole developer signing a lease for the entire site.
<b>Multi-partner phased approach</b>	This approach involves multiple development partners, as noted above. However, a multi-partner phased approach staggers redevelopment across the site as opposed to developing the entire site at once.
<b>Municipal site plan control</b>	Site plan control is a planning tool that a municipality uses to evaluate certain site elements, such as walkways, parking areas, landscaping or exterior design on a parcel of land where development is proposed.
<b>Non-disclosure agreement</b>	A legal agreement between parties which limits or prevents one or both parties from disclosing information.
<b>Official Plan</b>	The Official Plan sets out a municipality's goals, objectives and policies to manage and direct physical change and its effects on the social, economic, built and natural environment.
<b>Partial site solution</b>	A smaller scale proposal which encompasses only a portion of the entire Ontario Place site.
<b>Present Value</b>	The current worth of future cash flows discounted at a specific interest rate.
<b>Proof of Concept</b>	A form of evidence based on prior experience which demonstrates feasibility of a concept presented.
<b>Provincial Heritage Property of Provincial Significance</b>	Provincial heritage property that has been evaluated using the criteria found in <i>Ontario Heritage Act</i> O.Reg. 10/06 and has been found to have cultural heritage value or interest of provincial significance
<b>Public realm</b>	Public space and park land within Ontario Place connecting portions of the Ontario Place site such as the anchor tenants and redeveloped public marina.
<b>Request for Proposals (RFP)</b>	A formal solicitation for proposals from suppliers for specific projects.
<b>Request for Services (RFS)</b>	A document seeking offers for particular services from providers.
<b>Site readiness</b>	Activities that are required to get a site ready for construction.
<b>Term sheet</b>	A non-binding document outlining key terms of a proposed agreement.
<b>Terminate the lease for convenience</b>	The right to end a lease without cause, usually with advanced notice.

## Appendix 1: Timeline of Key Events for Ontario Place Revitalization (2010–2018)

Prepared by the Office of the Auditor General of Ontario

Year	Month	Event
2010	July	RFI is issued and attracts 35 submissions.  MyOntarioPlace.com and the Ontario Place Pavilion are launched. Approximately 1,200 comments from the public are received. These forms of consultation informed a summary of research and analysis that is presented in the July 2012 Minister's Advisory Panel report.
2012	February	Government announces closure of Ontario Place waterpark, amusement rides and Cinesphere.
2012	February	Public consultation re-opens, including through MyOntarioPlace.com. Over 450 submissions are received. Common suggestions include: waterpark, multi-use park, revitalize existing park, Cinesphere, casino, bars/restaurants and year-round uses.
2012	July	Minister's Advisory Panel reports to MTCS with 18 recommendations on how to move forward with an Ontario Place revitalization.
2013	June	Government unveils plans to convert green space on Ontario Place's East Island to an urban park (Trillium Park) and waterfront trail (William G. Davis Trail).  The Province invites the public to submit input on plans for the rest of the Ontario Place site. Over 200 people participate in the meetings, and over 2,500 public comments are received.  MTCS consults with representatives of the Mississaugas of the Credit First Nation.  MTCS engages with numerous stakeholders' groups during the consultation process. This includes the Stakeholder Advisory Committee established for the Trillium Park and William G. Davis Trail project, the City of Toronto Community Disability Steering Committee, and Waterfront Toronto.
2013	November	Government selects and announces the design team that will transform areas of the East Island into the urban park and waterfront trail. The design team is selected through an RFP. Ten bidders submit proposals.
2014	July	Government announces its long-term vision for Ontario Place. The plan does not include "residential development of any kind on a space that should remain public." The vision "reinforces the guiding principles" in the Minister's Advisory Panel report to create a destination that is open year-round.
2015	July	IO receives direction to "work with relevant ministries and the private sector to explore new use/tenancy opportunities for the site."



Year	Month	Event
2016	April	MTCS Minister requests the Ministry prepare a business case for the capital investment needed to make the OSC a premier culture attraction. The business case would consider the options of major repair and renovation of the existing site or moving to a new facility at Ontario Place. MTCS engages IO to complete the business case.
2016	October	IO presents a business case on modernizing the OSC to MTCS. The case recommends moving the OSC to a new building at Ontario Place, stating that would save the government \$250 million (net present value) over a 50-year period.
2017	April	IO executes a Letter of Agreement with MTCS to undertake “processes for engaging the market” on Ontario Place redevelopment. The letter includes authorization to retain advisors to advance works outlined in the agreement.
2017	May	Treasury Board approves a CFS process to solicit development concepts for the West Island of Ontario Place, in line with the vision announced in July 2014.
2017	June	Opening of the new Trillium Park and William G. Davis Trail on the East Island.
2017	July	<p>Government announces it is seeking an anchor partner to realize the Province’s vision for the West Island as a hub for culture, discovery and innovation. Residential or gaming uses are not permitted.</p> <p>A two-step CFS process launches. The first phase includes a competition, assessment and selection of preferred submissions. The second phase is direct negotiations with preferred proponents. Twenty-four submissions are received.</p>
2017	November	A summary of all submissions and the outcome of the assessment process is provided to Treasury Board and Management Board of Cabinet. Following this briefing, IO is directed to enter into due diligence discussions with all “High Potential” submissions.
2017	December	IO conducts due diligence meetings with the 10 “High Potential” CFS submissions and one other participant to obtain further information.
2018	April	The CFS process is paused pending a scheduled election in June.
2018	May	IO receives a legal opinion that using the Realty Directive for the 2017 CFS process was reasonable.

## Appendix 2: Call for Development Process Timeline, 2019

Prepared by the Office of the Auditor General of Ontario

Year	Date	Event
2019	January 11	The Deputy Minister of MTCS requests that IO provides its expertise for the Ontario Place redevelopment project.
2019	January 14	IO issues a Request for Service to vendors for transaction advisory services for the Ontario Place redevelopment project.
2019	January 18	MTCS issues a news release stating the “Our vision for Ontario Place will make it an impressive attraction that could include exciting sport and entertainment landmarks, public parks or shopping.”  The MTCS Minister announces an Expression of Interest process will open in spring but interested parties can submit proposals before it opens.
2019	February 7	IO selects and contracts with a transaction advisor to facilitate the Expression of Interest process.  A project team is formed of staff from MTCS, IO and the transaction advisors to lead the design and development of the Expression of Interest.
2019	February 28	The project team receives strategic direction on the design of the Expression of Interest during the planning process from the MTCS Minister’s Office, the Premier’s Office and the Cabinet Office.
2019	April 4	The Minister of Infrastructure issues a formal Letter of Direction to the Chair of IO to guide the Expression of Interest process.
2019	April 10	The government announces construction of the Ontario Line subway connecting Ontario Place to downtown Toronto and running northeast to the Ontario Science Centre.
2019	May 28	The government announces a CFD titled “Toronto Waterfront Opportunity” with a submission deadline of September 3, 2019.
2019	June 14	Participant D meets with staff from the Premier’s Office.
2019	July 22	Legal counsel for Therme Canada holds a meeting with a VP at IO. During the open period, the legal counsel also exchanges nine emails with the IO VP.
2019	July 23	Participant B meets with staff from the Premier’s Office.
2019	July 24	Therme Canada meets with staff from the MTCS Minister’s Office and the Premier’s Office.
2019	August 7	Transaction advisors email participants to tell them they can “request a confidential information meeting with senior level Government stakeholders to present any aspect of their development concept, or other areas of concern in respect of any of the requirements for their submission.”
2019	August 10	CFD deadline for participants to ask clarifying questions.

Year	Date	Event
2019	August 22	Live Nation Canada, Therme Canada, and Participants B, H, Q and U have meetings with staff from the MTCS Minister's Office and the Premier's Office.
2019	August 23	Participant B requests a call with the IO VP.
2019	August 26	Participants G, P, T and EE meet with staff from the MTCS Minister's Office and the Premier's Office.  Ontario Live signs its participant form and non-disclosure agreement (NDA) five business days before the September 3 CFD submission deadline.
2019	August 27	Participant E requests in writing a two-week extension to the CFD submission deadline.
2019	August 28	Representatives of Therme Canada ask whether there will be an extension to the CFD deadline, saying they were told in an earlier meeting with the government that the deadline would be extended.  Transaction advisors notify participants that the submission deadline has been extended from September 3 to 24. The deadline for asking questions is extended from August 10 to September 10.
2019	August 30	Triple Five signs its participant form and NDA. Triple Five has meetings with transaction advisors (August 23rd and 26th) to discuss the details of submission prior to signing the NDA.
2019	September 4	Original deadline for CFD proposal submissions; four participants submit their proposals.  Transaction advisors ask Triple Five if it would like to resubmit another proposal by the new deadline. Triple Five declines.
2019	September 6	Transaction advisors email participants a second time to let them know that "Participants that demonstrate that they have been developing and intend to make a bona-fide, comprehensive Submission, may request a confidential information meeting with government stakeholders to present any aspect of their development concept."
2019	September 10	Extended deadline to ask clarifying questions.  Participant D meets with staff from the MTCS Minister's Office and the Premier's Office.
2019	September 16	Participants BB, DD and FF meet with staff from the MTCS Minister's Office and the Premier's Office.
2019	September 17	Participants A, R, X and Ontario Live meet with staff from the MTCS Minister's Office and the Premier's Office.
2019	September 24	Extended deadline for CFD submissions. Transaction advisors receive 30 submissions on this date, for a total of 34 submissions.
2019	September 25	IO finalizes the assessment framework for participant submissions, with input from staff in the MTCS Minister's Office, the Premier's Office and Cabinet Office.
2019	September 30	Assessment team members begin their individual evaluations of submissions.

Year	Date	Event
2019	October 16	Staff at Premier's Office contact IO official requesting a briefing on Ontario Place submissions. They state that the Minister should also be part of the briefing.
2019	October 22	Staff from MTCS, IO and the transaction advisors meet with Live Nation for a due diligence meeting.
2019	October 24	Staff from MTCS, IO and transaction advisors hold meetings with Écorécéo Group, Therme Canada, Ontario Live and Participants B and M for individual due diligence meetings.
2019	October 28	Assessors submit their individual assessments to the lead assessor.
2019	October 29, 30	The assessment team holds a consensus meeting over a two-day period to finalize consensus scores.
2019	November 1	The lead assessor changes 25 consensus scores. These new scores are referred to as the "calibrated" assessment scores.
2019	November 5	IO briefs the Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI) Minister's Office and the Premier's Office on 34 submissions received, including a preliminary performance against three government priorities: Vision Alignment, Cost to Province and Speed of Delivery.
2019	November 6	<p>The Director of Policy at the Premier's Office reaches out to the IO VP, IO Director and CEO of IO asking for availability.</p> <p>The email states: "Schedule permitting I would appreciate having the opportunity to connect with you today with some additional feedback from yesterday's meeting—either by phone or I could swing by your offices midmorning."</p> <p>The meeting includes an additional invitee, the Director of Policy at the MHSTCI Minister's Office, and is held virtually with the MHSTCI Minister's Office, Premier's Office and the IO VP.</p>
2019	November 8	IO VP reaches out to Triple Five to set up a call to request additional details on its submission.
2019	November 8 to 19	Several calls and emails are exchanged between IO and Triple Five seeking new information and clarification on aspects of its submission such as potential site uses, footprint and visitor totals.
2019	November 20	IO revises Triple Five's consensus workbook scores to include the additional details provided during the calls and emails.
2019	November 22	Meeting held between CEO of IO, IO VP, and staff from MHSTCI Minister's Office and Premier's Office staff.
2019	November 27	Meeting held between CEO of IO, IO VP, and staff from MHSTCI Minister's Office and Premier's Office staff.
2019	November 29	Triple Five submits more information to the IO VP on programming, footprint and gross floor area.

Year	Date	Event
2019	December 3	Triple Five emails the IO VP submitting an “enhanced version” of its presentation “as previously discussed.”
2019	December 5	IO officials brief MHSTCI Minister in advance of December 11 meeting.
2019	December 6	Meeting is held between IO officials, and staff from MHSTCI Minister’s Office and Premier’s Office staff.
2019	December 11	IO briefs the MHSTCI Minister’s Office and Premier’s Office and presents a multi-partner approach as the preferred option and presented a short list of potential primary partners as well as potential supplementary partners, IO also presented two other options (a multi-partner phased approach and a comprehensive site-wide solution) for government consideration.
2019	December 19	The MHSTCI Minister’s Office and the Premier’s Office approve a multi-partner approach (combining three partial-site solutions) with a phased development.
2019	December 23	IO submits the final assessment report of CFD submissions to MHSTCI.
2020	January 30	Cabinet’s Priorities and Planning Committee approves a multi-partner multi-phase approach based on a presentation from MHSTCI.
2020	January to May	IO does additional due diligence on the three shortlisted partners and formulates a site development implementation strategy.

## Appendix 3: Visual Overview of Call for Development Process (May 2019–May 2020)

Prepared by the Office of the Auditor General of Ontario

<b>May 28</b>	Call for Development opens
<b>Aug 28</b>	CFD deadline is extended
<b>Sept 3</b>	Initial submission deadline
<b>Sept 24</b>	Extended submission deadline
<b>Sept 25– Oct 28</b>	Individual assessment period
<b>Oct 29 &amp; Oct 30</b>	Assessment consensus meetings
<b>Nov 5</b>	IO presents assessments to MHSTCI Minister's and Premier's Offices
<b>Dec 11</b>	IO makes recommendation to MHSTCI Minister's and Premier's Offices
<b>Dec 23</b>	IO submits final assessment report to MHSTCI
<b>Jan 30 2020</b>	MHSTCI presents recommendations to Priorities and Planning Committee of Cabinet
<b>May 21 2020</b>	Ministry's recommendations receive Treasury Board approval



## Appendix 4: Public Consultations Held, August 2021–September 2023

Source of data: Infrastructure Ontario

Date	Engagement Activity
August 30–October 28, 2021	Digital survey
October 13 and 27, 2021	Information sessions
December 14, 2021	Technical information session
April 12, 2022 October 27, 2022 April 27, 2023	Environmental assessment/public realm engagement meetings
April 12, 2022 October 27, 2022 April 27, 2023	Engagement rooms
November 3, 2022	Minister's Roundtable
February 16 and 24, 2023	Minister's Roundtables
March 6, 2023	Stakeholder meeting with Ontario Place for All and Architectural Conservancy Ontario
April 4, 2023	Stakeholder meeting with SwimOP
April 5, 2023	Stakeholder meeting with Ontario Place for All and Architectural Conservancy Ontario
April 15 and 18, 2023	City-led community consultations
May 1, 2023	Stakeholder meeting with SwimOP and OPC
May 1, 2023	Stakeholder meeting with Fort York Neighbourhood Association
May 1, 2023	Stakeholder meeting with Bathurst Quay Neighbourhood Association
May 2, 2023	Stakeholder meeting with Parkdale Residents Association
August 30, 2023	Stakeholder meeting with Waterfront Business Improvement Area
September 7 and 12, 2023	City-led community consultation meetings

## Appendix 5: Assessment Framework for 2019 Call for Development, September 25, 2019

Source of data: Infrastructure Ontario

### A. Alignment with Government's Vision

Objective	Criteria	Assessment Considerations
<b>Alignment with Government's Vision</b>  Demonstrates that the proposed concept will deliver the government's vision.	<b>Inclusion of preferred uses</b>	Including any or all of entertainment, sports, commercial, retail, recreation and / or leisure uses.
	<b>World-class landmark destination</b>	Scale or concept and degree of program diversity
		Brand recognition and appeal
		Uniqueness of concept
	<b>Level of activation</b>	Across seasons
		Day and night
		Expected number of annual visitors
	<b>Appeal to different demographics</b>	Age
		Geographic representation (e.g., international, regional, local)
		Socioeconomic and cultural
	<b>Compatibility</b>	<b>Synergies with the overall Ontario Place site and congruence with existing uses (marina, LNE, Exhibition Place, etc.)</b>
	<b>Degree of access</b>	<b>Degree of public accessibility on site</b>
	<b>Exclusion of prohibited uses</b>	Casino or residential development
	<b>Agreement to enter into ground lease</b>	Ground lease requirement

**B. Viability of Proposed Concept**

<b>Objective</b>	<b>Criteria</b>	<b>Assessment Considerations</b>
<b>Proven Track Record of the Concept</b> Demonstrates success of the development concept and evokes confidence in overall commercial viability and longevity of the use.	<b>Successful track record</b>	Demonstration that similar concept has proven to be successful in other similar markets
<b>Design Quality</b> Includes well-considered design that supports desire for site to be a unique destination attraction.	<b>Overall quality of design</b>	Degree of sophistication and expertise in building and site design (e.g., LEED certification, sustainable design consideration and operations), and inclusion of unique and iconic landmark feature(s) as part of concept
<b>Site Optimization</b> Demonstrates that the proposed concept is a quality design that successfully manages site constraints.	<b>Parking and site access</b>	Ability for users to park and access the site
	<b>Lake fill requirements</b>	<b>Extent to which lake fill is required to realize concept</b>
	<b>Marina opportunity</b>	Preservation or enhancement of marina facilities on site
	<b>Overall user experience</b>	<b>Conditions that will influence visitors' overall experience within the site, as well as consideration of the needs of users of all ages and ability levels (e.g., accessibility, washrooms, weather protection, wayfinding, crowd flow and mitigation, etc.)</b>
<b>Deliverability</b> Demonstrates an efficient but realistic implementation schedule (approvals and construction)	<b>Timing</b>	Time until completion (approvals and construction)
	<b>Process</b>	<b>Reflects appropriateness of approval requirements (including e.g., municipal approvals, Duty to Consult, and environmental approvals), and reasonable timeframe</b>
	<b>Program certainty</b>	<b>Extent to which programming partners are identified/confirmed</b>
<b>Alignment of Commercial Terms</b> Confirmation that partner is willing to enter into terms as outlined in Call for Development document	<b>Agreement with terms</b>	Confirmation that partner is willing to enter into terms as outlined in Call for Development document
<b>Financial Viability</b> Demonstrates the feasibility of the proposed concept(s) using a realistic financial business case.	<b>Quality of financial model and business case provided</b>	Level of due diligence evident in creation of the financial model
		Level of detail and robustness of financial model
		Reasonableness of assumptions

**C. Qualifications and Experience of the Team**

Objective	Criteria	Assessment Considerations
<b>Qualifications and Experience of Team</b> Demonstrates the team's ability, qualifications and experience to deliver the project.  Demonstrates appropriate experience and expertise of team members to successfully operate proposed concept.  Demonstrates a track record of success for delivering and operating services/uses similar to the proposed concept.  Demonstrates appropriate financial strength, stability, experience and capacity to deliver the proposed development concept.	<b>Respondents / companies' overall experience with similar projects</b>	'Similar projects' include brownfield, waterfront development, adaptive re-use projects, destination entertainment or other experience of a similar scale, scope, and complexity
	<b>Team members' abilities</b>	Reflected in overall years of experience, accreditations, and enumerated experience with similar projects
	<b>Team cohesion</b>	Reflected in reporting structure and articulated roles and responsibilities, as well as partners' experience working together
	<b>Team's financial strength and robustness of documentation</b>	Demonstrates financial strength using financial statements and other supplemental documentation (e.g., bank reference letters, commitment letters from funders / lenders, bonding limit confirmations, credit availability)

**D. Benefits to the Province**

Objective	Criteria	Assessment Considerations
<b>Benefits to the Province</b> Demonstrates that the proposed concept will deliver direct and indirect benefits to the Government and the people of Ontario.	<b>Indirect financial benefits</b>	Includes job creation, tax revenue, GDP impacts, environmental benefits, and other indirect benefits
	<b>Direct financial benefits</b>	Financial offer provided to the Government in terms of a lease payment
		Scale of investments offered by partner to realize development concept
	<b>Favourability and maturity of commercial terms</b>	Terms are commercially viable and do not impose inappropriate constraints  Overall maturity of commercial terms provided in submission, and implication for time frame required to agree to commercial terms
	<b>Investment required by government</b>	Limits cost to government for site preparation (e.g., remediation, servicing, access, etc.)
	<b>Financial and non-financial considerations to the Province</b>	The risk of additional capital and operating costs incurred by the Province, as well as unquantifiable risks (legal, reputational, environmental, stakeholder relations, etc.)

Highlights denote criteria that were not included in the Call for Development document

## Appendix 6: Key Events Following the Selection of Tenants, 2020–2024

Prepared by the Office of the Auditor General of Ontario

Year	Month/Date	Event
2020	May	Treasury Board formally approves the multi-partner redevelopment strategy with three anchor tenants: Therme, Live Nation and Écorécéo Group.  MHSTCI is asked to report back on a strategy for the potential relocation of the OSC.
2020	July	IO contracts with a leasing advisor to assist in “negotiating favourable commercial terms with potential future tenants of Ontario Place, in the sports, entertainment and attractions spaces.”
2020	August	MOI, IO and MHSTCI begin working together to identify order-of-magnitude and capital requirements associated with redeveloping the OSC at Ontario Place.
2020	October	IO’s lease advisor produces the first report to inform negotiations for ground lease. It also provides details of other comparable ground leases.
2021	February	The lease advisor presents its research of the development structure for lease negotiations to MOI. Lease advisor also provides updates to Ground Lease Methodology used to inform negotiations, including updated cost projections.
2021	March	Treasury Board authorizes MHSTCI to commence lease negotiations with the three participants (Therme, Live Nation and Écorécéo) and approves government-managed parking solution for the Ontario Place site. The costs to the government for the Ontario Place projects are estimated at \$745 million as of March 23, 2021.
2021	March	March 2021 Treasury Board submission states Phase II will cover the remaining portion of the East Island and Mainland, with a development strategy to be determined at a later date.
2021	June	MHSTCI informs management of the OSC that relocating the centre to Ontario Place is a “priority project” and the Ministry plans to submit a proposal to government decision-makers in summer 2022.
2021	July 30	Following the March 2021 approval from Treasury Board to MHSTCI to commence lease negotiations with the three participants, the government publicly announces three “anchor tenants” for Ontario Place redevelopment: <ol style="list-style-type: none"> <li>1. Therme Group – West Island wellness spa/waterpark</li> <li>2. Live Nation – Centre Island redeveloped amphitheatre</li> <li>3. Écorécéo Group – East Island adventure park</li> </ol> MHSTCI requests Stage 1 planning approval from government decision-makers for the OSC relocation.
2021	August	IO begins formal lease negotiations with tenants.

Year	Month/Date	Event
2022	March	MHSTCI initiates a Category C Environmental Assessment.
2022	April 19	Anchor tenant Écorécrcéo Group withdraws from the Ontario Place lease negotiations for many reasons including the cost escalation of the common area maintenance and other costs from when they bid.
2022	March 16	MHSTCI initiates a Category C Environmental Assessment.
2022	May 3	Treasury Board approves a ground lease agreement with Therme Canada. The term of the lease is 95 years (75 years plus 20-year extension) with a targeted construction period of 24 months.
2022	May	The government transfers the oversight of the redevelopment of Ontario Place from MHSTCI to the Ministry of Infrastructure (MOI) under the Ontario Place Redevelopment Secretariat branch.
2022	July	A Category B environmental assessment related to site servicing at Ontario Place is completed.
2022	November 25	IO submits a formal development application to the City of Toronto for a site-wide Official Plan and Zoning By-law Amendment. The application proposal includes a provincially led Public Realm Master Plan; water recreation and wellness facility (Therme Canada); entrance and bridge building (Therme Canada); future programming on the East Island and mainland; a five-level underground parking structure; and lake filling on the West Island.
2023	March 23	City of Toronto issues a status report on the Province's Ontario Place development application with concerns about the size and scale of the Therme Canada facility and the entrance pavilion located on the mainland. The City recommends an environmental assessment for the West Island and notes that transit and active transportation is not prioritized.
2023	April 6	MOI submits a business case to Treasury Board for approval of construction funding for the relocation of the Ontario Science Centre and planning for a site-wide parking solution.
2023	April 6	The Chief of Staff of MOI notifies the Deputy Minister of MOI and the CEO of IO that Ontario Live had been identified as the preferred partner for establishing food and beverage services, public realm, site maintenance and management, and people-moving infrastructure on the East Island.
2023	April 18	Government announces the relocation of the OSC to Ontario Place as an anchor tenant.
2023	July 11	Ontario Live shares a framework for a project agreement with IO related to a mixed-use development involving commercial operations and public amenity spaces.



Year	Month/Date	Event
2023	September 13	<p>IO resubmits the Official Plan and Zoning By-law Amendment application to the City of Toronto for the redevelopment of Ontario Place. The resubmission contains the following changes:</p> <ul style="list-style-type: none"> <li>• adding public access to the east side and top of the West Island bridge;</li> <li>• extending the landscape on the roof of the Therme building;</li> <li>• reducing the size of the Therme building;</li> <li>• improving connectivity by creating a transit hub;</li> <li>• less car parking and more bike parking; and</li> <li>• more waterfront programming and open space.</li> </ul> <p>The resubmission acknowledges that separate development applications will be required for future major facilities contemplated, including the OSC and Live Nation amphitheatre.</p>
2023	November 6	IO advises MOI that the Ontario Live was not suited for the proposed development and instead recommends an open procurement. In its presentation to Ministry officials, IO states: "Analysis by IO has not yet demonstrated that OL [Ontario Live] has the expertise or capacity to manage and successfully deliver on the entire scope."
2023	November 17	The Category C Public Work Class Environmental Assessment Project for the public realm at Ontario Place is completed.
2023	November 29	The Government of Ontario and the City of Toronto reach a "new deal" that gives the Province full control over Ontario Place redevelopment.
2023	December 6	Bill 154, the <i>New Deal for Toronto Act, 2023</i> receives royal assent. The legislation includes the <i>Rebuilding Ontario Place Act, 2023</i> , which gives the government additional powers (including authority to issue an MZO for Ontario Place site by Minister of Infrastructure) to advance the Ontario Place redevelopment.
2023	December	The federal government opts not to pursue environmental impact assessment of proposed Ontario Place redevelopment.
2023	December 31	Province misses initial deadline to provide interim utilities services and completes initial environmental obligations under the terms of lease with Therme. The agreement allows for a one-year cure period until December 31, 2024. At the time of our audit, IO was in discussions with Therme on when the interim utility services will be met.
2024	February 29	IO updates its cost projections for Ontario Place Phase 1 which shows that the cost of the project has now increased to \$2.237 billion.
2024	May 6	IO executes a 45-year lease with Live Nation Canada (30 years with an option to renew for an additional 15 years).
2024	May 9	IO releases an RFQ for the design, build, finance and maintenance of a new OSC building at Ontario Place. The process is expected to pre-qualify up to three vendors that will be invited to submit bids on an RFP to be released in January 2025.

Year	Month/Date	Event
2024	May 17	The Minister of Infrastructure makes an enhanced Minister's Zoning Order (eMZO) for Ontario Place, which establishes detailed development permissions and exempts the site from municipal site plan control.
2024	June 21	The government closes the OSC following the release of a new report that identifies structural issues within the building that may materialize by winter 2024.
2024	July 5	IO notifies Ontario Live that it is going to undertake competitive procurements for the scope of services contemplated "as part of their exploratory discussions."
2024	July 26	Ontario Superior Court dismisses a legal challenge filed by community group Ontario Place Protectors, who argue that the government's <i>Rebuilding Ontario Place Act, 2023</i> is unconstitutional.

## Appendix 7: Overview of Adverse Impacts and Mitigation Measures Cited in Site-wide Heritage Impact Assessment Report, October 2023

Source of data: Heritage Assessment Report, Infrastructure Ontario

### Adverse Heritage Impacts of Redevelopment at Ontario Place (as Identified by IO Consultant)

- Removal of/impact to approximately 1,156 (as of October 2023) trees across all areas of Ontario Place, including mature trees planted as part of the original Michael Hough landscape
- Removal of landscape features on the West Island, including the West Island Berm, the West Canal, the Lagoon and Cedar Cove
- Removal of all remnant pathways on the West and East Islands
- Removal of existing shoreline infrastructure
- Demolition of the Village Clusters (all buildings)
- Demolition of the West Entrance Building (and removal of the plaque at the West Entrance Building)
- Demolition of Bridge 6
- Obstruction of views to the Pods and Cinesphere due to the introduction of buildings on the West Island (Therme building) and mainland (Ontario Science Centre)
- Potential reduction of the prominence of the Pods and Cinesphere due to new buildings on the West Island and mainland

### Mitigation Measures to Address the Adverse Impacts (as Identified by IO Consultant)

- Site-wide native planting and new landscape features (e.g., berms) to address the removal of extant vegetation, trees and landscape features. It is anticipated that approximately 2,900 trees will be planted within Ontario Place.
- New pathway system to improve accessibility, support pedestrian circulation and address the removal of the extant pathway system
- New pathway nodes and plazas with vantage points for views, to address the removal of vantage points within the extant pathway system and the obstruction of views by new buildings
- New aquatic habitat and boardwalks to create the opportunity for close-range experiences of water and mitigate the removal of the extant waterbodies
- New accessory structures that interpret the design and history of Ontario Place to address the removal of extant buildings



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ISBN 978-1-4868-8477-3 (PDF)

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