

19 March 2019

Dear Sir Terence and Sir Geoffrey,

1. Thank you for clarifying, in Minute 9, the Inquiry's remaining concerns relating to the Operation Burnham location: that there is now no dispute about the location of Operation Burnham but that you want to know where within the agreed location particular events are said to have occurred. I appreciate the Inquiry's wish to have an accurate understanding of these issues. I also had a letter from your office this week asking me to confirm if I wish to take part in the first module hearing.

2. In this letter I will:

1. Answer all the questions about the Operation Burnham location that I am currently able to
2. Tell you which location issues I have not got accurate information on yet – which means there is little point in me presenting about location at the module hearing – and ask for assistance from the Inquiry to help us gather the information you have requested
3. Explain why I have decided not to attend the first module
4. Offer to provide a reply to an NZDF attack on *Hit & Run* released to media last year (that includes location issues) if that would assist the Inquiry.

Information about the Operation Burnham location that I can currently provide

3. First, I will answer your question about how the original (and long acknowledged) Operation Burnham location error occurred. During research for the book *Hit & Run* we arranged for a colleague to meet in Kabul with some villagers from Naik and Khak Khuday Dad. The colleague showed the villagers a satellite image that included the various groupings of houses along the length of the Tirgiran River (which we had labelled Possible Area 1, Possible Area 2 and so on). They discussed what the buildings looked like, the course of the river and the shape of the hills. The villagers were asked which of these hamlets they lived in, ie which of these places were their villages Naik and Khak Khuday Dad. As I explained in an earlier letter, they pointed out the wrong locations. This was the origin of the location error in some of the book's illustrations.

4. Having identified the supposed villages, the locals were given close-up satellite images for the two locations. They pored for hours over the unfamiliar satellite images and pointed out what they believed were their homes and other features. Unfortunately, of course, they were trying to superimpose their knowledge onto the wrong landscape. This is why the annotated satellite images on pp. 64-67 of *Hit and Run*, arising from the same meeting, are incorrect.

5. Therefore, to answer your main question in Minute 9: please disregard the satellite image on p. 35 (bottom) of *Hit & Run*, the two annotated satellite images on pp. 64-67 and a small number of references in the text based on these images.¹

¹ On p. 33, “on both sides of” should be “beside” and “about a kilometre up a side valley...” should be “on a side valley opposite Naik”; on p. 38 “southern side of the river” should be “eastern side of the river”; p. 50, remove “across the valley” and the “west” from “west end of the village”; p. 58 “When he was about 30 metres from” should be “As he headed towards”; and p. 62 “a kilometre down the valley” should be “a kilometre along the

In addition, some villagers made the journey back and forth between Naik and Kabul in difficult conditions in order to provide photos of the villages. The vast majority of this information is correct but, combining the practical difficulties and the language barrier, it is not surprising that there were some slips here as well. Two of the photo captions appear to be incorrect – p. 39,² p. 53,³ – and possibly a third: pp. 38/131 (top) and 132 (bottom).⁴ The caption given for the photo on p. 58 may be wrong as well (but has no significance to the facts at issue).

6. For completeness, I also reiterate (with reference to the NZDF Op Burnham satellite images on pp. 7-15 of the 27 March 2017 press conference powerpoint) that:

6.1. the villagers use the name Naik for the built up area on the right of the main river (including the buildings marked A1, A2 and A3) and the name Khak Khuday Dad for the area of houses on the left (adjacent to the helicopter landing zone).

6.2. there is agreement on the overall location of the operation, the Helicopter Landing Zones, the buildings (A1 and A2 which belonged to Abdullah Kalta and A3 to Maulawi Naimatullah) and the NZSAS observation point.

Information that cannot be provided yet

7. Minute 8 asked us to provide the “geolocation of relevant structures at each location, such as buildings (indicating to whom those buildings belonged), any flags erected since Operation Burnham, helicopter landing zones and similar relevant information;” and the “chronology of activity at the locations”. Counsel assisting elaborated in a 19 February 2019 letter that the Inquiry wanted to hear “the methodology by which locations were originally identified”, “any changes in respect of precise locations of specific activities”, whether locations of alleged killings have changed; and the location of structures shown in photographs.

8. I understand of course why you want this information. It is crucially important. As I have written to you before, I believe that the answer to many of the disputed and unknown aspects of Operation Burnham will be found in this detail.

9. I am in the process of gathering this information but I will not be ready to give a suitably reliable presentation on these subjects in time for the April 4 module hearing. This is the main information I have been working to gather and I hope I will achieve this in time to be useful to the Inquiry. My aim is to be able to provide an equivalent of the satellite images on pp. 64-67 of the book.

10. My approach in this research has not been to look at the villagers' information in isolation. Instead I have been looking at the details of both the villagers' and the NZSAS-led forces' explanations of what happened where. I believe this is the best way of working out the truth. One of the reasons I have not completed this work is that NZDF has obstructed me at every stage, refusing to give even basic information about what they did and saw on the operation. Their latest obstructions have been claiming, under s.6(c) of the OIA and more recently under s.15 of the Inquiries Act, that because the Inquiry is under way they are permitted to withhold most information I've requested (including blocking an 11-month Ombudsman's investigation).

11. In particular, they have repeatedly refused to say where each claimed insurgent was when

valley”.

2 Mohammad Iqbal's house may have been the middle one, not the nearest house. The same applies to p. 60.

3 This caption may be completely wrong. This may be the houses marked “A3”.

4 NZDF argues that these houses may be the same one and, if so, obviously one of the captions would be incorrect.

killed, if they were armed, why they were considered a threat and so on – information that does not include details of military tactics and methods that might genuinely need to be withheld for reasons of operational secrecy. This is delaying the work that you have asked about. As you know, I requested the Inquiry's assistance to try to end this obstruction: by clarifying that your s.15 orders do not stop OIA responses and by allowing formal written questioning of NZDF as part of the Inquiry process. Please reconsider these. They will only help the process.

Attendance at the module hearing

12. Since I do not yet have the information the Inquiry requested about the location of particular buildings and events completed to a good standard, there is no point in me presenting on this in the module. As far as I know, no one else has this information, updated since the book, either.

13. If I had the information ready I would attend the module. Since I do not, I have decided not to attend. I am unhappy at the one-sided presentations that have been chosen for the hearing (on the history of the war in Afghanistan). It was, in my opinion, already a process that gives unfair advantage to the NZDF. I believe it would have been much more useful to have a series of independent speakers on subjects such as the history of civilian casualties in the Afghanistan war, the efforts made over time to try to reduce civilian casualties and the way that other nations handled allegations of civilian casualties.

14. Speakers might also have given a critical history of the war in Afghanistan, questioning the tactics employed and whether it did harm or good. I explained my views on this to the Inquiry staff. The module appears to present only the already well-known official position. I cannot see how this is useful or appropriate.

15. Finally, some items in Minute 8 – for instance wanting to know about the positions of flags erected since Operation Burnham – make me wonder if you have been taking notice of an NZDF document called “Operation Burnham – Update on number of issues including further analysis of the book *Hit and Run*”. This document was written in April 2018 to try to persuade the Labour-led government not to hold an inquiry and then was released by NZDF to the media just before the November hearings. It claims to find 105 “issues” (ie errors) with the book *Hit & Run*. While it does highlight a handful of genuine errors (for instance the photo captions referred to above) a lot of it is wrong and at times ridiculous. It finds no significant errors that affect the main points in the book. It is a cynical piece of work, considering that the NZDF actively hid and refused to answer questions about everything to do with Operation Burnham and then has the nerve to criticise minor errors. But if this document is influencing the Inquiry's thinking, please let me know. I will willingly prepare a reply to it.

Yours sincerely,

Nicky Hager