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## Public accounts of events during Operation Burnham and Operation Nova given by the New Zealand Defence Force and the authors of *Hit & Run*: A comparative analysis

17 May 2019

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### Introduction

1. This document presents an interim analysis of publicly available, unclassified material relating to what occurred during Operation Burnham (22 August 2010) and Operation Nova (date contested).<sup>1</sup> The details of the operations and other matters in the Inquiry's Terms of Reference remain under the Inquiry's consideration. This document focuses on public accounts given by the authors of *Hit & Run* and the New Zealand Defence Force (NZDF), identifying areas where the public accounts align or appear to be reconcilable, and areas where they diverge. It also highlights factual issues raised by either the authors or NZDF that have not been publicly addressed by the other party. It does not address the planning of the operations, the intelligence relied on or subsequent investigations.
2. The public accounts compared in this document have been drawn from *Hit & Run*,<sup>2</sup> memoranda and submissions provided to the Inquiry (which have been published on the Inquiry's website),<sup>3</sup> NZDF's presentation at the Inquiry's Public Hearing Module 1<sup>4</sup> and documents published on the NZDF website<sup>5</sup>. Where relevant, this document also refers to previously classified documents that have been disclosed on the Inquiry's website as a result of the Inquiry's process for reviewing classified information.<sup>6</sup> It does not refer to classified documents under consideration by the Inquiry. The documents referred to are listed in a bibliography on page 17.

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<sup>1</sup> "Operation Nova" refers to the operation in which New Zealand Special Air Service (NZSAS) troops returned to the same area where Operation Burnham occurred. The date of the operation is contested (see paragraph [55] below).

<sup>2</sup> Nicky Hager and Jon Stephenson *Hit & Run: The New Zealand SAS in Afghanistan and the meaning of honour* (Potton & Burton, Nelson, 2017).

<sup>3</sup> Inquiry into Operation Burnham "Submissions to the Inquiry"  
(<https://operationburnham.inquiry.govt.nz/information/submissions-to-the-inquiry/>).

<sup>4</sup> Colonel Grant Motley, NZDF *Presentation at Public Hearing Module 1: Location and events of Operation Burnham* (4 April 2019) (available at Inquiry into Operation Burnham "Public hearings" <<https://operationburnham.inquiry.govt.nz>>) ["NZDF presentation at Public Hearing Module 1"].

<sup>5</sup> New Zealand Defence Force (NZDF) "Operation Burnham" ([www.nzdf.mil.nz/corporate-documents/operation-burnham/default.htm](http://www.nzdf.mil.nz/corporate-documents/operation-burnham/default.htm)).

<sup>6</sup> Inquiry into Operation Burnham "Disclosure of Documents"  
(<https://operationburnham.inquiry.govt.nz/information/declassified-documents/>).

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3. The purpose of this document is to help identify the main areas of current contention on factual issues. To that end, it focuses on the most recent public accounts given by NZDF and the authors in relation to each issue. It does not analyse the earlier public accounts given by NZDF and/or the authors. These earlier accounts contain some inconsistencies, which may be relevant to the issues the Inquiry is to determine. The relevance of these earlier accounts will be considered in due course.

## Operation Burnham (22 August 2010)

*Areas where the public accounts of NZDF and the authors broadly align*

4. **The main targets of the operation were the insurgents Abdullah Kalta and Maulawi Naimatullah:** NZDF has confirmed in response to an Official Information Act (OIA) request that, as alleged in *Hit & Run*, the main targets of the operation were Abdullah Kalta and Maulawi Naimatullah.<sup>7</sup> It says they were insurgent commanders in respect of whom the Afghan Ministry of Interior had issued arrest warrants.<sup>8</sup> *Hit & Run* appears to agree that Kalta and Naimatullah were insurgents.<sup>9</sup> A previously classified NZDF document disclosed on the Inquiry's website clarifies that Kalta was referred to as Objective Burnham and Naimatullah as Objective Nova.<sup>10</sup>
5. **The operation occurred in Tirgiran Valley, in two villages known as Khak Khuday Dad and Naik, or collectively as Tirgiran:** It appears there is no longer any dispute over the general location of the operation. NZDF has accepted that the area it refers to as Tirgiran may also be referred to by locals as Khak Khuday Dad and Naik, and that three of the photographs in *Hit & Run* are of Tirgiran.<sup>11</sup> Mr Hager made a submission to the Inquiry stating that he agrees with NZDF about the overall location of the operation, the Helicopter Landing Zones (HLZs), the target buildings (A1, A2 and A3) and the New Zealand Special Air Service (NZSAS) observation point.<sup>12</sup> He indicated that some of the satellite images in *Hit & Run* should be disregarded and corrected the captions to some of the photographs in the book.<sup>13</sup> Mr Hager also said that the villagers use the name Naik for the houses on the right-hand side of the river (including A1, A2 and A3) and the name Khak Khuday Dad for the houses on the left (adjacent to the HLZ).<sup>14</sup> NZDF referred to this in its presentation at the Inquiry's first public hearing but did not specifically give a view.<sup>15</sup>

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<sup>7</sup> NZDF Official Information Act (OIA) response (13 February 2018), p 4 (available at NZDF "Operation Burnham" <[www.nzdf.mil.nz](http://www.nzdf.mil.nz)>, [OIA responses February 2018](#) from p 1); *Hit & Run*, p 36.

<sup>8</sup> NZDF *Unreferenced account of events at issue*, pp 5–6 (attached to [Memorandum for New Zealand Defence Force on the public and unclassified account of events at issue in Government Inquiry into Operation Burnham](#) (7 November 2018), available at Inquiry into Operation Burnham "Submissions to the Inquiry" <<https://operationburnham.inquiry.govt.nz>>) ["NZDF unreferenced account of events at issue"].

<sup>9</sup> *Hit & Run*, pp 22–24, 30–31, 36, 54 and 61–62.

<sup>10</sup> Inquiry into Operation Burnham "Disclosure of Documents: Documents relating to Operation Burnham", [01 – OBJ BURNHAM](#) (undated) <<https://operationburnham.inquiry.govt.nz>>.

<sup>11</sup> NZDF presentation at Public Hearing Module 1, p 10.

<sup>12</sup> [Nicky Hager response to Minute No 9 and Module 1](#) (19 March 2019), para [6.2] (available at Inquiry into Operation Burnham "Submissions to the Inquiry" <<https://operationburnham.inquiry.govt.nz>>). These locations are shown on page 9 of the NZDF presentation at Public Hearing Module 1 [Powerpoint slides](#) (available at Inquiry into Operation Burnham "Public hearings" <<https://operationburnham.inquiry.govt.nz>>) and page 7 of the NZDF [Powerpoint presentation from press conference on 27 March 2017](#) (available at NZDF "Operation Burnham" <[www.nzdf.mil.nz](http://www.nzdf.mil.nz)>).

<sup>13</sup> Nicky Hager response to Minute No 9 and Module 1 (19 March 2019), para [5] and the corresponding footnotes.

<sup>14</sup> Nicky Hager response to Minute No 9 and Module 1 (19 March 2019), para [6.1].

<sup>15</sup> NZDF presentation at Public Hearing Module 1, p 10.

6. **Coalition aircraft supported the operation:** *Hit & Run* and NZDF both say that coalition aircraft provided support to ground troops.<sup>16</sup> They agree the coalition aircraft included Apache gunships, two Chinook transport helicopters and other transport helicopter(s).<sup>17</sup> The main ground force was transported in the two Chinook helicopters.<sup>18</sup> A previously classified NZDF document recently disclosed on the Inquiry’s website also refers to an AC-130 aircraft.<sup>19</sup> *Hit & Run* says the coalition aircraft were US aircraft crewed by US personnel;<sup>20</sup> this has not been specifically addressed in the public accounts released by NZDF.
7. **The NZSAS led the operation:** *Hit & Run* says the operation was NZSAS-led and commanded by NZSAS officers.<sup>21</sup> It says the ground commander was in direct communication with pilots of the Apache helicopters. NZDF’s description appears generally consistent with this, although it says communication with the pilots was through a Joint Tactical Air Controller (JTAC) rather than by the ground commander directly.<sup>22</sup> It says the operation was a New Zealand national task approved by the Chief of Defence Force.<sup>23</sup> The NZSAS Ground Force Commander (GFC) was responsible for the conduct of the operation, including providing clearance for any engagements.
8. **Afghan Crisis Response Unit (CRU) personnel participated in the operation and formed part of the assault force:** *Hit & Run* says that some CRU personnel formed part of the assault teams and participated in house searches.<sup>24</sup> NZDF also states that CRU personnel formed part of the assault force, and says they were used to call out at A1, A2 and A3 in the local language.<sup>25</sup>
9. **The first ground troops arrived around 12.30am on 22 August:** *Hit & Run* and NZDF both state that the first ground troops arrived in Tirgirán valley around 12.30am on 22 August 2010 (local time).<sup>26</sup> They therefore appear to agree broadly on when the operation began. However, as discussed below, they give different accounts of the order in which the helicopters transporting ground troops arrived (see paragraph [24]).

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<sup>16</sup> NZDF [Operation Burnham Information Pack](#), p 9 (available at NZDF “Operation Burnham” <[www.nzdf.mil.nz](http://www.nzdf.mil.nz)>) [“NZDF Operation Burnham information pack”]; *Hit & Run*, pp 32–33.

<sup>17</sup> *Hit & Run*, p 36; NZDF unreferenced account of events at issue, pp 6–7.

<sup>18</sup> *Hit & Run*, pp 32–33; NZDF unreferenced account of events at issue, p 7; NZDF presentation at Public Hearing Module 1, p 7.

<sup>19</sup> Inquiry into Operation Burnham “Disclosure of Documents: Documents relating to Operation Burnham” [08 – 4 x contacts during obj BURNHAM](#) (24 Aug 2010) <<https://operationburnham.inquiry.govt.nz>>.

<sup>20</sup> *Hit & Run*, pp 32–33.

<sup>21</sup> *Hit & Run*, p 55.

<sup>22</sup> NZDF unreferenced account of events at issue, p 7.

<sup>23</sup> NZDF unreferenced account of events at issue, p 6.

<sup>24</sup> *Hit & Run*, pp 38 and 40.

<sup>25</sup> NZDF Briefing to Minister of Defence (4 April 2018), Annex A (Table of Analysis), p 3.

<sup>26</sup> NZDF Operation Burnham information pack, p 9; *Hit & Run*, p 36.

10. **Chinook helicopter(s) dropped off some of the ground troops in a field near Khak Khuday Dad:** *Hit & Run* says the first Chinook helicopter landed in a corn field in Khak Khuday Dad.<sup>27</sup> NZDF says both Chinooks landed at the main HLZ, in a field approximately 100m north of two buildings NZDF calls the “cache house”<sup>28</sup> (which is in the village referred to by Mr Hager as Khak Khuday Dad<sup>29</sup>). Both sources say that the Chinooks transported the assault force.<sup>30</sup> NZDF says the Chinooks also carried HLZ security and technical personnel.
11. **A smaller helicopter deposited snipers in the hills above the valley:** *Hit & Run* says a Blackhawk helicopter dropped sniper teams off at various locations in the hills.<sup>31</sup> NZDF says a transport helicopter dropped off the GFC, JTAC and an observation team that included two snipers on the ridge west of A3.<sup>32</sup>
12. **At some stage a helicopter landed near Naik:** *Hit & Run* says the second Chinook landed in a farmer’s field on the edge of Naik.<sup>33</sup> Although NZDF says the second Chinook landed at the same HLZ as the first, it does say another helicopter landed just south of A1 at a later stage to evacuate a wounded NZSAS soldier<sup>34</sup> (which is in the village Mr Hager refers to as Naik<sup>35</sup>). However, the times indicated for these two landings are quite different: *Hit & Run* says the second Chinook landed sometime after 1am,<sup>36</sup> whereas NZDF says the casualty was not evacuated until approximately 2.37am<sup>37</sup>. *Hit & Run* also refers to a Blackhawk helicopter landing to evacuate the injured soldier, but it is unclear exactly where or when this landing is said to have occurred.<sup>38</sup>
13. **Sometime around 1am helicopters fired rounds in the area near Khak Khuday Dad:** *Hit & Run* says that almost immediately after ground troops arrived in Khak Khuday Dad (which it says occurred sometime after 1am), Apache gunships flew into the village and began a ferocious attack that lasted 10 minutes.<sup>39</sup> NZDF says aircraft engaged armed insurgents moving up the ridgeline behind the cache house (which is in the village referred to by Mr Hager as Khak Khuday Dad<sup>40</sup>) around 12.54am.<sup>41</sup>

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<sup>27</sup> *Hit & Run*, p 36.

<sup>28</sup> NZDF presentation at Public Hearing Module 1, p 5.

<sup>29</sup> Nicky Hager response to Minute No 9 and Module 1 (19 March 2019), para [6.1].

<sup>30</sup> *Hit & Run*, p 38; NZDF unreferenced account of events at issue, p 7.

<sup>31</sup> *Hit & Run*, p 36.

<sup>32</sup> NZDF unreferenced account of events at issue, p 8.

<sup>33</sup> *Hit & Run*, p 38.

<sup>34</sup> NZDF presentation at Public Hearing Module 1, p 6. These two landing zones are shown on page 9 of the powerpoint slides accompanying the presentation.

<sup>35</sup> Nicky Hager response to Minute No 9 and Module 1 (19 March 2019), para [6.1].

<sup>36</sup> *Hit & Run*, p 36.

<sup>37</sup> NZDF unreferenced account of events at issue, p 9.

<sup>38</sup> *Hit & Run*, pp 41–42. The book states that one source said the injury occurred at one of Kalta’s houses. It then says the injured soldier was carried “along the valley” to meet the Blackhawk helicopter.

<sup>39</sup> *Hit & Run*, p 36.

<sup>40</sup> Nicky Hager response to Minute No 9 and Module 1 (19 March 2019), para [6.1].

<sup>41</sup> NZDF unreferenced account of events at issue, p 8; NZDF presentation at Public Hearing Module 1, pp 7–8.

14. **Civilians may have been killed and/or injured, and buildings damaged, by the Apache fire:** *Hit & Run* says the Apaches fired at Khak Khuday Dad, destroying buildings, killing two people (Abdul Faqir, a farmer, and Fatima, a small child) and injuring 15.<sup>42</sup> NZDF denies coalition aircraft deliberately targeted or fired on any buildings.<sup>43</sup> However, it accepts that Apache rounds fell short and struck two buildings (the cache house), that civilians may have been in the buildings at the time, and that some may have been killed.<sup>44</sup> NZDF has also stated that unconfirmed post-operation reporting referred to the death of a child.<sup>45</sup>
15. **Sometime after 1am, an NZSAS sniper shot and killed a person on the ridge behind Khak Khuday Dad:** *Hit & Run* and NZDF both say that a person climbed the hill behind the village Mr Hager refers to as Khak Khuday Dad directly toward the sniper position, and was shot and killed.<sup>46</sup> *Hit & Run* says this occurred sometime after 1am. This is broadly consistent with NZDF's account, which says the engagement occurred around 1.25am. As discussed below, however, the public accounts take different positions on the identity of the person shot and whether a second person was also shot by snipers (see paragraph [33]).
16. **The houses of the main targets were searched and found to be unoccupied:** The authors and NZDF both say that the two main buildings targeted were the homes of Kalta (Objective Burnham) and Naimatullah (Objective Nova), which were about 300m apart.<sup>47</sup> They also agree that both houses were searched and found to be unoccupied.<sup>48</sup> The targets were not found. NZDF refers to Kalta's house as A1 and Naimatullah's house as A3 (A2, the third building of interest, was a smaller building next to A1).<sup>49</sup>

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<sup>42</sup> *Hit & Run*, pp 50–53.

<sup>43</sup> NZDF Operation Burnham information pack, pp 9, 18 and 24.

<sup>44</sup> NZDF presentation at Public Hearing Module 1, pp 7–8; NZDF Operation Burnham information pack, pp 9, 18 and 24; NZDF unreferenced account of events at issue, p 8; *Transcript: Lt Gen Tim Keating answers questions on Operation Burnham as part of the Press Conference with Commodore Ross Smith and Colonel Lisa Ferris* (28 March 2017), pp 7–9 (available at NZDF "Operation Burnham" <[www.nzdf.mil.nz](http://www.nzdf.mil.nz)>, [OIA responses August 2017](#) from p 2) ["Transcript from NZDF's 28 March 2017 Press Conference"].

<sup>45</sup> NZDF OIA response (13 February 2018), pp 3–4 (available at NZDF "Operation Burnham" <[www.nzdf.mil.nz](http://www.nzdf.mil.nz)>, [OIA responses February 2018](#) from p 1).

<sup>46</sup> *Hit & Run*, pp 56–58; NZDF presentation at Public Hearing Module 1, pp 8–9; NZDF unreferenced account of events at issue, p 9.

<sup>47</sup> *Hit & Run*, p 38; NZDF presentation at Public Hearing Module 1, pp 6 and 8–9; NZDF unreferenced account of events at issue, pp 9–10.

<sup>48</sup> *Hit & Run*, p 39; NZDF presentation at Public Hearing Module 1, pp 8–9.

<sup>49</sup> NZDF presentation at Public Hearing Module 1, p 6.

17. **Ammunition was recovered by NZSAS troops during the operation:** *Hit & Run* and NZDF both state that some ammunition was found by NZSAS troops, including bullets and rocket-propelled grenades (RPGs).<sup>50</sup> *Hit & Run* says the ammunition was found in a building associated with one of the insurgent leaders, “probably Naimatullah”, while NZDF says ammunition was found in both of the targets’ houses (A1 and A3).<sup>51</sup> NZDF also says that, in addition to various types of ammunition, ground troops recovered an RPG launcher and motors, an AK-47, a bipod (two-legged rifle rest) and a pistol holder from A1 and A3.<sup>52</sup> *Hit & Run* says that the building where the ammunition was found was later “blown up”,<sup>53</sup> while NZDF says weapons and ammunition were detonated near A1 causing a fire in A1.<sup>54</sup>
18. **The targets’ houses both caught fire:** The authors and NZDF agree that buildings belonging to both targets (Kalta and Naimatullah) caught fire.<sup>55</sup> The circumstances are disputed, as discussed below at paragraph [31].
19. **An NZSAS member was injured when the wall of a building collapsed on him:** *Hit & Run* and NZDF both state that an NZSAS member was injured when the wall of a building collapsed on him.<sup>56</sup> He was later evacuated by helicopter (according to NZDF, around 2.37am<sup>57</sup>). *Hit & Run* says the casualty, named “Mo”, was evacuated by a Blackhawk helicopter and taken to the US Air Force hospital at Ramstein in Germany.<sup>58</sup> This is not addressed by NZDF. The cause of the wall collapsing is disputed (see paragraph [36] below).
20. **Ground troops left behind information from ISAF:** *Hit & Run* says troops left a large piece of cotton outside one of the houses that had been burned, with an ISAF logo and a phone number to call if civilians had been killed or injured.<sup>59</sup> NZDF says ground troops distributed an ISAF information pamphlet about the operation.<sup>60</sup> It has not specified what the pamphlet contained (see further paragraph [50] below).
21. **Ground troops departed in helicopters before 4am:** *Hit & Run* says ground troops departed in the helicopters back to Camp Warehouse in Kabul shortly before 4am.<sup>61</sup> This is broadly consistent with NZDF’s account that ground forces were extracted by helicopter from the HLZ at approximately 3.46am.<sup>62</sup>

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50 *Hit & Run*, p 40; NZDF presentation at Public Hearing Module 1, p 8; NZDF unreferenced account of events at issue, pp 10–11.

51 *Hit & Run*, p 40; NZDF presentation at Public Hearing Module 1, pp 8–9; NZDF unreferenced account of events at issue, p 10.

52 NZDF unreferenced account of events at issue, pp 10–11.

53 *Hit & Run*, p 40.

54 NZDF presentation at Public Hearing Module 1, p 9; NZDF unreferenced account of events at issue, p 11.

55 *Hit & Run*, pp 39–40; NZDF presentation at Public Hearing Module 1, p 9.

56 *Hit & Run*, p 41; NZDF unreferenced account of events at issue, p 9.

57 NZDF unreferenced account of events at issue, p 9.

58 *Hit & Run*, pp 41–42.

59 *Hit & Run*, p 69.

60 NZDF Operation Burnham information pack, p 14.

61 *Hit & Run*, pp 44 and 48.

62 NZDF presentation at Public Hearing Module 1, p 9.

22. **Two people named Mohammad Iqbal and Abdul Qayoom were killed in the operation:** Of the six people *Hit & Run* says were killed in the operation, NZDF has acknowledged that two were among the dead: Mohammad Iqbal and Abdul Qayoom.<sup>63</sup> However, *Hit & Run* says they were civilians, while NZDF says they were insurgents.<sup>64</sup>
23. **Senior NZSAS personnel watched a video feed of the operation from Kabul:** *Hit & Run* and NZDF both state that during the operation senior NZSAS personnel were watching a video feed at the NZSAS Headquarters in Kabul.<sup>65</sup> They had the ability to contact troops on the ground if required. NZDF says the video feed showed near real-time footage from an Intelligence, Surveillance and Reconnaissance Remote Piloted Aircraft (ISR RPA), and it was being watched by command personnel and the legal adviser.<sup>66</sup> (*Hit & Run* does not specify the type of footage or which senior personnel watched it).

*Areas where the public accounts of NZDF and the authors diverge*

24. **Were the targets in Tirgiran at the time of the operation?** While *Hit & Run* and NZDF agree that the targets were not found in the buildings searched, they appear to take different views about whether the targets were present in the area around the time of the operation. *Hit & Run* says the insurgents were hiding out in the mountains at the time of the raid, following a well-known pattern of retreating after conducting an attack.<sup>67</sup> NZDF has not addressed this in its public accounts. However, in a previously classified document disclosed on the Inquiry's website, which was prepared the day after the operation, the NZSAS assessed that it was likely the targets were at the location and left when they heard the helicopters arrive.<sup>68</sup>
25. **In what order did the transport helicopters arrive?** NZDF says the first transport helicopter to arrive was a Chinook, which landed at the main HLZ at 12.30am.<sup>69</sup> This was followed by the command helicopter at 12.45am (on the ridge west of A3)<sup>70</sup> and the second Chinook at 12.48am (at the main HLZ).<sup>71</sup> *Hit & Run* says a Blackhawk helicopter dropped off sniper teams in the hills around 12.30am, and the Chinooks did not arrive until after 1am (one at Khak Khuday Dad and one at Naik).<sup>72</sup>

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63 NZDF "[Second release of information after Ombudsman direction](#)" (23 May 2018) <nzdf.mil.nz> ["NZDF Second release of information after Ombudsman direction"]; *Hit & Run*, p 126.

64 NZDF Second release of information after Ombudsman direction; *Hit & Run*, pp 62–63.

65 NZDF OIA Response (26 November 2018), p 2 (available at NZDF "Operation Burnham" <www.nzdf.mil.nz>, [OIA responses November 2018](#) from p 24); NZDF unreferenced account of events at issue, p 7; *Hit & Run* at 42–43.

66 NZDF OIA Response (26 November 2018), p 2 (available at NZDF "Operation Burnham" <www.nzdf.mil.nz>, [OIA responses November 2018](#) from p 24); NZDF unreferenced account of events at issue, p 7.

67 *Hit & Run*, pp 30–31.

68 Inquiry into Operation Burnham "Disclosure of Documents: Documents relating to Operation Burnham", [04 –Intelligence Debrief Report TF 81 Intelligence Cell](#) (23 Aug 2010), para [5] <<https://operationburnham.inquiry.govt.nz>> ["NZDF Intelligence Debrief Report"].

69 NZDF unreferenced account of events at issue, p 7.

70 NZDF presentation at Public Hearing Module 1, pp 6–7.

71 NZDF presentation at Public Hearing Module 1, p 7.

72 *Hit & Run*, p 36.

26. **How many troops were on the helicopters?** *Hit & Run* says there were 60 to 70 NZSAS and CRU troops on the two US Chinook helicopters,<sup>73</sup> in addition to a smaller group of troops (no number specified) on the Blackhawk helicopter.<sup>74</sup> NZDF has not specified how many troops were involved in the operation, but has said that 60–70 troops (with weapons, armour, ground kit and a flight crew) would not fit on two Chinooks.<sup>75</sup>
27. **Were there families sleeping in tents near the HLZ where the first Chinook landed?** *Hit & Run* says some families were sleeping in tents in the fields near where the first Chinook landed (approximately 250m away).<sup>76</sup> It says people ran from the tents to hide when the helicopter arrived. NZDF says the ISR RPA inspected the landing zone before the Chinooks arrived and would have detected any tents or people in the area.<sup>77</sup> It says no tents or people are visible in the ISR RPA footage or the Apache footage.
28. **Where did the second Chinook helicopter land?** *Hit & Run* says the second Chinook landed in a farmer’s field on the edge of Naik.<sup>78</sup> NZDF says it landed at the same HLZ as the first Chinook, in a field approximately 100m north of the “cache house”<sup>79</sup> (which is in the village Mr Hager refers to as Khak Khuday Dad<sup>80</sup>).
29. **Did air support deliberately fire at buildings?** *Hit & Run* says that air support “attacked” or fired at buildings in both Khak Khuday Dad and Naik.<sup>81</sup> A dozen buildings were bombed or burnt (although it appears this total includes houses allegedly burned by ground troops).<sup>82</sup> The book says houses associated with people assumed to be insurgents were systematically destroyed.<sup>83</sup> However, it says the houses destroyed in Khak Khuday Dad were not being used by insurgents for military purposes; they were civilian homes. Some of the houses destroyed in Naik belonged to insurgents (Kalta and Naimatullah), but others did not. NZDF says coalition aircraft did not deliberately target or fire on any buildings.<sup>84</sup> NZDF has only acknowledged damage to A1 and A3 (through accidental fires) and the two buildings hit by stray Apache helicopter rounds (the cache house).

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<sup>73</sup> *Hit & Run*, p 32.

<sup>74</sup> *Hit & Run*, p 35.

<sup>75</sup> NZDF *Operation Burnham – Update on a number of issues including further analysis of the book Hit and Run* (Briefing to Minister of Defence, 4 April 2018), Annex A (Table of Analysis), p 1 (available at NZDF “Operation Burnham” <[www.nzdf.mil.nz](http://www.nzdf.mil.nz)>, [OIA responses October 2018](#) from p 5) [“NZDF Briefing to Minister of Defence (4 April 2018)”].

<sup>76</sup> *Hit & Run*, pp 48–49.

<sup>77</sup> NZDF Briefing to Minister of Defence (4 April 2018), p 9.

<sup>78</sup> *Hit & Run*, p 38.

<sup>79</sup> NZDF presentation at Public Hearing Module 1, p 5 and the accompanying powerpoint slides, pp 9–10.

<sup>80</sup> Nicky Hager response to Minute No 9 and Module 1 (19 March 2019), para [6.1].

<sup>81</sup> *Hit & Run*, pp 36 and 41.

<sup>82</sup> *Hit & Run*, p 48.

<sup>83</sup> *Hit & Run*, pp 60–62.

<sup>84</sup> NZDF Operation Burnham information pack, pp 14, 15 and 18.

30. **Could ground troops see the air support firing at buildings?** *Hit & Run* says that during the air attack on Khak Khuday Dad ground troops were only 200m away and could see armaments hitting houses.<sup>85</sup> During the attack on Naik troops gathered in an open area and could see the rockets and cannon fire hitting houses.<sup>86</sup> NZDF says NZSAS troops had already passed the cache house by the time the helicopter rounds struck the buildings and were not in a position to see this occur.<sup>87</sup> It does not refer to any other buildings being struck.
31. **Were the fires in A1 and A3 deliberately lit?** *Hit & Run* says that both fires were intentionally lit. In Kalta's house a trooper fired his weapon into a cotton mattress, and in Naimatullah's house troops torched a room containing religious books.<sup>88</sup> NZDF says the fires were accidental, resulting from an unattended cooking fire in A3 and debris from the destruction of insurgent weapons falling on the roof of A1.<sup>89</sup>
32. **Were other buildings set alight or blown up by ground troops?** NZDF says only A1 and A3 were burned.<sup>90</sup> *Hit & Run* says a separate unoccupied building belonging to Naimatullah (where ammunition was found) was blown up, and Naimatullah's father's house (20m away from Naimatullah's) was set alight.<sup>91</sup> NZDF says the house pictured in the book as Naimatullah's father's house did not exist at the time of the operation.<sup>92</sup>

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<sup>85</sup> *Hit & Run*, p 36.

<sup>86</sup> *Hit & Run*, p 41.

<sup>87</sup> NZDF Operation Burnham information pack, pp 18 and 24.

<sup>88</sup> *Hit & Run*, pp 39–40.

<sup>89</sup> NZDF presentation at Public Hearing Module 1, p 9; NZDF Operation Burnham information pack, p 15.

<sup>90</sup> NZDF presentation at Public Hearing Module 1, p 9; NZDF Operation Burnham information pack, p 15.

<sup>91</sup> *Hit & Run*, pp 39–40.

<sup>92</sup> NZDF Briefing to Minister of Defence (4 April 2018), Annex A (Table of Analysis), p 2.

33. **How many people were shot by the NZSAS snipers, and what was their identity?** *Hit & Run* identifies the person who was shot while running toward the snipers as Islamuddin, who it says was a civilian (a newly graduated school teacher).<sup>93</sup> It also says another civilian, Abdul Qayoom, was shot by snipers while walking along a path below their position.<sup>94</sup> (Note *Hit & Run* says there were two men called Abdul Qayoom killed in the operation – this is a different person to the Abdul Qayoom described as Naimatullah’s brother.) NZDF says only one person, an insurgent, was shot<sup>95</sup> and no other shots were fired by NZSAS troops during the operation.<sup>96</sup> The man was sighted by NZSAS personnel<sup>97</sup> and described as an older man with a beard who was “living rough”.<sup>98</sup> NZDF has said that the man’s “identity as an insurgent was confirmed” but security conditions precluded collection of the deceased or biometric data which may have led to conclusive personal identification.<sup>99</sup> Elsewhere it has stated that all nine of the insurgents killed in the operation have been identified,<sup>100</sup> and it is unaware of anyone named Islamuddin being killed.<sup>101</sup> It is unclear based on these statements whether the man shot by the sniper was identified by NZDF or not.
34. **Was intelligence seized from A3?** *Hit & Run* says various materials were seized from A3 as intelligence.<sup>102</sup> An NZDF report states that no documents or cell phones were found during the operation.<sup>103</sup>
35. **Were buildings other than A1, A2 and A3 entered and/or searched?** *Hit & Run* says that ground troops searched houses in Naik before air support fired on the village.<sup>104</sup> The book cites one trooper as saying that he searched five houses and found only elderly people and women. NZDF says there was no house-to-house search.<sup>105</sup> More specifically, it also says the cache house was not entered or searched by ground forces at any stage.<sup>106</sup>

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93 *Hit & Run*, pp 56–58.

94 *Hit & Run*, p 59.

95 NZDF presentation at Public Hearing Module 1, pp 8–9; NZDF unreferenced account of events at issue, p 9.

96 NZDF Operation Burnham information pack, p 12.

97 [Memorandum for New Zealand Defence Force Relating to a Presentation Made at the Public Hearing of the Inquiry on 4 April 2019](#) (11 April 2019), para [4] (available at Inquiry into Operation Burnham “Submissions to the Inquiry” <<https://operationburnham.inquiry.govt.nz>>).

98 NZDF Briefing to Minister of Defence (4 April 2018), Annex A (Table of Analysis), p 5.

99 NZDF Operation Burnham information pack, p 12. See also Transcript from NZDF’s 28 March 2017 Press Conference, p 4 (stating that NZDF did not have the names of the nine insurgents killed).

100 NZDF Second release of information after Ombudsman direction.

101 NZDF Second release of information after Ombudsman direction.

102 *Hit & Run*, pp 38–39.

103 NZDF Intelligence Debrief Report, para [6].

104 *Hit & Run*, p 40.

105 NZDF Briefing to Minister of Defence (4 April 2018), p 4.

106 NZDF unreferenced account of events at issue, p 11.

36. **What caused the collapse of the wall that injured an NZSAS member?** *Hit & Run* says the wall collapsed because it was hit by rounds from an Apache helicopter.<sup>107</sup> NZDF says the wall and part of the roof of A1 collapsed after explosives were used to make an entry point for troops.<sup>108</sup>
37. **To what extent did ground troops see or interact with civilians?** *Hit & Run* says ground troops searched houses in Naik and encountered only elderly people and women.<sup>109</sup> It also says CRU personnel saw an old man with a shrapnel wound as they were heading back to the HLZ and covered his wound with a field dressing.<sup>110</sup> NZDF says the only civilians seen were two women and an old man at a building northeast of the HLZ.<sup>111</sup> It says a CRU member advised them on their safety. The elderly man approached further times, and on one such occasion a CRU member fired a single shot in the man's direction before he had been identified. NZDF says ground forces did not see or hear any wounded or injured villagers.<sup>112</sup>
38. **What did CRU personnel do during the operation?** While *Hit & Run* and NZDF both say that some CRU personnel formed part of the assault force, the book says other CRU personnel had "nothing to do".<sup>113</sup> NZDF says other CRU personnel were used as HLZ security, including responding to sightings of villagers.<sup>114</sup>
39. **Were Mohammad Iqbal and Abdul Qayoom civilians or insurgents?** NZDF claims that Mohammad Iqbal and Abdul Qayoom were insurgents, while *Hit & Run* says they were civilians.<sup>115</sup> *Hit & Run* says they were the father and brother of Naimatullah, but they were not themselves insurgents or supporters of the Taliban.<sup>116</sup> NZDF has not commented on whether the two men were related to Naimatullah or why they were considered to be insurgents.

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<sup>107</sup> *Hit & Run*, p 41.

<sup>108</sup> NZDF unreferenced account of events at issue, p 9.

<sup>109</sup> *Hit & Run*, p 40.

<sup>110</sup> *Hit & Run*, pp 43–44.

<sup>111</sup> NZDF unreferenced account of events at issue, p 11.

<sup>112</sup> NZDF Briefing to Minister of Defence (4 April 2018), Annex A (Table of Analysis), p 6.

<sup>113</sup> *Hit & Run*, pp 38 and 40.

<sup>114</sup> NZDF Briefing to Minister of Defence (4 April 2018), Annex A (Table of Analysis), p 3.

<sup>115</sup> NZDF Second release of information after Ombudsman direction; *Hit & Run*, pp 62–63.

<sup>116</sup> *Hit & Run*, pp 62–63.

40. **How many insurgents were killed in the operation? Were they identified?** NZDF says nine insurgents were killed<sup>117</sup> and it knows the identity of all nine<sup>118</sup> (although earlier statements suggested their names were not known<sup>119</sup>). NZDF has not named any of the insurgents it says were killed other than Mohammad Iqbal and Abdul Qayoom. *Hit & Run* does not explicitly state that no insurgents were killed, but it does say that the people killed and injured in the attack were innocent civilians.<sup>120</sup> The deaths it refers to are of six civilians (civilian deaths are discussed in paragraph [46] below).

*Factual issues raised by the authors or NZDF that have not been publicly responded to by the other*

41. **Were there other targets aside from Kalta and Naimatullah?** *Hit & Run* suggests that in addition to the two main targets (Kalta and Naimatullah), Abdul Ghafar from Khak Khuday Dad was also “probably” a target, and the troops hoped they might find Qari Miraj as well although he lived elsewhere.<sup>121</sup> These claims have not been publicly addressed by NZDF.

42. **When did the non-transport air support arrive?** NZDF says the ISR RPA arrived at Tirgiran valley first, followed soon after by the two Apache helicopters at approximately 11.59pm.<sup>122</sup> *Hit & Run* does not mention the ISR RPA or say what time the Apaches arrived. It says the Apache attack on Khak Khuday Dad began shortly after the first Chinook landed (sometime after 1am),<sup>123</sup> but it does not state whether the Apaches were already overhead of the objective area before then.

43. **When and where was the command group dropped off?** NZDF says a command helicopter landed the GFC, JTAC and observation team (including a sniper pair) at an HLZ on a ridge west of A3 at 12.45am.<sup>124</sup> This was approximately 300m south of the planned HLZ, which proved to be unsuitable for landing due to the uneven terrain. *Hit & Run* does not specify when the GFC, JTAC or command group arrived or where they were located. It says the snipers were dropped off in the mountains by the Blackhawk helicopter around 12.30am,<sup>125</sup> and that the sniper pair that shot Islamuddin was positioned at a lookout point above Khak Khuday Dad.<sup>126</sup> However it does not state whether those snipers were part of the command group.

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<sup>117</sup> Transcript from NZDF’s 28 March 2017 Press Conference, p 4.

<sup>118</sup> NZDF Second release of information after Ombudsman direction.

<sup>119</sup> Transcript from NZDF’s 28 March 2017 Press Conference, p 4. See also paragraph [33] above in relation to the identification of the man shot by the sniper.

<sup>120</sup> *Hit & Run*, pp 55 and 63.

<sup>121</sup> *Hit & Run*, p 36.

<sup>122</sup> NZDF unreferenced account of events at issue, p 6.

<sup>123</sup> *Hit & Run*, p 36.

<sup>124</sup> NZDF unreferenced account of events at issue, p 8; NZDF presentation at Public Hearing Module 1, pp 6–7.

<sup>125</sup> *Hit & Run*, p 36.

<sup>126</sup> *Hit & Run*, pp 56–58.

44. **Where and in what circumstances were Mohammad Iqbal and Abdul Qayoom killed?** *Hit & Run* says Apache helicopters pursued Mohammad Iqbal and Abdul Qayoom when they left a building near Naimatullah's house and headed along a track northwest out of the village.<sup>127</sup> They were fired at and killed about 800m from Naik near a rocky corner of the track. As noted above, NZDF has confirmed Mohammad Iqbal and Abdul Qayoom were killed, but says they were insurgents.<sup>128</sup> It has not specified the circumstances or location in which they were killed. NZDF's public accounts do not refer to any engagements 800m northwest of Naik.
45. **Were there air asset engagements south of A3? If so, what did these engagements involve?** *Hit & Run* does not mention any air engagements south of A3 / Naik. NZDF says there were two air engagements south of A3. At 1.23am the Apache helicopter crew engaged positively identified armed insurgents.<sup>129</sup> Around 2.55am "support aircraft" engaged a group of four insurgents moving toward high ground overlooking the valley. A previously classified NZDF document recently disclosed on the Inquiry's website suggests this was an "integrated engagement by AC-130 and AWT [Air Weapons Team]."<sup>130</sup> NZDF has not publicly released any further information about the location or circumstances of these engagements.
46. **How many civilians were killed in the operation?** *Hit & Run* alleges that six civilians were killed in the operation, specifically, five men and a female child.<sup>131</sup> NZDF has confirmed that two of the six people named in *Hit & Run* were killed, but says they were insurgents not civilians (Mohammad Iqbal and Abdul Qayoom).<sup>132</sup> NZDF has also said that another of the six, Islamuddin, was not among the people it knows to have been killed.<sup>133</sup> One of the remaining civilians alleged to have been killed in *Hit & Run* (Fatima) was a three-year-old child.<sup>134</sup> It is unclear whether the final two people named in *Hit & Run* (Abdul Faqir and a second man named Abdul Qayoom) correlate to any of the nine insurgents NZDF says were killed. NZDF has not said how many civilians were or may have been killed in addition to the nine insurgents it has identified. It has stated that there was unconfirmed reporting after the operation of a child being killed.<sup>135</sup>
47. **How many civilians were injured in the operation?** *Hit & Run* says 15 people were injured in the operation, all of them civilians.<sup>136</sup> NZDF has stated that unconfirmed post-operation reporting referred to a woman being injured.<sup>137</sup> Aside from this it has not commented on potential injuries to civilians.

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<sup>127</sup> *Hit & Run*, pp 42 and 62.

<sup>128</sup> NZDF Second release of information after Ombudsman direction.

<sup>129</sup> NZDF unreferenced account of events at issue, p 10; NZDF presentation at Public Hearing Module 1, p 9.

<sup>130</sup> Inquiry into Operation Burnham "Disclosure of Documents: Documents relating to Operation Burnham" [08 – 4 x contacts during obj BURNHAM](https://operationburnham.inquiry.govt.nz) (24 Aug 2010) <<https://operationburnham.inquiry.govt.nz>>.

<sup>131</sup> *Hit & Run*, p 126 (see also pp 51–53, 56–59 and 62).

<sup>132</sup> NZDF Second release of information after Ombudsman direction.

<sup>133</sup> NZDF Second release of information after Ombudsman direction.

<sup>134</sup> *Hit & Run*, p 51.

<sup>135</sup> NZDF OIA response (13 February 2018), pp 3–4 (available at NZDF "Operation Burnham" <[www.nzdf.mil.nz](http://www.nzdf.mil.nz)>, [OIA responses February 2018](#) from p 1); *Hit & Run*, p 51.

<sup>136</sup> *Hit & Run*, pp 55 and 126.

<sup>137</sup> NZDF OIA response (13 February 2018), pp 3–4 (available at NZDF "Operation Burnham" <[www.nzdf.mil.nz](http://www.nzdf.mil.nz)>, [OIA responses February 2018](#) from p 1).

48. **What video footage was recorded during the operation?** NZDF says the ISR RPA recorded video footage during the operation, which was viewed near real-time in Kabul.<sup>138</sup> It has also referred to video footage from the weapons system of coalition aircraft,<sup>139</sup> specifically Apache helicopters<sup>140</sup>. It says no video footage was taken by NZDF.<sup>141</sup> Although helmet cameras were being trialled by NZSAS troops, they were not used during the operation because the trial did not include night vision equipment.<sup>142</sup> *Hit & Run* mentions that senior officers were watching a video feed during the operation, but otherwise does not comment on the type or nature of the video footage recorded by NZDF or coalition forces.<sup>143</sup> The book does refer to video footage taken by villagers after the operation showing damage to houses in Khak Khuday Dad<sup>144</sup> and insurgents attending a funeral held for dead villagers.<sup>145</sup>
49. **Did a CRU member lose his pistol?** *Hit & Run* says that as the Afghan commandos walked back to the helicopters, one of them lost his pistol and could not find it again.<sup>146</sup> This is not mentioned in NZDF's accounts.
50. **What was the nature of the ISAF information left behind by ground troops?** *Hit & Run* says the large piece of cotton with an ISAF logo left behind by ground troops included a phone number to call if civilians had been killed or injured.<sup>147</sup> NZDF's public accounts do not say what information was included in the ISAF pamphlet/poster or whether a phone number was given. A previously classified NZDF document recently disclosed on the Inquiry's website says the posters explained the reasons for the operation.<sup>148</sup>

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<sup>138</sup> NZDF OIA response (26 November 2018), p 2 (available at NZDF "Operation Burnham" <[www.nzdf.mil.nz](http://www.nzdf.mil.nz)>, [OIA responses November 2018](#) from p 24); NZDF unreferenced account of events at issue, p 7.

<sup>139</sup> NZDF Operation Burnham information pack, p 30.

<sup>140</sup> NZDF Briefing to Minister of Defence (4 April 2018), p 10.

<sup>141</sup> NZDF OIA Response (4 May 2017), p 2 (available at NZDF "Operation Burnham" <[www.nzdf.mil.nz](http://www.nzdf.mil.nz)>, [OIA responses May 2017](#) from p 9).

<sup>142</sup> NZDF OIA response (13 February 2018), p 4 (available at NZDF "Operation Burnham" <[www.nzdf.mil.nz](http://www.nzdf.mil.nz)>, [OIA responses February 2018](#) from p 1).

<sup>143</sup> *Hit & Run*, p 42.

<sup>144</sup> *Hit & Run*, p 61.

<sup>145</sup> *Hit & Run*, p 76.

<sup>146</sup> *Hit & Run*, p 43.

<sup>147</sup> *Hit & Run*, p 69.

<sup>148</sup> NZDF Intelligence Debrief Report, para [7].

## Operation Nova (date contested)

### *Areas where the public accounts of NZDF and the authors broadly align*

51. **There was a second operation in Tirgiran valley:** The NZSAS and CRU returned to Tirgiran Valley for a second operation (Operation Nova) after Operation Burnham.<sup>149</sup> The operation occurred after midnight (at approximately 2am, according to NZDF) and NZSAS and CRU troops were in the valley for an hour or less.
52. **The operation was unsuccessful in locating the insurgents:** Both NZDF and *Hit & Run* say that the occupants of the targeted buildings were not present when NZSAS and CRU troops searched them.<sup>150</sup>
53. **No shots were fired during the operation:** Both NZDF and *Hit & Run* state that no shots were fired during the operation.<sup>151</sup>

### *Areas where the public accounts of NZDF and the authors diverge*

54. **What was the purpose of the operation?** NZDF has stated that the operation targeted the residence of Objective Nova (Naimatullah) based on the extant arrest warrant.<sup>152</sup> *Hit & Run* states that it was a revenge operation and the purpose was to “wreck the houses again, this time more thoroughly” (specifically Kalta’s house).<sup>153</sup> It also quotes an NZDF source as saying that an internal NZDF document stated the purpose of the raid was to scare the insurgents and discourage them from further attacks.
55. **When did the second operation take place?** *Hit & Run* states that the operation took place around 10 days after Operation Burnham, which would have been in late August or early September 2010.<sup>154</sup> NZDF has stated that it took place on 3 October 2010.<sup>155</sup>
56. **Which buildings were targeted in the operation?** NZDF says Objective Nova’s residence (A3) was the main target of the operation, but A1, A2 and A3 were all entered and searched.<sup>156</sup> *Hit & Run* only specifically refers to Kalta’s house (A1) being entered by troops, but it also mentions a second house further away may have been blown up.<sup>157</sup>

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<sup>149</sup> *Hit & Run*, pp 79–81; NZDF unreferenced account of events at issue, pp 12–13.

<sup>150</sup> *Hit & Run*, p 80; NZDF unreferenced account of events at issue, p 13.

<sup>151</sup> *Hit & Run*, p 80; NZDF unreferenced account of events at issue, p 13.

<sup>152</sup> NZDF unreferenced account of events at issue, p 12.

<sup>153</sup> *Hit & Run*, pp 80–81.

<sup>154</sup> *Hit & Run*, p 79.

<sup>155</sup> NZDF unreferenced account of events at issue, p 12.

<sup>156</sup> NZDF unreferenced account of events at issue, pp 12–13.

<sup>157</sup> *Hit & Run*, pp 80–81.

57. **Were the buildings searched?** NZDF has stated that A1, A2 and A3 were searched and no insurgents were found.<sup>158</sup> *Hit & Run* states that Kalta's house (A1) was not searched, and was blown up with explosives instead.<sup>159</sup> The book does not state whether the other buildings were searched or not.

58. **How damaged were the target buildings as a result of the operation?** NZDF has stated that "No damage to property occurred other than minor damage from entry into building A3."<sup>160</sup> *Hit & Run* states that entry to Kalta's house using explosives caused "much more damage than the first time," and states that one of their sources thought a second house was also "blown up".<sup>161</sup>

*Factual issues raised by the authors or NZDF that have not been publicly responded to by the other*

59. **Did CRU troops take part in the entry and search of A1 and A2?** *Hit & Run* states that the assault team that searched Kalta's house consisted entirely of NZSAS troops.<sup>162</sup> NZDF has not commented on whether CRU troops were present during this part of the operation.

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<sup>158</sup> NZDF unreferenced account of events at issue, p 13.

<sup>159</sup> *Hit & Run*, pp 80–81.

<sup>160</sup> NZDF unreferenced account of events at issue, p 13.

<sup>161</sup> *Hit & Run*, pp 80–81.

<sup>162</sup> *Hit & Run*, p 80.

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