# Understanding the Devolution Agreement-in-Principle (AIP)

**Overview and Summary**

## Overview: Devolution

- "Devolution" is the transfer or delegation of power or authority usually from a central government to a local or regional government. In this case, it is about the transfer of authorities from the Government of Canada to the Government of Nunavut.

- The Parties to the Nunavut devolution process are the Government of Canada (GC), the Government of Nunavut (GN), and Nunavut Tunngavik Incorporated (NTI).

- In Nunavut, devolution will see the GC transfer responsibility for Nunavut's public (Crown) lands, fresh water and resources to the GN. Devolution will allow Nunavummiut to make decisions on how public lands and resources are used and developed.

- The GC currently makes all the final decisions on Nunavut's public lands. This includes decision-making on the development of Nunavut's minerals, oil and gas. This means any royalties for resource development on Nunavut's public lands currently go to the federal government. Devolution will change this – allowing the GN to manage these resources and collect these royalties.

## Overview: Agreement-in-Principle

- An Agreement-in-Principle, commonly called an AIP, is a non-binding agreement amongst the parties on the main issues under negotiation. An AIP is a significant milestone in the negotiation process, indicating that the parties have come to agreement on a broad range of subject matters. While not legally enforceable, the AIP generally contains all of the major elements of the final Devolution Agreement.

- The AIP sets many conditions for the final agreement on devolution. It identifies the financial resources required for achieving devolution, the scope and conditions for the transfer of responsibilities and initiates training to prepare for devolution. The AIP starts the five-year process that will see the official transfer of responsibilities for land, water and resource management from the GC to the GN.

- An AIP was recently initialled by the Chief Negotiators of the GN, the GC and NTI. Once the AIP is signed, it will formally trigger the start of funding for training and the five-year time frame for the completion of this process.

## Overview: Devolution's Five Phases

- Many responsibilities once exercised by the federal government have been transferred to territorial governments over the years. These include health care, education, municipal services, and in the NWT and Yukon the management of public lands and resources.

- Usually, there are five phases to a devolution process:

    1. **Protocol:** a framework agreement or negotiation protocol is outlined and used as a guide for negotiations. This was completed in Nunavut in *2008* when the *Nunavut Lands and Resources Devolution Negotiation Protocol* was signed.

    2. **Agreement-in-Principle:** an AIP outlines the main agreed upon conditions, funding and framework regarding the transfer of land and resources management responsibilities.

    3. **Final Agreement:** a final Devolution Agreement is negotiated and signed by all Parties. This finalizes all the arrangements of the transfer and legally binds the Parties.

    4. **Implementation and Legislation:** legislation and transition mechanisms are drafted and an implementation schedule is determined by all Parties.

    5. **Transfer of Responsibilities:** the legislation and transition mechanisms are implemented through a series of legislative changes which are approved through Parliament and mirrored in the Nunavut Legislative Assembly.

# Summary of Agreement-in-Principle

| CHAPTER | NOTES |
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| **Whereas Clauses** | Immediately before Chapter 1 are several 'whereas' clauses that provide context for the AIP including that the GC wishes to devolve certain powers to the GN; it is desirable that they do so; and that Inuit rights under the *Nunavut Agreement* will be respected. |
| **1 Definitions** | This chapter contains all definitions for the document. |
| **2 General Provisions of the AIP** | This chapter describes the purpose of the AIP; the consultation process the GC must undertake with aboriginal groups outside of Nunavut that might be affected in some way by Devolution; and confirms its non-binding nature. |
| **3 Devolution Agreement Negotiation Process** | This chapter outlines the process for the drafting of a final Devolution Agreement following the AIP.<br><br>It states that the parties will complete negotiations on the final Devolution Agreement within two years of the completion of the *Transitional Human Resources Development Strategy* and Transfer Date three years after the final Devolution Agreement. We therefore anticipate there will be approximately a five-year timeline between signing of the AIP and the Transfer Date. |
| **4 General Provisions of the Devolution Agreement** | This chapter contains a number of standard terms describing the calculation of time, how notices are delivered, the signing of the agreement in counterparts, etc..<br><br>It also describes where the final Devolution Agreement fits within the legal landscape; clarifying that it does not override Settlement Agreements such as the *Nunavut Agreement*; and it remains subordinate to the Constitution. |

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| **5** | **Transfer of Responsibilities** | This chapter sets out the responsibilities that the GC is transferring to the GN.<br><br>The agreement provides that:<br>- The GN will have administration and control of Crown (public) Lands in Nunavut<br>- The powers of the Legislature under the *Nunavut Act* will be expanded to include management of lands and resources in Nunavut; including laws for the exploration and exploitation of non-renewable resources<br>- The GC will repeal and the GN will mirror the Federal *Nunavut Waters and Nunavut Surface Rights Tribunal Act*<br>- A Territorial Minister will be the final decision-maker on project proposals under *Nunavut Planning and Project Assessment Act* wholly within Nunavut, except where such projects are in areas retained by the GC<br>- The GN will appoint all non-Federal members to the Nunavut Planning Commission, Nunavut Impact Review Board, and the Nunavut Water Board<br>- The GN will appoint the chair of the Nunavut Planning Commission and Nunavut Water Board<br>- The GC will make the *Canada Oil and Gas Operations Act* inapplicable in onshore areas, except in areas retained by the GC; however the GN shall mirror necessary provisions to provide for the National Energy Board to continue carrying out regulatory functions for not less than 5 years from the Transfer Date<br>- The GC has the ability to take additional lands from Nunavut following the transfer date for specific purposes; and establishes the consultation process to be followed<br>- The GC shall provide the GN with detailed information on the security interest held by the GC for sites in Nunavut |

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| **6** | **Administration of Oil and Gas Resources** | The chapter sets out the framework for the transfer of responsibility for oil and gas management on the onshore, which will be detailed in the final Devolution Agreement. This includes the coordination and/or benefit from any oil and gas resources that may be straddled between the onshore and offshore.<br><br>After the signing of the AIP, the GC commits to consulting with the GN with regard to any changes to its oil and gas legislation and/or policy development. At the request of the GN, offshore oil and gas negotiations are to begin immediately following the signing of the final Devolution Agreement. These negotiations will be with respect to the management of, decision making for and sharing of resource revenues in the offshore. |
| **7** | **Post Devolution Coordination** | This chapter states that, prior to the conclusion of the final Devolution Agreement, the GN and NTI will enter into an agreement for coordination and cooperation of the management of Inuit Owned Lands and Public Lands and rights in respect of Water. |
| **8** | **Impacted Sites** | This chapter provides for the management of Federal sites that are contaminated. This agreement does not affect sites that have already been transferred to the GN.<br><br>The GC will retain all contaminated sites, and will not transfer them to the GN until they are cleaned. The GN may propose the identification of sites on Public Lands that were contaminated by entities other than the GN prior to the Transfer Date and, following agreement of the GC or a successful arbitration process, these unidentified sites shall become sites to be cleaned by the GC.<br><br>All cleaned sites have a warranty that would allow the GN to ensure the GC remains accountable and has cleaned a site to the national standard in place at the time the land is cleaned.<br><br>There is also a ‘bypass’ that allows the GN to take any land it requires, for any reason, but if that land has not yet been cleaned the GN must take responsibility for remediation. |

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| **9** | **Human Resources Development, Employment, and Article 23** | This chapter outlines the principles and processes to develop the human resources development strategies that will be undertaken in support of devolution. The purpose is to maximize Inuit employment at all levels within the complement of positions that will be created in the GN as a result of devolution while ensuring that the GN will have the necessary human resource capacity to discharge the responsibilities it receives from the GC.<br><br>The Parties are developing a five-year Transitional Human Resources Development Strategy (Transitional Strategy) that will be in place prior to the Transfer Date. This chapter outlines the Transitional Strategy's key program components: training and accredited learning; on-the-job training; student support; and program promotion. This chapter also commits the parties to have this strategy completed and approved within 6 months of the signing of the AIP.<br><br>This chapter also describes the GN and NTI's bilateral commitment to develop and implement a Post-Devolution Human Resources Development Strategy. This strategy's program components will be determined following a review of the Transitional Strategy and its duration will be for an initial period of not less than five years following the Transfer Date. |

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| **10** | **Affected Federal Employees** | This chapter describes the type of information that will be provided by the GC for the purpose of human resource planning leading up to the Transfer Date. It also establishes an “Affected Federal Employees Working Group” to oversee the activities that will need to be undertaken between the AIP and Transfer Date related to the transition of federal employees to the GN.<br><br>As of the Transfer Date, GC employees who work in the territory and whose positions are devolved to the GN will have the option of accepting a GN job offer or going through the GC’s layoff process.<br><br>This chapter outlines a number of terms and conditions of employment for GC employees who accept GN job offers and contains special measures to retain them and ensure a smooth transition to the GN including: keeping their staff housing unit, carrying over unused vacation and sick leave; providing for continued health care, dental, disability, life insurance, and other benefits; and for a set period of time, matching federal salaries and benefits and maintaining their community of employment.<br><br>Additional details on the terms and conditions of employment for affected federal employees will be negotiated in the final Devolution Agreement. |
| **11** | **Properties, Assets, Records, and Contracts** | This chapter provides a process for the transfer of GC properties, assets, records, and contracts to the GN. These transfers are necessary so that the GN can appropriately manage its new responsibilities.<br><br>Buildings, assets such as vehicles and computers, records such as information on Crown Lands, and contracts such as leases and service agreements must move in an orderly fashion from the GC to the GN.<br><br>The GN will have the opportunity to assess assets and ensure that they are functional and will be able to inspect GC buildings to assess their condition.<br><br>The details on what, precisely, will move over will be worked out between the signing of the AIP and the final Devolution Agreement. |

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| **12 Financial Matters** | This chapter sets out the amounts, mechanisms, and timing by which ongoing and one-time (transitional) funding will be transferred from the GC to the respective Parties. Ongoing and one-time funding amounts identified in the AIP are for costs associated with 1) the transfer of authorities, assets, and personnel; and 2) the delivery of programs, services, and training.<br><br>For ongoing funding, the GC will increase its annual Territorial Transfer Funding (TFF) payment to the GN by $84M on the Transfer Date. Going forward this increase will be inflated at same rate as the TFF. Of note, the GN did commit to an ongoing $5M training fund to be used from this $84M addition to our transfer payment. The GC will also provide NTI with $3M of ongoing funding, which will be inflated going forward.<br><br>For one-time funding, the GC will provide $67.25M for transitional activities and an additional $15M for training, for a total of $82.25M. The GN will receive 2 onetime payments of $3M between the signing of the AIP and the final Devolution Agreement to begin work on transitional activities. The remaining $61.25 will be paid between the final Devolution Agreement and the Transfer Date. The additional $15M for training will be disbursed between the completion of the Transitional Strategy and the Transfer Date. NTI will receive $1.75M in one-time funding.<br><br>This chapter also commits the GC to include additional funds in the final Devolution Agreement to address the transfer of responsibility for the Nunavut Surface Rights Tribunal and the Nunavut Water Board.<br><br>The chapter concludes with a series of appendices that identify the types and timing for ongoing and one-time activities. |

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| 13 | **Net Fiscal Benefit and Resource Revenues** | This chapter sets out the resource revenue sharing formula.<br><br>The formula allows the GN to collect 100% of up to $9M cap on Resource Revenues collected from onshore mining and oil and gas revenues collected from Crown Land. The formula also allows the GN the one-time option to change its formula where it would collect 50% of Resource Revenues up 5% cap of the Gross Expenditure Base (currently ~$2.1B); effectively giving the GN the option to collect 50% of ~$80 of Resource Revenues.<br><br>Under the terms of the AIP, settlement payments will not be accounted against the cap nor come out of the GN or GC share of Resource Revenues. Under Article 25 of the *Nunavut Agreement*, NTI receives 50% of the first $2M and 5% of any additional resource royalties. |
| **14** | **Implementation Matters** | This chapter establishes an Implementation Planning Committee that will create an Implementation Plan, which will be appended to the final Devolution Agreement. |