

In the Government Inquiry into Operation Burnham and
Related Matters

MEMORANDUM OF COUNSEL FOR JON STEPHENSON

10 May 2019

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MAY IT PLEASE THE INQUIRY

1. This memorandum responds to the Inquiry's Minute No 14. It also addresses some matters raised by counsel for the villagers in their memorandum dated 3 May 2019.

Comments on the proposed approach

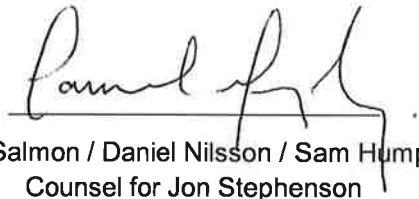
2. The Inquiry's proposed approach is summarised at paragraphs [38]-[41] of Minute No 14. The main points are that:
 - (a) For the time being, the Inquiry will not seek to interview any of the Afghan villagers, but will instead rely on the accounts reported in *Hit & Run* and transcripts, accounts and other information with villager sources provided by Mr Stephenson pursuant to an order for production under s 20(a) of the Inquiries Act 2013 (**Act**).
 - (b) This approach may be varied "*depend[ing] on the way in which the evidence emerges*".
 - (c) The villagers' rights to natural justice can be accommodated by the Inquiry giving counsel advance notice if the Inquiry were to contemplate making factual findings adverse to the villagers' interests, and by the Inquiry giving the villagers the opportunity to respond.
3. Contrary to the suggestion in paragraph [13] of counsel for the villagers' memorandum of 3 May 2019, Mr Stephenson has personally conducted interviews with five of the Afghan villagers represented by Dr Harrison QC and Ms Manning. He has also arranged and participated in interviews with an additional two villagers represented by Dr Harrison QC and Ms Manning, and has interviewed a number of other villagers and former villagers who are not represented before the Inquiry.
4. Mr Stephenson does not object to the Inquiry referring to transcripts, accounts and other information related to his interviews of these persons. However, it is necessary to make two comments on the context in which that information was obtained.
5. First, most of the interviews with villagers were conducted prior to the publication of *Hit and Run*. At this point in time, these interviewees did not have access to the full account of the NZDF's response to the allegations made in the book and therefore could not respond directly to those allegations.
6. Second, Mr Stephenson did not interview all of the villagers who will have had direct evidence of the events of Operations Burnham and Nova. Other villagers will have relevant information about what happened on those operations.
7. It is submitted that if the Inquiry were to rely solely on the information provided by Mr Stephenson and the information recorded in *Hit and Run*,

there would be a risk that that would affect its ability to get at the truth. Relying on interviews conducted with some villagers would also arguably be insufficient to ensure the villagers' rights to natural justice are respected, given that not all villagers were interviewed and of those that were interviewed, not all were able to engage with the position of the NZDF.

Provision of interview information

8. The materials provided by Mr Stephenson are subject to confidentiality orders under s 15 of the Act. Mr Stephenson does not consent to any modification of those orders, and wishes to be heard in respect of any consideration of the production of his documents to any party other than the Inquiry.

Dated 10 May 2019

A handwritten signature in black ink, appearing to read 'Samuel f. h.', is written over a horizontal line. The signature is cursive and somewhat stylized.

Davey Salmon / Daniel Nilsson / Sam Humphrey
Counsel for Jon Stephenson

