



# AFP

AUSTRALIAN FEDERAL POLICE

UNCLASSIFIED

CRM 2020/138

17 November 2019

Mr George Porter

Email: [foi+request-5595-b7314e39@righttoknow.org.au](mailto:foi+request-5595-b7314e39@righttoknow.org.au)

Dear Mr Porter,

## Freedom of Information request

I refer to your email dated 27 August 2019, under the *Freedom of Information Act 1982* (the Act) seeking the following:

- Any agreements, Memorandum of Understanding (MOU) or contracts between the AFP and DFAT (including its Overseas Property Office) in respect of the accommodation of AFP employees at Port Road 2 apartments in Port Moresby, Papua New Guinea during calendar years 2016 to 2019;
- Documents evidencing payments by the AFP to DFAT (including its Overseas Property Office) in respect of the accommodation of AFP employees at Port Road 2 apartments in Port Moresby, Papua New Guinea during calendar years 2016 to 2019; and
- Communications since November 2018 between the AFP and the Department of Finance touching upon issue of whether allowances, including rent free accommodation, paid to AFP staff posted or deployed overseas should be treated as salary or superannuation purposes.

Attached at Annexure A to this letter is my decision and statement of reasons for that decision. A "Schedule of Documents" identified as falling into the scope of your request is at Annexure B.

## Information Publication Scheme (IPS)

As notified to you on 28 August 2019 it has been decided to publish the documents in full (subject to exemptions) in respect of your request.

Publication of the documents and any relevant documents will be made on the AFP website at <https://www.afp.gov.au/about-us/information-publication-scheme/routinely-requested-information-and-disclosure-log> in accordance with timeframes stipulated in section 11C of the Act.

Yours sincerely,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Adam Raszewski  
Acting Coordinator  
Freedom of Information Team  
Chief Counsel Portfolio

**STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY  
George PORTER**

I, Adam Raszewski, Acting Coordinator, Freedom of Information Team, am an officer authorised under section 23 of the Act to make decisions in relation to the Australian Federal Police.

I note that all statutory timeframes have been exhausted. I apologise for the delay in providing you with our decision and any inconvenience this may have caused you.

What follows is my decision and reasons for the decision in relation to your application.

**BACKGROUND**

On 27 August 2019, this office received your email in which you requested:

- *Any agreements, Memorandum of Understanding (MOU) or contracts between the AFP and DFAT (including its Overseas Property Office) in respect of the accommodation of AFP employees at Port Road 2 apartments in Port Moresby, Papua New Guinea during calendar years 2016 to 2019;*
- *Documents evidencing payments by the AFP to DFAT (including its Overseas Property Office) in respect of the accommodation of AFP employees at Port Road 2 apartments in Port Moresby, Papua New Guinea during calendar years 2016 to 2019; and*
- *Communications since November 2018 between the AFP and the Department of Finance touching upon issue of whether allowances, including rent free accommodation, paid to AFP staff posted or deployed overseas should be treated as salary or superannuation purposes.*

On 16 September 2019, you agreed to a 30 day extension of time pursuant to section 15AA of the Act.

**SEARCHES**

In relation to this request, searches were undertaken by the AFP Legal, Industrial Relations and International Operations teams for all relevant documents.

**WAIVER OF CHARGES**

Given that the request has exceeded all statutory timeframes as outlined at section 15 of the Act, the AFP is not able to impose any fees or charges as outlined at Regulation 5(2) & (3) of the *Freedom of Information (Charges) Regulations 1982*.

**DECISION**

I have identified nine documents relevant to your request. A Schedule of each document and details of my decision in relation to each document is at Annexure B.

I have decided that some of the documents that relate to your request are released in full. Some of the documents are released with deletions pursuant to subsection 22(1)(a)(ii), 42(1), 47E(d) and 47F of the Act.

My reasons for this decision are set out below.

## REASONS FOR DECISION

### ***Folios to which subsection 22(1)(a)(ii) applies:***

Subsection 22(1)(a)(ii) of the Act provides that:

- “(1) Where:
- (a) an agency or Minister decides:
  - (ii) that to grant a request for access to a document would disclose information that would reasonably be regarded as irrelevant to that request;”

The parts of documents identified in the Schedule under this section of the Act contain information which is considered irrelevant to the request. I have determined that information contained in some of the folios is irrelevant because it does not come within the scope of your application and thus falls outside the ambit of your request. This information is irrelevant to your application as you have agreed to exclude it from the scope of your request. Specifically, in accordance with our acknowledgement letter dated 28 August 2019, you agreed to exclude the names of AFP members, other than the Senior Executive, and direct telephone numbers, signatures and mobile telephone numbers of AFP members.

I therefore find that those parts of the documents would reasonably be regarded as irrelevant to the request under subsection 22(1)(a)(ii) of the Act.

### ***Folios to which subsection 42(1) applies:***

Subsection 42(1) of the Act provides that:

- “(1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.”

The part of the document identified in the Schedule as exempt contains information brought into existence for the dominant purpose of obtaining or providing legal advice. I am satisfied that the document would be subject to a claim of legal professional privilege. The AFP has not waived privilege over these folios.

I therefore find that part of document is exempt under subsection 42(1) of the Act.

### ***Folios to which subsection 47E(d) applies:***

Section 47E(d) of the Act provides that:

“A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- ...  
(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency;...”

The parts of the documents identified as exempt under section 47E(d) contain the name and direct contact information for public servants of other Commonwealth agencies below the level of Senior Executive Service. These contact details are not publicly known (such as through government directories or websites). They are not the established channels of communication with the relevant agency established to ensure the efficient functioning its operations. Public release of this information would expose the agency to diversion of



external enquiries and possible harassing or vexatious communication from the established communication channels, thereby adversely impacting their agency operations. I am satisfied the release of this material would have a substantial adverse effect on their agency operations in a material way. Therefore, the relevant folios are conditionally exempt in part under section 47E(d) of the FOI Act.

However, I must give access to the folios unless, in the circumstances, access at this time would on balance be contrary to the public interest.

While it may be argued the release of this material would promote the objects of the FOI Act, I consider release would make only a minimal (if any) contribution to this public interest factor. The objects of the FOI Act and the language of those provisions focus on government not individuals serving the government of the day, and the transparency and accountability of the conduct of APS employees are met by other avenues for complaint handling and review of decisions.

On the other hand, I consider the prejudice to the agency operations to be a factor against disclosure. I give greater weight to the adverse impact disclosure can be expected to have on agency operations in ensuring effective and efficient communication channels. Accordingly, I am satisfied that the name and contact information for other agency staff is conditionally exempt under section 47E(d) and to disclose this information would be contrary to the public interest.

***Folios to which section 47F applies:***

Section 47F(1) of the Act provides that:

*“(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).”*

The parts of documents identified in the Schedule as exempt under this section of the Act contain personal information of third parties. Personal information is information or an opinion about an individual whose identity is known or easily ascertainable. I find that these documents contain details including their name and signatures.

Taking into account the factors at s47F(2), I find the release of this personal information to be unreasonable.

I have considered the public interest factors both in favour and against disclosure of the information in these folios.

In relation to the factors favouring disclosure, I believe the general public interest in access to documents as expressed in sections 3 and 11 of the Act is relevant.

In relation to the factors against disclosure, I believe that the prejudice to the protection of an individual's right to privacy is relevant.

While there is a public interest in providing access to documents held by the AFP, I have given greater weight to the factors against disclosure and conclude that on balance, disclosure is not in the public interest. I find that the release of personal information in these documents is neither in the public interest, nor a reasonable disclosure of personal information, and the information is therefore exempt under section 47F of the Act.

## **EVIDENCE/MATERIAL ON WHICH MY FINDINGS WERE BASED**

In reaching my decision, I have relied on the following:

- ❖ the scope of your application;
- ❖ the contents of the documents listed in the attached Schedule;
- ❖ advice from AFP officers with responsibility for matters relating to the documents to which you sought access;
- ❖ consultation with relevant Commonwealth Agencies;
- ❖ *Freedom of Information Act 1982*; and
- ❖ Guidelines issued by the Office of the Australian Information Commissioner.

***YOU SHOULD READ THIS GENERAL ADVICE IN CONJUNCTION WITH THE LEGISLATIVE REQUIREMENTS IN THE FREEDOM OF INFORMATION ACT 1982***

## **REVIEW AND COMPLAINT RIGHTS**

If you are dissatisfied with a Freedom of Information decision made by the Australian Federal Police, you can apply either for internal review of the decision, or for a review by the Information Commissioner (IC). You do not have to apply for internal review before seeking review by the IC.

For complaints about the AFP's actions in processing your request, you do not need to seek review by either the AFP or the IC in making your complaint.

### ***REVIEW RIGHTS under Part VI of the Act***

#### ***Internal Review by the AFP***

Section 53A of the Act gives you the right to apply for internal review in writing to the AFP within 30 days of being notified of a decision. No particular form is required. It would assist the independent AFP decision-maker responsible for reviewing the file if you set out in the application, the grounds on which you consider that the decision should be reviewed.

Section 54B of the Act provides that the internal review submission must be made within 30 days. Applications should be addressed to:

Freedom of Information  
Australian Federal Police  
GPO Box 401  
Canberra ACT 2601

## ***REVIEW RIGHTS under Part VII of the Act***

### ***Review by the Information Commissioner***

Alternatively, section 54L of the Act gives you the right to apply directly to the IC, or following an internal review by the AFP. In making your application you will need to provide an address for notices to be sent (this can be an email address) and a copy of the AFP decision. It would also assist if you set out the reasons for review in your application.

Section 54S of the Act provides the timeframes for an IC review submission. For an *access refusal decision* covered by subsection 54L(2), the application must be made within 60 days. For an *access grant decision* covered by subsection 54M(2), the application must be made within 30 days.

Applications for IC review should be addressed to:

Office of the Australian Information Commissioner  
GPO Box 5128  
Sydney NSW 2001

Further, the OAIC encourages parties to an IC review to resolve their dispute informally, and encourages agencies to consider possible compromises or alternative solutions to the dispute in this matter. The AFP would be pleased to assist you in this regard.

Information about this process can be found in Part 10 of the Guidelines which are available on the OAIC's website at <http://www.oaic.gov.au/publications/guidelines.html>.

### ***RIGHT TO COMPLAIN under Part VIIB of the Act***

Section 70 of the Act provides that a person may complain to the IC about action taken by the Australian Federal Police in relation to your application.

A complaint to the IC may be made in writing and identify the agency against which the complaint is made. There is no particular form required to make a complaint, but the complaint should set out the grounds on which you consider the action should be investigated.

The IC may be contacted on 1300 363 992.



## ANNEXURE B

Document #	Folio #	Description	
1	1	22(1)(a)(ii)	<b>s22(1)(a)(ii)</b> Exempted material would disclose information that would reasonably be regarded as irrelevant to the request.
		47E(d)	<b>s47E(d)</b> Exempted material would disclose information that would have a substantial adverse effect on the proper and efficient conduct of the operations of the AFP and would be contrary to the public interest. Access must be given unless it would be contrary to the public interest.
2	3	22(1)(a)(ii)	
		Folio exempt in full: 42	<b>s42(1)</b> Material is considered exempt on the grounds that it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.
		47E(d)	
3	11	47E(d)	
	14	47F	<b>s47F</b> Deletions are made on the grounds that disclosure would involve the unreasonable provision of personal details of people other than the FOI applicant. Access must be given unless it would be contrary to the public interest.
	18	47F	
	19	47F	
	23	47F	
	30	22(1)(a)(ii)	
		47E(d)	
4	40	22(1)(a)(ii)	
		47E(d)	
5	56	22(1)(a)(ii)	
		47E(d)	
6	63	22(1)(a)(ii)	
		47E(d)	
7	67	22(1)(a)(ii)	
		47E(d)	
8	68	22(1)(a)(ii)	
		47E(d)	



**From:** Gersbach, Tarnya  
**Sent:** Thursday, 27 June 2019 5:28 PM  
**To:** 47E(d) @finance.gov.au  
**Subject:** Superannuation liability for rent free accommodation [DLM=For-Official-Use-Only]

**For-Official-Use-Only**

Evening

We appreciate the opportunity to speak with you on the superannuation issue. As agreed below are points on which we seek consideration from the Department of Finance from a Whole of Government perspective.

- We appreciate the point you made in regard to the variety of industrial instruments and the difference in articulation and presentation of clauses. However we believe the concept of the application of superannuation to rent free accommodation can be addressed in isolation to the industrial instruments. In many cases, agency EAs are silent on the issue of rent free accommodation.
- Without a coordinated Commonwealth response to the issue of superannuation on rent free accommodation, different agencies may take inconsistent approaches in circumstances where those differences cannot be justified by variations in industrial instruments, raising the risks for the Commonwealth as a whole.
- The Department of Finance may also wish to consider whether legislative amendment is feasible (retrospective or otherwise). This could define the relevant terms in Regulation 5(e).
- Discuss the issue with the ANAO and have a common note in the Financial Statements for all impacted agencies.
- Seek collective/central process for the provision of legal advice for WoG, notwithstanding the challenge around different EA's etc.
- Establish a working group to understand the holistic view on this issue and consolidating issues from across agencies.
- The Department of Finance could assist agencies by disseminating information about the following matters:
  - A Commonwealth view of the scope of the regulation and any guidance on its interpretation.
  - Guidance on the methodology to utilise for valuation/calculation of the rent free amount to be included in superannuation salaries.
  - Updates on current litigation that may affect agencies' decisions on this issue.

**MS TARNYA GERSBACH**

Performing the duties of Chief Financial Officer  
CHIEF FINANCIAL OFFICER PORTFOLIO  
Tel 22(1)(a)(ii)  
[www.afp.gov.au](http://www.afp.gov.au)



THIS DOCUMENT IS DE-CLASSIFIED  
AND RELEASED BY  
THE AUSTRALIAN FEDERAL POLICE  
UNDER THE  
FREEDOM OF INFORMATION ACT 1982



# Commonwealth of Australia Overseas Owned Estate

## Memorandum of Understanding

### Residential

---

Commonwealth of Australia  
Overseas Property Office  
Department of Foreign Affairs and Trade  
("Owner")

Australian Agency for International  
Development - AusAID

("Tenant")



THIS MEMORANDUM OF UNDERSTANDING (MOU) is made on the date in Item 1 of Schedule 1

**BETWEEN**

**COMMONWEALTH OF AUSTRALIA** represented by **OVERSEAS PROPERTY OFFICE, DEPARTMENT OF FOREIGN AFFAIRS & TRADE** R G Casey Building, John McEwen Crescent Barton in the Australian Capital Territory ("Owner")

**AND**

**COMMONWEALTH OF AUSTRALIA** represented by **AUSTRALIAN AGENCY FOR INTERNATIONAL DEVELOPMENT** of 255 London Circuit, Canberra in the Australian Capital Territory ("Tenant")

**INTRODUCTION**

- A. The Owner wishes to record its agreement with the Tenant about appropriate arrangements for occupancy of Commonwealth owned residential premises.
- B. Both the Owner and the Tenant are aware that as both are part of the Commonwealth of Australia they cannot enter into a legally binding agreement with each other. They however intend to act as if the terms of this Memorandum so far as practicable are interpreted in accordance with the general law as if the parties were separate legal entities.
- C. The Commonwealth of Australia owns the premises described in Item 7 of Schedule 1.
- D. The Tenant has agreed to occupy the premises on the terms set out in this Memorandum of Understanding (MOU).

**OPERATIVE PROVISIONS**

**1. DESCRIPTION OF PREMISES**

- 1.1 The Owner rents the premises to the Tenant together with the fixtures and fittings set out in Item 3 of Schedule 1 for use as a residence for the term in Item 4 of Schedule 1 starting on the day in Item 5 of Schedule 1.

**2. HOW TO READ THIS MOU**

**2.1 TERMS**

Terms in bold type have the meaning shown opposite them.

**2.2 DEFINITIONS**

Unless the contrary intention appears:

- (1) **"Chosen currency"** means the legal tender of the country named in Item 6 of Schedule 1;
- (2) **"Compound Residence"** means non HOM Residences in the residential compounds at the following posts: Apia; Beijing; Berlin; Hanoi; New Delhi; Paris; Port Moresby (4); Shanghai; Suva and Tokyo;
- (3) **"Managing Agency"** means the agency responsible for the management and administration of an overseas mission as defined in the Prime Minister's Directive on the Guidelines for the Management of the Australian Government Presence Overseas (2007).

- (4) "Market based rent" means method for determining market rent set out in Section 4.1 of Schedule 2—Rent Setting Policy for the Commonwealth overseas owned estate (Schedule 2)
- (5) "Owner" includes a Person immediately entitled to the premises on expiry of this MOU and (where consistent with the context) the Owner's executors, administrators, successors, and assigns;
- (6) "Person" includes a body corporate and vice versa;
- (7) "Premises" means those set out in Item 7 of Schedule 1;
- (8) "Rent" means the rent in Item 9 of Schedule 1;
- (9) "Tenant" includes (where consistent with the context) the servants, agents and invitees of the Tenant
- (10) "Term" means the term in Item 4 of Schedule 1 and includes any period during which the Tenant holds over with the Owner's consent;

### 2.3 INTERPRETATION

- (1) In this Memorandum, unless the context otherwise requires:
  - (a) words importing the singular include the plural and vice versa;
  - (b) words importing a gender include each other gender;
  - (c) headings are for convenience only and will be ignored in construing this memorandum;
  - (d) a reference to this Memorandum includes any schedules or annexures to it.
  - (e) a reference to a thing includes a part of that thing;
  - (f) a reference to a body:
    - (i) which ceases to exist;
    - (ii) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

### 3. INSPECTIONS

#### 3.1 The parties will jointly inspect the Premises and record their condition:

- (1) at the commencement of this MOU; and
- (2) at the end of this MOU.

### 4. TENANT'S COVENANTS

#### 4.1 The Tenant must:

- (1)
  - (a) pay the Rent in Item 9 of Schedule 1 to the Owner in the manner shown in Item 11 of Schedule 1 at the address given by the Owner from time to time.
  - (b) where the MOU commences on a date other than 1 July pay the first pro-rata instalment on the date this MOU commences;
  - (c) where this MOU commences or ends on a day other than the first or the last of a month, pay the first and last instalments apportioned on a daily basis.
  - (d) part year instalments shall be calculated on a daily basis.
- (2) pay all charges for:
  - (a) electricity consumed;
  - (b) telephone services connected to the Premises;
  - (c) water charges and rates in respect of water consumed on the Premises; and
  - (d) all other charges imposed by any body other than the Owner for the supply of any service separately supplied to the Premises;
- (3) not alter the Premises in any way without first obtaining the Owner's consent, which will not be unreasonably withheld;



- (4) keep the Premises in good repair, working order and condition (having regard to their condition at the start of this MOU);
- (5) permit the Owner to enter the Premises for inspection, to carry out repairs, improvements, maintenance, alterations and other work (including work of a structural nature, work that the Owner is required to do under this MOU or by law) at a time agreed by the Tenant (acting reasonably) and if requested by the Tenant in the presence of a representative of the Tenant. The Owner will avoid unduly inconveniencing the Tenant and will not interfere with the Tenant's use and occupation of the Premises more than is reasonably necessary. The Owner will make good any damage caused by exercising this right;
- (6)
  - (a) at the expiry of the Term or sooner determination of this MOU:
    - (i) quietly yield up the Premises in good repair and condition (having regard to their condition at the start of this MOU) and excluding fair wear and tear; and
    - (ii) remove all fixtures, fittings, plants, equipment or other articles brought to the premises by the Tenant. If the Tenant in such removal damages the Premises it will immediately make good such damage;
  - (b) if requested by the Owner:
    - (i) restore any alteration to the premises whether or not the Owner has consented to the making of the alterations; and
    - (ii) remove any signs, insignia or flagstaffs installed on the premises or elsewhere in the building by the Tenant and make good any damage or disfigurement caused by this;
- (7) not assign, sublet or otherwise dispose of or in any way part with possession or grant any licence to use the whole or part of the premises without the Owner's written consent. The Owner will not unreasonably withhold its consent. The Tenant may permit usage of the whole or part of the premises for use by other agencies of the Government of the Commonwealth of Australia without breaching this sub clause;
- (8) pay the Rent in the Australian Capital Territory.

4.2 The Tenant is responsible for the matters in Item 15 of Schedule 1 in respect of the Premises.

4.3 Except to the extent that the Tenant has contributed to the cause of the damage, the Tenant is not required to repair:

- (1) damage to any part of the service lines or the structure of the building, of which the Premises form part; and
- (2) damage resulting from fair wear and tear, fire, lightning, storm, flood, tempest, earthquake, water damage, radiation, fusion, explosion or concussion from explosion, impact by vehicles or aircraft or articles dropped from aircraft, termites, structural and inherent defects (whether due to faulty design construction, inadequate supervision, defective or unsuitable materials or other causes), subsidence, extraordinary occurrence which not have been foreseen and which could not have been guarded against, accidents due to natural causes, riot, civil commotion, strikes, enemy action or malicious damage.

## 5. OWNER'S COVENANTS

5.1 The Owner must:

- (1) keep the Premises and the building of which they form part to the same standard as at the commencement of this MOU, or such other standard agreed in writing at the commencement;
- (2) give the Tenant quiet enjoyment and use of the premises;



- (3) permit the Tenant to bring upon or install in the Premises any container or communications equipment necessary for a diplomatic or consular establishment. The cost of any alterations or additions is to be borne by the Tenant. Where consequential structural alterations will be required, the Tenant must first obtain the Owner's consent under clause 4.1.3;
- (4) carry out all reasonably necessary internal and external structural repairs to the main walls, roofs, floors, facades, and drains of the Premises and any necessary repairs to the mains and services (gas, water, electricity) promptly on written notice by the Tenant. In doing this the Owner will observe the access restrictions imposed under this MOU;
- (5) permit the Tenant to display by usual means on or in the Premises or in the building signs insignia or flagstaffs. Any such fixtures remain the property of the Tenant;
- (6) if the Premises are only part of a building, maintain any entrances, stairways, passages, lifts, doorways and other common and public parts of the building and its service facilities and conveniences;
- (7) undertake the matters in Item 19 of Schedule 1;
- (8) maintain all mechanical services in proper working condition; and
- (9) give the Tenant access to the Premises at all times.

5.2 Notwithstanding anything else in this MOU the Owner is not obliged to provide security measures.

## 6. MONTHLY TENANCY

6.1 If the Tenant remains in the premises at the expiry of the Term or sooner determination with the Owner's consent, or the Owner consents to an extension or renewal the Tenant becomes a holdover Tenant and will be invoiced on the same terms and conditions as this MOU.

## 7. DESTRUCTION OF THE PREMISES

7.1 If, after the commencement of this MOU, the premises or the building of which the premises form part are damaged or destroyed in whole or in part and as a result the Tenant cannot use or gain access to all or any part of the premises then, from the date that the Tenant notifies the Owner of the damage or destruction, the Owner:

- (1) must reduce the rent and any other money owing to the Owner by a reasonable amount depending on the type and extent of damage destruction or inaccessibility; and
- (2) cannot enforce covenants to repair or maintain against the Tenant; until the premises are fit for use and accessible.

7.2 The Tenant may terminate this MOU by notice to the Owner unless the Owner:

- (1) notifies the Tenant within 1 month of the premises or building of which the premises form part being damaged or destroyed that the Owner will reinstate the premises; and
- (2) carries out the reinstatement works within a reasonable time in all the circumstances.

7.3 The Tenant will not be entitled to the rights in clause 7.1 or 7.2 if the damage or destruction was caused by or materially contributed to, or arises from any wilful act of the Tenant.

7.4 If the Owner considers the damage to the premises renders it impractical or undesirable to reinstate the premises it may terminate this MOU by giving the Tenant at least two (2) month's notice ending on any day of the month. At the end of that notice this MOU ends.



- 7.5 The Owner is not obliged to reinstate the premises or the means of access to them. If the Owner decides not to reinstate it will inform the Tenant by notice in writing and the Tenant may at any time thereafter terminate this MOU by written notice.
- 7.6 When reinstating the premises, if the Owner wishes to change any aspect of the design, fabric, character or dimensions then the Owner must give the Tenant written notice of such proposed change. If the Tenant is of the reasonable opinion that the change substantially adversely affects the suitability for the Tenant's use, the Owner must not make that change.
- 7.7 Termination by either party under this clause does not affect either party's rights for breach which had accrued before termination.

## **8. OPTION TO RENEW**

### **8.1 When does this Clause apply**

This Clause applies if "applicable" has been inserted in Item 16 of Schedule 1.

### **8.2 The Tenant's option**

If the Tenant

- (1) wishes to rent the Premises for the further term;
- (2) gives notice to that effect to the Owner not less than six (6) months before the Term expires; and
- (3) has not breached an essential term of this MOU;
- (4) the Owner must agree to rent the Premises by way of an instrument of variation on the same terms as this MOU except that the instrument of variation will be varied as follows:
  - (5) the Term will be as shown in Item 17 of Schedule 1;
  - (6) the rent will be an amount to be determined by following the procedure set out in Clause 9 as if the last day of the Term was a market review date to which that clause applied;
  - (7) this Clause 8 will be omitted from the instrument of variation.

### **8.3 The instrument of variation template is at Schedule 6 to this MOU.**

## **9. MARKET RENT REVIEW**

### **9.1 When does this Clause apply**

Section 5.2.4 of Schedule 2 is applicable where an MOU is signed for three years or longer, or includes an option to renew which might result in an extended agreement. Market rent reviews will occur at three yearly intervals to coincide with the valuation cycle.

- (1) In this clause:
  - (a) "review date" means the date in Item 12 of Schedule 1;
  - (b) "rent period" means the period starting on a review date and ending on the earlier of:
    - (i) the day before the next review date; or
    - (ii) the end of this MOU.

- (2) The Owner must notify the Tenant, within the period starting two (2) months before a review date, of the rent that it considers to be the market rent.

**10. EARLY TERMINATION BY TENANT**

- 10.1 The Tenant may terminate this MOU by giving the Owner one (1) month's written notice if the Owner has not honoured obligations under subclauses 5.1.4, and 5.1.6.

**11. TENANT'S ADDITIONAL RIGHT TO REDUCE THE TERM**

**11.1 CLOSURE OF POST**

If, during the Term of this MOU, the Australian Government severs diplomatic relations with the country in which the premises are located or decides to close the post in the country in which the premises are located, this MOU will extinguish.

**11.2 GOVERNMENT POLICY DECISIONS**

If in accordance with clause 5.2.6.1 of the Rent Setting Policy, a Machinery of Government (MOG) decision requires the Tenant to withdraw the occupant of the Premises, the MOU will novate to the agency assuming the Tenant's function or if there is no transfer of functions the Tenant may terminate this MOU

- 11.3 A termination pursuant to this clause does not affect either party's rights for breach which had accrued before termination.

**12. SERVICE OF NOTICES**

- 12.1 Any notice to be given under this MOU is sufficiently served on the Owner if sent by post or left addressed to it at the address shown in this MOU and is sufficiently served on the Tenant if forwarded by post or left addressed to it at the premises. A notice sent by post is deemed to be served two (2) days after the date of posting.

**13. APPLICATION OF LAWS AND JURISDICTION**

- 13.1 The laws of the Australian Capital Territory will apply to this MOU as regards its formation and interpretation. The courts of the Australian Capital Territory shall have a non-exclusive jurisdiction over the subject matter of this MOU and for all purposes of adjudication between the parties, it is agreed that the land shall be treated as if it were land situated in the Australian Capital Territory.

**14. AMENDMENTS**

- 14.1 Notwithstanding anything that is written in this MOU, this MOU is amended by the terms in Schedule 3.

EXECUTED AS AN AGREEMENT

SIGNED for and on behalf of the  
COMMONWEALTH OF AUSTRALIA

by

OVERSEAS PROPERTY OFFICE –

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

a duly authorised delegate

in the presence of

47E(d)

Signature

Witness Signature

47E(d)

Print Name

Print Name

A/G Director, AMS/PFB  
Office Held

PROPERTY MANAGER  
Office Held

Date: 4 / 6 / 12

Date: 4 / 6 / 12

SIGNED for and on behalf of the  
COMMONWEALTH OF AUSTRALIA

by

AUSTRALIAN AGENCY FOR INTERNATIONAL  
DEVELOPMENT

a duly authorised delegate

in the presence of

47E(d)

Signature

Witness Signature

47E(d)

Print Name

Print Name

A/G Director OVERSEAS PROPERTY  
Office Held

OVERSEAS PROJECT MANA  
Office Held

Date: 10 / 04 / 2012

Date: 10 / 04 / 2012



**SCHEDULE 1 – PORT MORESBY APARTMENT B4 (PORT ROAD TWO)**

**POST: PORT MORESBY  
PROPERTY NUMBER: 10407700  
MOU NUMBER: 353**

<b>Item 1</b>	Date	
<b>Item 2</b>	Tenant	AusAID
<b>Item 3</b>	Fixtures & Fittings	Carpets and Window Treatments
<b>Item 4</b>	Term	Four (4) Years and Three (3) Months ending 30 June 2016
<b>Item 5</b>	Starting Date	1 April 2012
<b>Item 6</b>	Country of Chosen Currency	Australia
<b>Item 7</b>	Premises	Apartment B4, Port Road Residential Compound Two, Port Road, Port Moresby, PAPUA NEW GUINEA
<b>Item 8</b>	Car parking spaces: Covered	Not applicable
	Uncovered	Not applicable
<b>Item 9</b>	Rent Per Annum	\$60,661.00
<b>Item 10</b>	Compound Residence	Yes
<b>Item 11</b>	Manner for payment of rent	Annually in advance on 1 <sup>st</sup> July
<b>Item 12</b>	Market Rent Review	Applicable
<b>Item 13</b>	Fixed Rent Increases	Not applicable
<b>Item 14</b>	Market Review dates during term	1 July 2013
<b>Item 15</b>	Tenants Special Responsibilities	<ul style="list-style-type: none"> <li>• Day to day property management performed by tenant. This <u>may</u> include, subject to any agreement between the Tenant and a third party which has been approved by the Owner, arrangement of all:</li> <li>• Internal and external window cleaning;</li> <li>• Internal and external cleaning;</li> <li>• Security</li> <li>• Snow clearing chemicals;</li> <li>• Swimming pool maintenance and chemicals;</li> <li>• Garden material and labour;</li> <li>• Chimney sweeping and cleaning of the roof and gutter;</li> </ul>



		<ul style="list-style-type: none"> <li>• Re-gravelling the footpath;</li> <li>• Maintaining and servicing all light bulbs and fluorescent tubes;</li> <li>• Rubbish removal;</li> <li>• Changing locks on doors and key cutting;</li> <li>• The installation and removal of cable television and radio;</li> <li>• Pest control not of a structural nature;</li> <li>• Cleaning of Carpets and Curtains;</li> <li>• Glass replacement where caused by tenant;</li> <li>• Replacement of tap washers;</li> <li>• Provision of furniture and whitegoods (Non compound residences only. In Compound Residences furniture and whitegoods are provided by the Managing Agency);</li> <li>• Utilities charges;</li> <li>• Batteries for smoke detectors; and</li> <li>• Make good on departure from accommodation.</li> </ul>
<b>Item 16</b>	Option to renew	Applicable
<b>Item 17</b>	Further Term	3 Years 1 July 2016 – 30 June 2019
<b>Item 18</b>	Fixed Rent increases in further term  Market Review reviews in further term	Not applicable  1 July 2016
<b>Item 19</b>	Owner's Special Responsibilities	<ul style="list-style-type: none"> <li>• Repairs and maintenance of building including structural. This includes:</li> <li>• Supply of curtains and replacement where necessary but not less than every ten (10) years;</li> <li>• Supply and replacement of fixed floor coverings but not less than every ten (10) years;</li> <li>• Programmed painting of interior and exterior painted surfaces of the premises not less than every six (6) years;</li> <li>• Programmed replacement of wall paper on papered surfaces not less than every six (6) years;</li> <li>• Maintenance and repairs to HVAC, electricals and hydraulics;</li> <li>• Maintenance of building exterior and facade;</li> <li>• Structural repairs;</li> <li>• Maintenance of building interior including fixtures and fittings;</li> <li>• Battery operated smoke detectors where hard wired smoke detectors are not provided;</li> <li>• Where supplied, maintenance of hard wired smoke detectors; and</li> <li>• Pest control including termite inspection</li> </ul>



1 July 2011  
Our Ref: MF:NL | 60051

Savills Valuations Pty Ltd

47F

Asset Management & Strategy Section  
Overseas Property Office  
Department of Foreign Affairs & Trade  
RG Casey Building, John McEwen Crescent  
Barton ACT 2600

Level 7  
50 Bridge Street  
Sydney NSW 2000  
Australia  
T +61 02 8215 8888  
savills.com.au

## RENTAL CERTIFICATE

Property	Apartment B4, Port Road Residential Compound Two, Port Road, Port Moresby, PAPUA NEW GUINEA.	
Tenant	AusAID.	
Lease No.	353.	
Lettable Area	Living Area	224.00m <sup>2</sup>
	TOTAL	224.00m <sup>2</sup>
No. of Bedrooms	4.	

In response to instructions received from Department of Foreign Affairs and Trade (Overseas Property Office), dated 24 August 2011, we have determined the current market-based rental value of the above property, in accordance with *Rent setting policy for the Commonwealth overseas owned estate (dated July 11)*.

### 1 Definition of Market-Based Rent

*The amount for which a comparable property, or space within a property, will lease between a willing lessor and willing lessee on comparable lease terms in an arm's length transaction, after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.*

**S 4.1.1 Rent setting policy for the Commonwealth overseas owned estate (dated July 11).**

AusAID Apartment B4, Port Road Two, Port Moresby, PAPUA NEW GUINEA.

Date of Assessment: 1 July 2011

Valuation Number: 60051



---

2. Location

The property is located within the established and popular Touaguba Hill district, approximately 1 kilometre north east of the Central Business District of Port Moresby, which is the capital of Papua New Guinea. The immediate area is regarded as an upmarket precinct, with the majority of properties enjoying unrestricted views across Port Moresby Harbour.

3. Description

The residential complex comprises two circa 1995, three storey buildings which are accessed via Port Road and lie within a secure residential compound. There is a shared recreational area with a pool and barbeque area situated at the rear of the compound, which is shared with a neighbouring allotment (known as Airvos House). There are 16 apartments in total, with each having a ground level carport. Each unit in the residential complex has a building area of 224m<sup>2</sup> (excluding carport).



## 4. Rental Evidence

We have detailed below rental evidence of comparable transactions in order to provide our assessment of the current market rental for the property:

Address	Commencement Date	Gross Rental p.a. (PGK)	Description
1. Unit 7, Coastwatchers Court, Touaguba Hill, Port Moresby.	March 2011	195,000	A modern (circa 2007), 2 level apartment providing 2 bedrooms, ensuite, main bathroom, kitchen, living/dining room, laundry and attached double carport. Average finishes internally. Common improvements include an inground pool and full security facilities. Expansive views of Port Moresby Harbour. Leased to Exxon Mobil Corporation for 12 months. Considered superior overall.
2. Unit 29, Coastwatchers Court, Touaguba Hill, Port Moresby.	March 2011	221,000	A modern (circa 2007), 2 level penthouse apartment providing 3 bedrooms, ensuite, main bathroom, kitchen, living/dining room, large balcony areas and attached double carport. Average finishes internally. Common improvements include an inground pool and full security facilities. Expansive views of Port Moresby Harbour. Leased to local executive for 12 months. Considered superior overall.
3. Section 51, Lot 92 Davetari Drive, Port Moresby.	September 2010	234,000	A recently refurbished, split level townhouse providing 3 bedrooms, 2 bathrooms and formal and informal living areas. High standard of internal finishes. Common improvements include an inground pool, tennis court and full security facilities. Hillside position with views to Port Moresby Harbour. Considered superior overall.
4. Bayview Apartments, Bougainville Crescent, Port Moresby.	September 2010	218,400	A new apartment providing 2 bedrooms, 2 bathrooms and formal and informal living areas. High standard of internal finishes. Common improvements include an inground pool, tennis court and full security facilities. Hillside position with views to Port Moresby Harbour. Considered superior overall.
5. Ela Apartments, Port Moresby.	July 2010	156,000	Ela Apartments comprises a recently completed complex of 3 apartments. Average standard of internal finishes. Hillside position with views of Port Moresby Harbour. Full security facilities. Considered superior overall.



AusAID Apartment B4, Port Road Two, Port Moresby, PAPUA NEW GUINEA.

Date of Assessment: 1 July 2011

Valuation Number: 60051



#### 5. Adopted Current Market-Based Rental

Description	Lettable Area (m <sup>2</sup> )	Total (PGK/annum)	Total (AUD/annum)*
Port Road Two Apartment B4	224.00	160,000	60,661
<b>Total</b>		<b>160,000</b>	<b>60,661</b>

\* Exchange Rate as at 1 May 2011 – AUD/PGK = 2.6376

The rental stated above has been converted to Australian Dollars as per 4.1.3.1 of Rent setting policy for the Commonwealth overseas owned estate (dated July 11).

#### 6. Company Qualifications

Where this report has not been prepared by a senior executive of this Company the report has been countersigned to verify that the report is issued by this Company. Any reliance upon this report should therefore be based upon the actual possession or sighting of an original document duly signed and countersigned in the beforementioned manner.

This advice is prepared for **Commonwealth of Australia** for internal rental assessment purposes. This report should not be relied upon by anyone other than **Commonwealth of Australia** whether for that purpose or otherwise.

Savills (Australia) Pty Ltd accepts no responsibility to third parties nor does it contemplate that this report will be relied upon by third parties. We invite other parties who may come into possession of this report to seek our written consent to them relying upon this report and we reserve our rights to review the contents in the event that our consent is sought.

The lettable area has been provided by the property manager, United Group Limited. Should an alternate building survey reveal any difference to the areas provided, we reserve the right to review our valuation.

AusAID Apartment B4, Port Road Two, Port Moresby, PAPUA NEW GUINEA.

Date of Assessment: 1 July 2011

Valuation Number: 60051



We hereby certify that the Valuer and valuation firm does not have any direct, indirect or financial interest in the property or clients described herein that would conflict with the proper advice of the property.

Yours faithfully,

Per:

47F

Certified Practising Valuer  
Valuation & Consultancy

Divisional Director  
Valuation & Consultancy



1 July 2013  
Our Ref: MF:NL | 60960

Savills Valuations Pty Ltd  
47F

Level 7  
50 Bridge Street  
Sydney NSW 2000  
Australia  
T +61 02 8215 8888  
savills.com.au

Asset Management & Strategy Section  
Overseas Property Office  
Department of Foreign Affairs & Trade  
RG Casey Building, John McEwen Crescent  
Barton ACT 2600

## **MARKET BASED RENT REVIEW CERTIFICATE**

<b>Property</b>	Port Road 2 Residential Compound Two, Apartment B4, Port Road, Port Moresby, PAPUA NEW GUINEA.	
<b>Tenant</b>	AusAID.	
<b>Lease No.</b>	353.	
<b>Lettable Area</b>	Living Area	224.00m <sup>2</sup>
	<b>TOTAL</b>	<b>224.00m<sup>2</sup></b>
<b>No. of Bedrooms</b>	4.	
<b>Car Spaces</b>	1.	

In response to instructions received from Department of Foreign Affairs and Trade (Overseas Property Office), dated 25 March 2013, we have determined the current market-based rental value of the above property, in accordance with *Rent setting policy for the Commonwealth overseas owned estate (dated July 11)*. This review has been undertaken in conjunction with our full valuation report dated 30 June 2013.

### **1. Definition of Market- Based Rent**

*The amount for which a comparable property, or space within a property, will lease between a willing lessor and willing lessee on comparable lease terms in an arm's length transaction, after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.*

**S 4.1.1 Rent setting policy for the Commonwealth overseas owned estate (dated July 11).**





## 2. Location

Papua New Guinea is a country in the Oceania, having a population of approximately 7 million as at July 2011 (source: PNG Government). The island encompasses a total land area of approximately 463,000 square kilometres, and is located some 160 kilometres north of Australia.

The property is located within the established and popular Touaguba Hill district, approximately 1 kilometre north east of the Central Business District of Port Moresby, which is the capital of Papua New Guinea. The immediate area is regarded as an upmarket residential precinct, with the majority of properties enjoying unrestricted views across Port Moresby Harbour. The subject is positioned on the eastern side of Port Road.

## 3. Description

The residential complex comprises two circa 1995, three storey buildings which are accessed via Port Road and lie within a secure residential compound. There is a shared recreational area with a pool and barbeque area is situated at the rear of the compound, which is shared with a neighbouring allotment (known as Airvos Avenue – not part of valuation). There are 16 apartments in total, consisting of 10 x three bedroom and 6 x four bedroom units, with each having a ground level carport. Each unit in the residential complex has a building area of 225m<sup>2</sup> (excluding carport).

The residential compound comprises 16 apartments configured as 10 x three bedroom units and 6 x four bedroom units within two 3 storey blocks. The ground level incorporates undercover car parking and storage areas, with the upper two levels are occupied by the apartments.

Each unit also comprises lounge, dining room, kitchen, family room, laundry, main bathroom, separate toilet, ensuite to the master bedroom, balcony and rear enclosed verandah.

The units also comprise air conditioning, floor tiling and built in wardrobes, whilst all enjoy views over Port Moresby Harbour.

## 4. Rental Evidence

We have undertaken a survey of rental evidence which we have had regard to in deriving our market rent profile for the subject property. See the table overleaf.



Date of Assessment: 1 July 2013

Valuation Number: 60960



Address	Comm. Date	NLA (m²)	Gross Rental p.a. (PGK)	Description
1. Ixora Residency, Savannah Heights, Section 516, Allotment 8, Hohola	Late 2012 / Early 2013	127	166,400	New apartments opposite Vision City Mega Mall. Leased to Airlines PNG for a term of 1 year. Internal building area 127m² being a 2 bedroom apartment located in the Waigani area. Inferior.
2. Ixora Residency, Savannah Heights Section 516, Allotment 8, Hohola	Late 2012 / Early 2013	127	182,000	New apartments opposite Vision City Mega Mall. Leased to AkzoNobel for a term of 1 year. Internal building area 127m² being a 2 bedroom apartment with ocean views. Complex is located within the Waigani area. Inferior.
3. Ixora Residency, Savannah Heights Section 516, Allotment 8, Hohola	Late 2012 / Early 2013	127	197,600	New apartments opposite Vision City Mega Mall. Leased to Ukonekt Technologies for a term of 6 months. Internal building area 127m² being a 2 bedroom apartment with ocean views on the top floor. Complex is located within the Waigani area. Inferior.
4. House Section 32 Lot 28, Webb Street, Granville	Late 2012 / Early 2013	N/A	416,000	A two level, three bedroom house with a one bedroom granny flat. Property has a swimming pool being a secured complex with guard house. Superior.
5. King Fisher Apartments, Royal Papua Yacht Club Marina Precinct	Late 2012 / Early 2013	110	249,600 -265,200	Recently completed 3 level x 39 unit (2 & 3 bedroom) complex with marina views. Units are approximately 110m² each plus small balcony. Complex provides an example of a recent decline in rentals when in 2011 rents were achieving PGK5,000-PGK6,000 p/w and now they are achieving PGK4,800-PGK5,100 p/w. Inferior.
6. The Edge Apartments, Royal Papua Yacht Club Marina Precinct	Late 2012 / Early 2013	N/A	218,400 -338,000	6 level x 63 unit complex with marina views and still currently under construction. Comparable.
7. Fitch Apartments, Ela Beach	Late 2012 / Early 2013	N/A	390,000	4 level executive townhouses in a complex of 8 with ocean views. 5 out of 8 leased at PGK7,500 p/w. Complex includes modern improvements with granite bench top kitchens, intercom system, court yard, swimming pool, spa bath, gymnasium, bbq area and undercover parking. Superior.
8. Windward Apartments Stage 1, Ela Beach Road	Late 2012 / Early 2013	N/A	338,000 -390,000	Modern luxury 2 and 3 bedroom apartments. Water views over Ela Beach. Superior.
9. Fairfax Apartments, Hunter Street, Downtown Port Moresby CBD	Late 2012 / Early 2013	N/A	312,000	Modern 3 bedroom apartment complex. Superior.



From the rental evidence, we note that rentals for good quality 3 to 4 bedroom apartments reflect a rental range of PGK3,200 to PGK8,000 per week.

## 5. Adopted Current Market-Based Rental

Description	Lettable Area (m <sup>2</sup> )	No.	Total (PGK/annum)	Total (AUD/annum)*
Apartment B4	224.0	N/A	273,000	125,069
<b>Total</b>			<b>273,000</b>	<b>125,069</b>

\* Exchange Rate as at 1 May 2013 - PGK/AUD = 2.1828

The rental stated above has been converted to Australian Dollars as per 4.1.3.1 of *Rent setting policy for the Commonwealth overseas owned estate (dated July 11)*.

## 6. Company Qualifications

Where this report has not been prepared by a senior executive of this Company the report has been countersigned to verify that the report is issued by this Company. Any reliance upon this report should therefore be based upon the actual possession or sighting of an original document duly signed and countersigned in the beforementioned manner.

This advice is prepared for **Commonwealth of Australia** for internal rental assessment purposes. This report should not be relied upon by anyone other than **Commonwealth of Australia** whether for that purpose or otherwise.

Savills Valuations Pty Ltd accepts no responsibility to third parties nor does it contemplate that this report will be relied upon by third parties. We invite other parties who may come into possession of this report to seek our written consent to them relying upon this report and we reserve our rights to review the contents in the event that our consent is sought.

The lettable area has been provided by the property manager, DTZ, a UGL Company. Should an alternate building survey reveal any difference to the areas provided, we reserve the right to review our rental assessment.



Port Road 2 Residential Compound Two, Apartment B4, Port Road, Port Moresby,  
PAPUA NEW GUINEA.

Date of Assessment: 1 July 2013

Valuation Number: 60960



We hereby certify that the Valuer and valuation firm does not have any direct, indirect or financial interest in the property or clients described herein that would conflict with the proper advice of the property.

Prepared by: Savills Valuations Pty Ltd

47F

Per:

Certified Practising Valuer  
Valuation & Consultancy

Divisional Director  
Valuation & Consultancy

The Divisional Director signatory verifies that this report is genuine, and issued by, and endorsed by Savills Valuations Pty Ltd. However the opinion expressed in this report has been arrived at by the prime signatory.

Savills Valuations Pty Ltd liability is limited by a scheme approved under Professional Standards Legislation.

Cover of Excellence® and Cover of Excellence and Star Device® are registered Trade Marks of the NSW Professional Standards Council.



Liability limited by a scheme approved  
under Professional Standards Legislation

## **Memorandum of Understanding**

In relation to changes to accommodation arrangements in Papua New Guinea

between

The Commonwealth of Australia, as represented by the Australian Federal Police

(AFP)

and

The Commonwealth of Australia, as represented by the Department of Foreign Affairs and Trade

(DFAT)

### **Recitals:**

- A. The AFP and Overseas Property Office (OPO) entered into an MOU dated 1 April 2012, in relation to appropriate arrangements for occupancy of Commonwealth owned residential premises in Papua New Guinea (the 'AFP MOU'). Pursuant to the AFP MOU, OPO leased the Konedobu Apartment 20 property to AFP.
- B. DFAT and OPO entered into an MOU dated 1 April 2012 about appropriate arrangements for occupancy of Commonwealth owned residential premises in Papua New Guinea (the 'DFAT MOU'). Pursuant to the DFAT MOU, OPO leased the Port Road Two Apartment B4 property to the agency formerly known as AusAID, which has since integrated into DFAT.
- C. The Parties wish to change their arrangements so that DFAT leases the Konedobu Apartment 20 property and the AFP leases the Port Road Two Apartment B4 property.

### **About the Parties**

1. All Parties are responsible for administering and ensuring compliance with the terms and conditions of this MOU.

### **About this MOU**

#### **2. Purpose of this MOU**

The purpose of this MOU is to record an agreement between the Parties in relation to changes to the arrangements for occupancy of the Port Road Two Apartment B4 property and the Konedobu Apartment 20 property.