

Export

From: LTC
(NZL)
USSOCO
M
SOCOM
J3-I
To: DCSO , LTCOL PSR(IC)3 , CAPT PSR(IC)3
CC: LTCOL PSR(IC)3 , MAJ
Subject: Re: [Non-DoD Source] FW: HNR DDT: Summary of 2 May:UNCLASSIFIED

Wed, 03
May
2017
14:43:0
7 GMT

Ack agree.

From: DCSO , LTCOL
Sent: Wednesday, May 3, 2017 9:04 AM
To: PSR(IC)3 LTC (NZL) USSOCOM SOCOM J3-I; PSR(IC)3 , CAPT;
PSR(IC)3 , LTCOL
Cc: PSR(IC)3 , MAJ
Subject: RE: [Non-DoD Source] FW: HNR DDT: Summary of 2 May:UNCLASSIFIED

Evening - agreed, however we will also leverage PSR(R)1 reps at GCPSU.

No other comments from me.

Lieutenant Colonel PSR(IC)3
Deputy Commander Special Operations
Special Operations Command
NEW ZEALAND DEFENCE FORCE
M PSR(IC)3 , Internal ISTN PSR(
U: PSR(IC)3 | PSR(R)2, PSR(R)3/SWAN: PSR(IC)3

PSR(R)1 PSR(IC)3
www.nzdf.mil.nz

From: PSR(IC)3 LTC (NZL) USSOCOM SOCOM J3-I
PSR(IC)3
Date: Wednesday, 03 May 2017, 7:32 PM
To: PSR(IC)3 , CAPT
PSR(IC)3 , DCSO
, LTCOL PSR(IC)3
LTCOL PSR(IC)3
Cc: PSR(IC)3 , MAJ PSR(IC)3
Subject: Re: [Non-DoD Source] FW: HNR DDT: Summary of 2 May:UNCLASSIFIED

PSR(IC)3/Team: Ack all below, appreciate the heads up. PSR(IC) and I meet with DA LON tomorrow so this is timely. I agree with your points in purple that PSR(R)1 are the best entry point to both PSR(R)1 . I can pre-warm their LNO in Tampa with an email but equally could wait until I

return to Tampa on Monday to talk face to face and see how the week progresses. They're not going anywhere. Two points:
 1) On your US leg are you coming to Tampa? (CENTCOM - if so COL Shaw will need informing and there are coord timelines etc. If so when, do you need any support)
 2) Please note that PSR(IC)3 has been in contact with me regarding the DOD JS POC for the reclassification of US footage we have.

PSR(IC)3

From: PSR(IC)3, CAPT
 Sent: Wednesday, May 3, 2017 5:47 AM
 To: DCSO, LTCOL; PSR(IC)3 LTC (NZL) USSOCOM SOCOM J3-I; PSR(IC)3, LTCOL
 Cc: PSR(IC)3, MAJ
 Subject: [Non-DoD Source] FW: HNR DDT: Summary of 2 May: UNCLASSIFIED

All,

Col Motley & LtCdr PSR(IC)3 (Lawyer) have been tasked to facilitate the CDF's intent to chase down any outstanding relevant fact based information in regard Op (DCSO, please add if required).

Outlined below (Bottom Email) is the basic plan (At this stage), drafted by Col Motley for BRIG Boswell to send to DA MEA and DA LON, in regards to meeting the CDF's intent.

Through our discussions yesterday, at this stage a visit to AFG may not be required/ warranted if the outstanding source document for the exec summary is located and the additional footage is sourced (Long shot).

For myself/ NZSOF, at this stage Ph 2a. is the only requirement as an if required/ Col Motley decides the paper trail leads to a requirement to visit AFG. I have outlined below what I think is feasible/ achievable until there is an actual requirement to visit.

For DCSO/ LtCol PSR(IC)3

Can you please review what I have stated below (In purple), what is feasible through your SO contacts. I'm assuming that we get in ctry through Troy, and then we can be met/ picked up hosted through your SO contacts to achieve any requirements given that NZDF has no asserts there? Please clarify if I'm off the mark on that?

I don't believe there is any point trying to facilitate mtgs etc with no timeline, so we would skin that/ try to facilitate that once we know we have to head there.

For CO/DCO,

Sir your concurrence with the COA and my intent in Red below (Col Motley is happy as long as I can re-direct to ME).

Regards

PSR(IC)3

Capt PSR(IC)3

S7, Training & Commitments, 1 NZSAS Regt

T PSR(IC)3

M PSR(IC)3

DTLN PSR(IC)3

[cid:PSR(IC)3

<http://force4nz.mil.nz/>

From: PSR(IC)3, CAPT
 Sent: Wednesday, 3 May 2017 12:25 p.m.
 To: MOTLEY GRANT, COL
 Cc: PSR(IC)3, LTCDR
 Subject: RE: HNR DDT: Summary of 2 May

Hi Sir,

Ack the intent below etc, sounds like a plan.

With Ph 2a. I don't see this as onerous currently or needing to go further than an outline plan. I'll look into the following:

- * Meet/ Mount through Troy
- * Utilise Mil flights into theatre from there
- * Assuming as discussed no Visa's required
- * DA was going to confirm Mil flight schedule?
- * I'll contact Troy as well, in case to confirm and any other requirements they might need (LtCol PSR(IC)3
- * In theatre plan
- * I'll look to co-ord a plan through LtCol DCSO and LtCol PSR(IC)3 (NZSOCOM LNO) and there contacts
- * In theatre SO facilitator/ POC (Likely through the PSR(R)1, PSR(IC)4
- * Hopefully we should be able to be hosted through SO community
- * Provide the SO POC the scope/ intent broadly of the potential visit
- * They can provide validity/ advice etc
- * PSR(R)1, PSR(IC)4 are the POC for CRU.
- * A visit to CRU in my opinion would need to have a specific purpose given that they will have no records etc of the acty we've been discussing. PSR(IC)4, PSR(R)1

The actual visit program/ schedule I don't believe we can start facilitating, pre-empting or provide warning to MOI/GCPSU of a potential visit. Best to try and achieve this once we confirm the requirement to visit/ on the ground.

We certainly see no point in pre-empting/ me heading to Troy until there's a requirement.

Hopefully what I've outlined meets your intent below to investigate options for the team to visit - real-life support requirements etc.

At this stage I'll look/ plan to head to the US on Sat evening as planned (06-16 May) and if necessary, re-orientate to ME from there. I will be on my cell phone (Additional wk number is PSR(IC)3). I'll provide a full contact plan/ options prior to departing for our Ops staff and yourself, hotel number, alt POC in US etc. I will also have DIXS access intermittently (i.e. morning & evening) to keep track of things.

Let me know otherwise, happy to assist where I can.

Regards

PSR(IC)3

Capt PSR(IC)3

S7, Training & Commitments, 1 NZSAS Regt

T PSR(IC)3 , M PSR(IC)3 , DT1N PSR(IC)3

[cid:PSR(IC)3

<http://force4nz.mil.nz/>

From: MOTLEY GRANT, COL

Sent: Wednesday, 3 May 2017 7:17 a.m.

To: PSR(IC)3 , LTCDR; PSR(IC)3 , CAPT

Subject: HNR DDT: Summary of 2 May

Importance: High

PSR(IC)3

Thank you for your time and effort yesterday - especially PSR(IC)3 for flying down.

The read-in was necessary of course and I feel that we are reasonably well informed now of all available information.

Below is a quick summary that I drafted (in haste) for BRIG Boswell to send to DA MEA and DA LON

CDF explained that the HNR DDT is intended to bridge the perceived gap between 'what we know' and 'what more we can know' about the operation of 21/22 Aug 2010 (OP BURNHAM) if:

- 1) we were to ask our coalition partners and GIROA (additionally, search open source ICRC/UNAMA records for ISAF CIVCAS reporting/declarations made to them);
- 2) if we were compelled to respond to and/or refute additional allegations from the authors of HNR.

The work of the HNR DDT is therefore not an investigation but rather a clarification and fact finding task.

The DDT spent today reading unclassified and classified documentation related to OP BURNHAM. COL Motley is devising a plan which will be supported by a CDF Directive and a Terms of Reference - to be released NLT Friday (and forwarded to you both). In outline, COL Motley intends to pursue the following COA with Motley PSR(IC)3 likely to depart NZ on Sun 7 May/Mon 8 May.

Ph 1. Col Motley to contact MG Zadalis and arrange for a face-to-face meeting in Ramstein - contact details passed to us via the US staff in Wellington. Intention is to clarify whether the NATO ISAF Incident Assessment Team Executive Summary dated 26 Aug 10 is 'the' report or whether a more comprehensive document and supporting documents exist. If a meeting is arranged, then COL Motley and LTCDR PSR(IC)3 will travel to Germany. Note the CDF direction is for COL Motley travel as an acting BRIG to assist him gain access to senior personal and HQs throughout this task. Evan, given your primary tasking to support KLE visit various over the next few weeks, if you can arrange the necessary access, using the letters

forwarded by PSR(IC) Col Motley will act independently but keep you advised of progress as it occurs on the ground.

Ph 2. Dependant upon the outcome of Ph 1, Motley and PSR(IC)3 can travel to relevant NATO HQ to source additional 26 Aug 10 incident report documentation (if it exists). I will add that CDF was advised of a US AWT report being sourced by DA MEA - I think some confusion sits around this. I wonder whether it's the US AWT report or actually the fill NATO IAT report. Regardless, it is his intent to carry on with planning without waiting for receipt - it is still an important document to help fill in the info.

Ph 2a. Concurrent to Ph 2, CAPT PSR(IC)3 will plan the HNR DDT visit to AFG if needed. It is intended that he would consult with DA MEA (pushing forward your call Lofty, in consultation between Col Motley and yourself), and using SOF contacts in thtr, commence scoping of basic administrative arrangements and planning/scheduling office calls with MOI, GCPSU, CRU personnel as required.

Ph 3. Visit AFG. Again, this is dependant on the Zadalis/DDT meeting in Germany, where any additional documentation is held and whether any AFG specific 'leads' are established that warrant further pursuit and fact gathering/clarification. In any case, CDF is still determined to confirm that no unresolved issues remain that relate to TG6 operations and the GIRoA.

A branch plan is to visit the US, and via face-to-face meetings, progress 1) the declassification of the AWT footage and 2) seek to acquire and have declassified the AC130 footage that may still exist. This branch effort would clearly require DA Washington and SNR Tampa support.

Work continues, there are lots of moving parts, most of which are being coordinated through SCE (Shane as point) as Grant and his team continue to gather info and then depart overseas.

For today.

I will ring MG Zadalis. I am working in Trentham but am available throughout on PSR(IC)3 - do not hesitate to call.

PSR(IC)3 - if you can pick your way through the available NZDF documentation, especially the classified folder. Could you also find out who our last officer was posted to Kabul with UNAMA. HQ JFNZ will know.

PSR(IC)3 - DA MEA is keen to have you up in the ME. I told him that we shouldn't rush and that whether we need to go to theatre depends on the contents of the 'report' that he is currently very confident of sourcing. He is convinced that the report he has located is actually the full document upon which the Exec Sum was based. We will see and I will ask MG Zadalis. I think its still worth you investigating options for us to visit - real-life support requirements etc.

Otherwise, the Directive and ToR are still being drafted by LTCOL PSR(IC)3 and Legal. I think Shane Arndell set Friday as the deadline for this.

More to follow.

Colonel Grant Motley
SPO Defence Intelligence

New Zealand Defence Force
M PSR(IC)3
www.nzdf.mil.nz<<http://www.nzdf.mil.nz/>>

<< OLE Object: Picture (Device Independent Bitmap) >>
<<http://force4nz.mil.nz/>>

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From: BOSWEL
L JOHN
BRIG

Thu, 04
May
2017
23:00:2
4 GMT

To: MOTLEY GRANT, COL
Subject: RE: ~~SEEMAIL~~: HNR DDT SITREP: Week Ending 5 May 17

Good read out mate, thank you

Sent with BlackBerry Work (www.blackberry.com)

From: MOTLEY GRANT, COL PSR(IC)3
Date: Friday, 05 May 2017, 10:45 AM
To: KEATING TIMOTHY, LTGEN PSR(IC)3
Cc: SMITH ROSS, CDRE PSR(IC)3, BOSWELL JOHN, BRIG PSR(IC)3
WILLIAMS EVAN, BRIG PSR(IC)3
HAYWARD ANTONY, BRIG PSR(IC)3, Defence AttachA© Middle
East PSR(IC)3, KEATING FRED, CDRE PSR(IC)3
PSR(IC)3, LTCOL PSR(IC)3, FERRIS LISA, COL
PSR(IC)3, CAPT PSR(IC)3
LTCDR PSR(IC)3, CAPT PSR(IC)3
Subject: ~~SEEMAIL~~: HNR DDT SITREP: Week Ending 5 May 17

Sir,

Since your direction and guidance on AM 2 May, the following has occurred or is under action:

Establishing Contact with MG Zadalis.

PSR(IC)4

<p>Recalled the investigation and confirmed the existence of a full and comprehensive report; Agreed to meeting once all parties had been fully briefed; Comment on logistical arrangements with Zadalis' office.</p>

Sourcing the NATO ISAF IAT Full Report.

5. I spoke to DA MER PM 4 May.

Details of advice received from partners on nature of report; US Foreign Disclosure processes and primary point of contact.

PSR(IC)4

8. Finally, I note DA LON has closed off our request to NATO for the same report and he has asked them to stand-down with our thanks.

Fact Finding Schedule/Travel Intentions.

9. As you know, the Fact Finding Team comprises myself, LTCDR PSR(IC) and CAPT PSR(IC). Given recent developments, I have amended our schedule and travel plan. The order in which I intend to progress is as follows:

- a. Receive and Review the full NATO ISAF IAT report. NZ.
- b. PSR(IC) and I deploy to meet Zadalis. Germany.
- c. I had then intended to visit the relevant NATO HQ responsible for CIVCAS investigation processes (probably JFC-Brunssum, TBC). However, this now seems unnecessary given PSR(R)1, PSR(IC)3).
- d. Deploy to Kabul, Afghanistan. This would involve Motley, PSR(IC) and PSR(IC). Whether this is necessary will be determined as a result of steps a-c above. MG Zadalis and DA MER's contacts in theatre PSR(R)1, PSR(IC)4

This leg of the travel schedule remains on stand-by. If we do deploy, then the intention is to stage through TG TROY and utilise PSR(R)1 military flights into and out of theatre (AFG VISA requirements will take too long and tie-up our passports which are needed for the remaining travel legs), Real-Life Support in theatre is likely to be provided via NSOC-A allies – this is being scoped by CAPT PSR(IC).

e. The final leg would be to visit the US – most likely CENTCOM (Tampa) – however given that it appears likely that we will receive the full report beforehand, this would only be necessary if information gaps still exist after reading the report and having spoken to MG Zadalis. It remains possible that we might still consider asking 1) whether the Apache Gun-Sight problem was investigated by the US (it appears so) and what was the outcome; and 2) whether the NZDF could request and obtain the fixed-wing weapon sight video which may still exist and may provide FMV imagery of where the Apache rounds impacted.

10. Currently, PSR(IC) and I remain in NZ and will continue to work with DA MER and then NZ SNR Tampa to obtain and then review the 'full report'. We will continue to build our question-list and lines of enquiry (which includes ICRC and UNAMA public records). Separately, CAPT PSR(IC) is deploying to the US on 6 May however, he is on standby to plan and facilitate para 9d-9e above. If I required him to confirm the Afghanistan stage, he will deploy from the US to the ME and work with TG TROY and DA ME to develop the in-country programme and confirm the mil flight and real-life support arrangements. SCE Branch continue to develop the Directive with our support. I have introduced myself to MG Zadalis and others as a BRIG, so I will refer to myself at that rank until this task is closed.

Distribution of this, and other updates and summaries, has been limited to the addressees included above. I will defer to AC SCE if it is deemed necessary to distribute this further noting that HQ JFNZ J3/J4 should be aware of our intentions concerning TROY and the administrative requirements of the AFGHANISTAN leg - if executed.

A/Brigadier Grant Motley
SPO to CDF/Lead, HNR DDT
NEW ZEALAND DEFENCE FORCE
MPSR(IC)3
www.nzdf.mil.nz

PSR(IC)3 (LGL/GIL)

From: PSR(IC)3 LTCOL PSR(IC)3
Sent: Friday, 5 May 2017 4:37 p.m.
To: WILLIAMS EVAN, BRIG; HAYWARD, Antony (ABD); KEATING FRED, CDRE
Cc: BOSWELL JOHN, BRIG; MOTLEY GRANT, COL; PSR(IC)3, CAPT
Subject: FW: CDF Directive 27/2017 Due Diligence Task Seemail-Unclassified
Attachments: 170505 CDF Directive 27 2017 DUE DILIGENCE TASK.docx

~~*** [SEEMAIL] This message may contain classified information ***~~

Unclassified

Sirs.

Please find attached a copy of the Directive that AC SCE has approved to send on to CoS/OCDF.

Thank you for your support.

Regards.

PSR(IC)3

Sent with BlackBerry Work
www.blackberry.com

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NZDF 3130/DSC/1

May 17

See Distribution

CDF DIRECTIVE 27/2017: DUE DILIGENCE TASK

Reference:

A. DI Military Threat Level Summary 01/17 (dated 7 March 2017)

Situation

1. The recently published book entitled 'Hit and Run' suggested that members of the NZSAS participating in a specific coalition mission on 21/22 August 2010 in Afghanistan may have engaged in unlawful conduct by way of deliberately targeting civilians and intentionally destroying property on a large scale. The only operation that NZSAS were involved in on those dates within Afghanistan was Op BURNHAM.
2. The NZDF has been provided with a volume of information in relation to Op BURNHAM. However, a more complete set of information is required regarding the allegations of civilian casualty (CIVCAS), property damage, including any subsequent investigations and remediation or compensation efforts.
3. A Fact Finding Team (FFT) is to be established with effect from 02 May 17, consisting of three NZDF personnel in order to undertake a due diligence examination of the information. These personnel will deploy to the Middle East, Europe and the United States.
4. The FFT will be led by A/BRIG G.A. Motley and comprise two other members: LT CDR PSR(IC)3, RNZN; and CAPT PSR(IC)3. The team will be unarmed and except for the Afghanistan phase will be in non-operational environments.
5. **Threat Level.** The operational threat level for NZDF personnel while in Afghanistan is currently assessed by DI (Ref A) as **HIGH**.

Mission

6. NZDF is to support FFT in conducting a due diligence task over the period May – Jul 17 in order to establish a clearer understanding of the information that exists relating to the allegations made against the NZDF.

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Execution**7. CDF intent:**

a. **Purpose.** To gather information related to Op BURNHAM.

b. **Method.**

(1) **Scope.** The FFT is to assess the information currently available regarding the Op BURNHAM CIVCAS and property damage, as well as any subsequent investigation and actions, in order to identify information gaps. This will include assessing what National and Coalition policies were in place regarding CIVCAS and property damage at the time Op BURNHAM was conducted. The FFT is to then try to fill any identified information gaps.

(2) **Information Sources.** The FFT will, in priority order, seek information held by:

- (a) NZDF and NZIC;
- (b) NATO/ISAF;
- (c) United States of America;
- (d) Islamic Republic of Afghanistan; and
- (e) UNAMA/ICRC held information.

(3) **FFT Report.** On conclusion of the task, the FFT is to provide CDF with a report outlining who they spoke to, what additional information was obtained, and what information was unable to be obtained.

(4) **Decision Points.** The following situations constitute decision points where the FFT is to seek CDF direction and approval before continuing with their fact-finding mission:

- (a) The FFT become aware of information which may constitute a well-founded allegation of offending by NZDF personnel pursuant to s. 102 of the AFDA;
- (b) The FFT becomes aware of information which suggests unlawful conduct during Op BURNHAM by a coalition partner;
- (c) Moving to an AO outside those stipulated in this Directive; and
- (d) If the FFT considers it needs to seek further information that appears to be broader than the scope.

c. **End State.** FFT is returned to NZ having used all reasonable endeavours to acquire relevant information not currently held by NZDF in relation to Op BURNHAM and submitted their final report for CDF.

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Tasks

8. **AC SCE** is to:
 - a. raise and maintain the establishment for the deployment of the FFT to complete the Op BURNHAM Due Diligence Task;
 - b. direct support and facilitation to the FFT from:
 - (1) DA Middle East Region;
 - (2) NZDS – London; and
 - (3) NZDS – Washington.
 - c. facilitate visa clearances as required for the task.
9. **Service Chiefs** are to BPT assist FFT if requested. CA is to promote COL Motley to A/BRIG for the duration of the task for representational purposes.
10. **COMJFNZ** is to assist FFT as requested.
11. **DLS** and **SOCC** are to release their personnel for FFT duties and to assist AC SCE if requested.
12. **CDI** is to release A/BRIG Motley and BPT assist AC SCE if requested.
13. **DPA** is to provide public affairs guidance, a media plan and talking points, support and liaison to the FFT.

Co-ordinating Instructions

14. **Area of Operations.** The due diligence task is authorised for the following AOs: Afghanistan; Belgium; Germany; United Kingdom; United States and NATO HQs. Additional AOs are to be approved by AC SCE.
15. **Operational Security.** The due diligence task is a fact-finding mission. The name is UNCLASSIFIED. Details of associated planning, tasking and logistic support are to be classified a minimum of RESTRICTED.
16. **Rules of Engagement.** Rules of Engagement are not being issued for the FFT. Standard Self Defence (SSD) Rules of Engagement are authorised for any movement forward into Afghanistan.
17. **Public Affairs.** The NZDF point of contact for public and media enquiries is DPA.
18. **Legal.** There is no applicable status of forces arrangement or agreement in respect of the AOs. As such, FFT personnel will be subject to the domestic jurisdiction applicable within each AO

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Administration and Logistics

- 19. **Discipline.** The FFT remains subject to the Armed Forces Discipline Act 1971.
- 20. **Conditions of Service.** As outlined in DFO 3.
- 21. **Logistic Support.** HQJFNZ is to arrange for the FFT to be issued with any required equipment.
- 22. **Finance.** All directly attributable costs incurred as a result of this deployment are to be expensed against PSR(IC)2

Command and Signal

- 23. **Command and Control.** FFT will:
 - a. remain under full command of CDF; and
 - b. be assigned under OPCOM to AC SCE.
- 24. **Liaison Authority.** DIRLAUTH between FFT and DA Middle East Region, NZDS London, NZDS Washington, HQJFNZ, and LNO TAMPA is authorised.
- 25. **Reporting.** FFT is to provide a weekly written report to AC SCE and on occurrence for matters deemed significant. AC SCE is to keep CDF updated on the content of the reports. A final report to CDF is to be submitted through AC SCE.
- 26. **Point of Contact.** The HQNZDF POC is CAPT PSR(IC)3 I, DSE, DTelN PSR(IC)3 DDI PSR(IC)3 , email: PSR(IC)3
- 27. **Acknowledgement Instructions.** Action addressees are to acknowledge receipt of this Directive to AC SCE PSR(IC)3
- 28. **Review.** This Directive is cancelled on completion of the task.

T.J. KEATING, MNZM
 Lieutenant General
 Chief of Defence Force

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5

Distribution:**Action:**

COMJFNZ

CN

CA

CAF

AC SCE

CDI

DPA

DLS

SOCC

DA Middle East Region

DA UK

DA US

LNO TAMPA

A/BRIG Motley

LT CDR PSR(IC)3

CAPT PSR(IC)3

Information:

VCDF

CPO

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Export

~~Please treat this as Confidential.~~

SOCC

From:

COL

To: PSR(IC)3

CC PSR(IC)3

Subject

Ack

Sun, 07
May
2017
07:19:4
2 GMT

, CAPT; PSR(IC)3 LTCOL
MAJ, DCSO, LTCOL
RE: ~~SEEMAIL~~ HNR DDT SITREP: Week Ending 5 May 17

Sent with BlackBerry Work (www.blackberry.com)

From: PSR(IC)3, CAPT PSR(IC)3

Date: Sunday, 07 May 2017, 17:03

To: PSR(IC)3, LTCOL PSR(IC)3

Rob Gillard

COL

PSR(IC)3

Cc: PSR(IC)3, MAJ PSR(IC)3, DCSO, LTCOL

Subject: FW: ~~SEEMAIL~~ HNR DDT SITREP: Week Ending 5 May 17

CO/SOCC, FYI below from DA ME. I've been in touch with LtCol PSR(IC)3, he is in the loop to support if the need arises.

Regards

PSR(IC)3

Capt PSR(IC)3

T PSR(IC)3, M PSR(IC)3

From: KEATING TIMOTHY, LTGEN

Sent: Saturday, 6 May 2017 7:10 p.m.

To: Defence Attaché Middle East; MOTLEY GRANT, COL

Cc: SMITH ROSS, CDRE; BOSWELL JOHN, BRIG; WILLIAMS EVAN, BRIG; HAYWARD ANTONY, BRIG; KEATING FRED, CDRE; PSR(IC)3, LTCOL; FERRIS LISA, COL; ARNDELL SHANE, CAPT; PSR(IC)3, CAPT; PSR(IC)3, LTCDR

Subject: RE: ~~SEEMAIL~~ HNR DDT SITREP: Week Ending 5 May 17

Sensitivity: Confidential

Thanks Lofty this is great progress
Tim

Sent with BlackBerry Work

(www.blackberry.com)

From: HAYWARD, Antony (ABD) PSR(IC)3

Date: Saturday, 06 May 2017, 12:52 AM

To: MOTLEY GRANT, COL PSR(IC)3

, KEATING TIMOTHY, LTGEN

Cc: SMITH ROSS, CDRE PSR(IC)3

, BOSWELL JOHN, BRIG

PSR(IC)3

, WILLIAMS EVAN, BRIG PSR(IC)3

HAYWARD ANTONY, BRIG PSR(IC)3

, KEATING FRED, CDRE

PSR(IC)3

, LTCOL PSR(IC)3

FERRIS LISA, COL PSR(IC)3

ARNDELL SHANE, CAPT

PSR(IC)3

, CAPT

PSR(IC)3

, LTCDR

PSR(IC)3

Subject: RE: ~~SEEMAIL~~ HNR DDT SITREP: Week Ending 5 May 17

[~~SEEMAIL~~] [RESTRICTED]

Hi Sir/ All

PSR(IC)4

Comment on US Foreign Disclosure process, outline of engagement with US contacts and details received on US report; comment on future US engagement strategy to source full report

Best Regards

Lofty H

From: MOTLEY GRANT, COL **PSR(IC)3**
Sent: Friday, 5 May 2017 2:46 a.m.
To: KEATING TIMOTHY, LTGEN
Cc: SMITH ROSS, CDRE; BOSWELL JOHN, BRIG; WILLIAMS EVAN, BRIG; HAYWARD ANTONY, BRIG; HAYWARD, Antony (ABD); KEATING FRED, CDRE; **PSR(IC)3**, LTCOL; FERRIS LISA, COL; ARNDELL SHANE, CAPT; **PSR(IC)3**, CAPT; **PSR(IC)3**, LTCDR
Subject: ~~SEEMAIL~~: HNR DDT SITREP: Week Ending 5 May 17
Importance: High
Sensitivity: Confidential

~~*** [SEEMAIL] This message may contain classified information ***~~

Sir,

Since your direction and guidance on AM 2 May, the following has occurred or is under action:

Establishing Contact with MG Zadalis.

PSR(IC)4

Recalled the investigation and confirmed the existence of a full and comprehensive report; Agreed to meeting once all parties had been fully briefed; Comment on logistical arrangements with Zadalis' office.

Sourcing the NATO ISAF IAT Full Report.

5. I spoke to DA MER PM 4 May. **PSR(IC)4**

Details of advice received from partners on nature of report; US Foreign Disclosure processes and primary point of contact.

PSR(IC)4

8. Finally, I note DA LON has closed off our request to NATO for the same report and he has asked them to stand-down with our thanks.

Fact Finding Schedule/Travel Intentions.

9. As you know, the Fact Finding Team comprises myself, LTCDR PSR(IC) and CAPT PSR(IC). Given recent developments, I have amended our schedule and travel plan. The order in which I intend to progress is as follows:

- a. Receive and Review the full NATO ISAF IAT report. NZ.
- b. PSR(IC) and I deploy to meet Zadalis. Germany.
- c. I had then intended to visit the relevant NATO HQ responsible for CIVCAS investigation processes (probably JFC-Brunssum, TBC). However, this now seems unnecessary given that the US has the report whereas NATO does not (despite their efforts to locate it – ref para 8).
- d. Deploy to Kabul, Afghanistan. This would involve Motley, PSR(IC) and PSR(IC). Whether this is necessary will be determined as a result of steps a-c above. MG Zadalis and DA MER's contacts in theatre PSR(R)1, PSR(IC)4

In-confidence advice received on utility of traveling to Afghanistan to search for relevant information.

. This leg of the travel schedule remains on stand-by. If we do deploy, then the intention is to stage through TG TROY and utilise PSR(R)1 military flights into and out of theatre (AFG VISA requirements will take too long and tie-up our passports which are needed for the remaining travel legs), Real-Life Support in theatre is likely to be provided via NSOC-A allies – this is being scoped by CAPT PSR(IC).

e. The final leg would be to visit the US – most likely CENTCOM (Tampa) – however given that it appears likely that we will receive the full report beforehand, this would only be necessary if information gaps still exist after reading the report and having spoken to MG Zadalis. It remains possible that we might still consider asking 1) whether the Apache Gun-Sight problem was investigated by the US (it appears so) and what was the outcome; and 2) whether the NZDF could request and obtain the fixed-wing weapon sight video which may still exist and may provide FMV imagery of where the Apache rounds impacted.

10. Currently, PSR(IC) and I remain in NZ and will continue to work with DA MER and then NZ SNR Tampa to obtain and then review the 'full report'. We will continue to build our question-list and lines of enquiry (which includes ICRC and UNAMA public records). Separately, CAPT PSR(IC) is deploying to the US on 6 May however, he is on standby to plan and facilitate para 9d-9e above. If I required him to confirm the Afghanistan stage, he will deploy from the US to the ME and work with TG TROY and DA ME to develop the in-country programme and confirm the mil flight and real-life support arrangements. SCE Branch continue to develop the Directive with our support. I have introduced myself to MG Zadalis and others as a BRIG, so I will refer to myself at that rank until this task is closed.

Distribution of this, and other updates and summaries, has been limited to the addressees included above. I will defer to AC SCE if it is deemed necessary to distribute this further noting that HQ JFNZ J3/J4 should be aware of our intentions concerning TROY and the administrative requirements of the AFGHANISTAN leg - if executed.

A/Brigadier Grant Motley
SPO to CDF/Lead, HNR DDT
NEW ZEALAND DEFENCE FORCE
M PSR(IC)3
www.nzdf.mil.nz

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"The information contained in this email message is intended only for the addressee and is not necessarily the official view or communication of the Ministry. It may be legally privileged. If you are not the intended recipient you must not use, disclose, copy or distribute this message or the information in it as this may be unlawful. If you have received this message in error, please email or telephone the sender immediately."

Article Information	
Article Title	<u>Keith Locke to the Minister of Defence</u>
Source	Parliamentary Questions
Date Published	16/05/2011

3678 (2011). Keith Locke to the Minister of Defence (16 May 2011): What Afghan civilian casualties, if any, have resulted from New Zealand SAS operational activity in Afghanistan since the unit was re-deployed to Afghanistan in 2009 broken down by figures, or estimates, of both the numbers killed and the numbers wounded?

Dr Wayne Mapp (Minister of Defence) replied: Any persons killed in Afghanistan as a result of NZSAS operational activity have been those persons taking direct part in hostilities, and thereby presenting a direct threat to the lives of NZDF personnel, Coalition forces, Afghan security forces, or Afghan or international citizens.

OCDFPSR(IC)3

From: MOTLEY GRANT, COL
Sent: Thursday, 31 August 2017 3:21 p.m.
To: PSR(IC)3
Subject: FW: HNR FFT

Importance: High

PSR(IC)3

For 'discovery' purposes as discussed.

Grant

From: MOTLEY GRANT, COL
Sent: Wednesday, 24 May 2017 1:23 p.m.
To: BOSWELL JOHN, BRIG; PSR(IC)3 CAPT; PSR(IC)3 LTCDR
Subject: HNR FFT
Importance: High

CDF (through AC SCE and HNR FFT),

The narrative below is pretty raw but enough for an update to CDF. PSR(IC)3 and PSR(IC)3 need to review this and blend it with their comments regarding the recently received report. The combination of the two should be briefed to CDF.

I will be back on 28 May. We can draft the formal report then and submit it early next week. There was no need to visit AFG nor to visit CENTCOM.

One small matter - PSR(IC)4

. Can we check that the footage we viewed recently isn't actually AC-130 footage?

Meeting

I met with MG Zadalis, USAF at Ramstein Air Base in Germany on 19 May 17.

As part of the HNR FFT core tasks I spent nearly two hours with MG Zadalis. The General was the Incident Assessment Team (IAT) Lead in 2010 and was keen to assist and offered further assistance if required.

MG Zadalis hosted the discussion in his office. He is currently the Vice Chief of the USAF in Europe and the USAF Africa. PSR(IC)4

PSR(IC)4

PSR(IC)4

PSR(IC)4

452

Next Steps.

For LTCDR PSR(IC)3 and CAPT PSR(IC)3 - please read though this and see that it aligns with the report that you had now seen. Note that I still have not seen it. MG Zadalis was very happy to help PSR(IC)4

Grant Motley

Details an in-person discussion between Col Grant Motley and MG Zadalis, who lead the IAT investigation relating to Operation Burnham, and MG Zadalis's recollection of the investigation. Also details follow-up written questions and their answers. In the in-person correspondence, MG Zadalis:

- Recalled the investigation and confirmed it was focused on likelihood of civilian casualties;*
- Outlined the process of, and consultees in, the investigation*
- Confirmed that the likely cause of civilian casualties, if any, was a malfunction in helicopter gun sight;*
- Confirmed that ground forces were not a factor in any civilian casualties investigated and ground forces were unlikely to have been aware if any helicopter rounds landed near civilian houses;*
- Confirmed that another investigation was recommended as a follow-up but it was not directly connected to Operation Burnham*

This page has been deliberately left blank.

PSR(IC)6

PSR(IC)6

PSR(IC)6

From: MOTLEY GRANT, COL

Sent: Wednesday, 24 May 2017 1:23 p.m.

To: BOSWELL JOHN, BRIG; PSR(IC)3

CAPT; PSR(IC)3

LTCDR

Subject: HNR FFT

Importance: High

CDF (through AC SCE and HNR FFT),

The narrative below is pretty raw but enough for an update to CDF. ^{PSR(IC)3} and ¹²PSR(IC) need to review this and blend it with their comments regarding the recently received report. The combination of the two should be briefed to CDF.

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PSR(IC)4

PSR(IC)4

PSR(IC)4

Next Steps.

For LTCDR ²PSR(IC)3 and CAPT ²PSR(IC) - please read though this and see that it aligns with the report that you had now seen. Note that I still have not seen it. MG Zadalis was very happy to help PSR(IC)4

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Details an in-person discussion between Col Grant Motley and MG Zadalis, who lead the IAT investigation relating to Operation Burnham, and MG Zadalis's recollection of the investigation. Also details follow-up written questions and their answers. In the in-person discussion and follow-up correspondence, MG Zadalis:

- *Recalled the investigation and confirmed it was focused on likelihood of civilian casualties;*
- *Outlined the process of, and consultees in, the investigation;*
- *Confirmed that the likely cause of civilian casualties, if any, was a malfunction in helicopter gun sight;*
- *Confirmed that ground forces were not a factor in any civilian casualties investigated and ground forces were unlikely to have been aware if any helicopter rounds landed near civilian houses;*
- *Confirmed that another investigation was recommended as a follow-up but it was not directly connected to Operation Burnham.*

Export

From: Rob Gillard

Sent: Tue, 30 May 2017 20:07:24 GMT

To: DCSO, LTCOL

Subject: RE: General Pavel official visit to New Zealand - Public Affairs and StratCom unclassified

I have yet to discuss with in detail with CoS (will do so today) but I am assuming if we get release for one then we should get the second.Â

From: DCSO, LTCOL

Sent: Wednesday, 31 May 2017 8:05 a.m.

To: Rob Gillard, COL

Subject: RE: General Pavel official visit to New Zealand - Public Affairs and StratCom unclassified

Who is seeking release of the ISR video? That is a new one to me.

From: Rob Gillard, COL

Sent: Wednesday, 31 May 2017 8:01 a.m.

To: Kevin Taylor, DCSO, LTCOL

Subject: RE: General Pavel official visit to New Zealand - Public Affairs and StratCom unclassified

We still do not have the full report despite efforts of Grant Motley. We should get it but when is unknown.

As best as I know we do not yet have permission from US to publically use the AH64 video PSR(IC)4. SCE may have a better idea as they are co-ordinating the release permissions or speak to Grant Motley. Having now found the ISR video we are going through the same process to get this releasable also.

Will let you know if situation changes between now and Gen Pavel visit.

From: Kevin Taylor

Sent: Wednesday, 31 May 2017 7:25 a.m.

To: Rob Gillard, COL; DCSO, LTCOL

Subject: FW: General Pavel official visit to New Zealand - Public Affairs and StratCom unclassified

Rob DCSO

See below from upcoming NATO visit and intention to do media IVs.

Op Burnham may come up and PSR(IC)4 be raised. Where are we at with the full IAT report and gun cam footage?

I realise the Apache request went to the US but it was still a NATO-Isaf op.

Kevin Taylor

PSR(Sen(1))

Out of scope

Out of Scope

From: Kevin Taylor

Sent: Monday, 22 May, 2017 11:20 PM

To: PSR(Sen(1))

Cc: PSR(IC)3, PSR(Sen(1))

Subject: RE: General Pavel official visit to New Zealand - Public Affairs and StratCom unclassified

Hi PSR(Sen(1))

Thanks for the email.

Out of scope

Let me know if we can help with anything else.

regards

Kevin Taylor

Kevin Taylor

Chief Advisor Public Affairs Office of the Chief of Defence Force

NEW ZEALAND DEFENCE FORCE

TPSR(IC)3 , MPSR(IC)3 , InternalPSR(IC)

www.nzdf.mil.nz

Out of Scope

Out of Scope

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Article Information	
Article Title	<u>Metiria Turei to the Minister of Defence</u>
Source	Parliamentary Questions
Date Published	30/05/2017

4959 (2017). Metiria Turei to the Minister of Defence

Parliamentary Questions 30/05/2017

4959 (2017). Metiria Turei to the Minister of Defence (30 May 2017): With reference to QWA 02319 (2017), does the New Zealand Defence Force believe that a three year old girl named Fatima died of injuries during a different raid than that led by the SAS on 22 August 2010 in Baghlan province, Afghanistan, and, if so, when, where and led by whom?

Hon Mark Mitchell (Minister of Defence) replied: In the absence of any evidence, the Defence Force has no grounds for believing or not believing that a three year-old girl named Fatima died during an operation on 22 August 2010 in Baghlan Province, Afghanistan.

4960 (2017). Metiria Turei to the Minister of Defence

Parliamentary Questions 30/05/2017

4960 (2017). Metiria Turei to the Minister of Defence (30 May 2017): With reference to QWA 02320 (2017), has the New Zealand Defence Force seen the official Baghlan government report as reproduced on pages 126 and 127 of the book Hit and Run, showing the names of people killed or wounded during the 22 August 2010 SAS raid in Baghlan Province, Afghanistan; and, if not, why not?

Hon Mark Mitchell (Minister of Defence) replied: No. The New Zealand Defence Force has not sighted a copy of what the book Hit & Run represents as an official Baghlan report, but has seen the list of names reproduced on page 127 of the book.

4961 (2017). Metiria Turei to the Minister of Defence

Parliamentary Questions 30/05/2017

4961 (2017). Metiria Turei to the Minister of Defence (30 May 2017): With reference to QWA 02320 (2017), does the New Zealand Defence Force accept the findings of the official Baghlan government report as reproduced on pages 126 and 127 of the book Hit and Run on the people killed or wounded during a 22 August 2010 SAS raid in Baghlan Province, Afghanistan; and, if not, why not?

Hon Mark Mitchell (Minister of Defence) replied: The New Zealand Defence Force has not sighted a copy of any official Baghlan report that included the list of names included on page 127 of the book Hit & Run.

4974 (2017). Metiria Turei to the Minister of Defence

Parliamentary Questions 30/05/2017

4974 (2017). Metiria Turei to the Minister of Defence (30 May 2017): With reference to QWA 02319 (2017), does the New Zealand Defence Force acknowledge that a three year old girl named Fatima died of injuries received during a 22 August 2010 raid in Baghlan province, Afghanistan?

Hon Mark Mitchell (Minister of Defence) replied: In the absence of any evidence, the Defence Force has no grounds for believing or not believing that a three year-old girl named Fatima died during an operation on 22 August 2010 in Baghlan Province, Afghanistan.



Office of Hon Mark Mitchell

MP for Rodney
Minister of Defence
Minister for Land Information

Associate Minister of Justice

OIA-2017-0043

The Nation

Dear [REDACTED]

I refer to your email of 28 March to the Prime Minister's Office requesting, under the Official Information Act 1982 (OIA):

1. Any and all written advice to the Prime Minister regarding the allegations in the book *Hit and Run* since it was released on March 21, 2017.
2. A written summary of any verbal advice provided to the Prime Minister regarding the allegations in the book *Hit and Run* since it was released on March 21, 2017.
3. Any and all communication between the Prime Minister's office and the office of the Minister of Defence regarding the allegations in the book *Hit and Run* since it was released on 21 March, 2017.
4. Any and all communication between the Prime Minister's office and the New Zealand Defence force regarding the allegations in the book *Hit and Run* since it was released on 21 March, 2017.
5. Any and all communication regarding Operation Burnham between the Prime Minister's office and the office of the Minister of Defence from August 3 2010 to and January 3 2011.
6. Any and all communication regarding Operation Burnham between the Prime Minister's office and the New Zealand Defence Force from August 3 2010 to January 3 2011.
7. Any and all communication between the Prime Minister's office and the office of the Minister of Defence relating to the Maori TV story "Collateral Damage" aired June 30 2014 to August 30 2014.
8. Any and all communication between the Prime Minister's office and the New Zealand Defence Force relating to the Maori TV story "Collateral Damage" aired June 30 2014 to August 30 2014.

This request was transferred to former Minister of Defence Gerry Brownlee for a response as the information requested is more closely related to the functions and responsibilities of the Minister of Defence. As I was sworn in as Minister of Defence on 2 May 2017, the request has now been transferred to me. I have provided a response to each of your points on the following pages.

1. Please find enclosed a copy of a note from the Chief of Defence Force regarding the allegations of offending. Where indicated the contact details and name of an individual have been withheld to protect their privacy in accordance with section 9(2)(a) of the OIA. Information that can be made publicly available regarding the allegations in the book was provided by the Chief of Defence Force in his press conference of 27 March 2017. A copy of this information can be found on the New Zealand Defence Force website.

Other written advice relating to the allegations in the book is withheld in accordance with sections 6(a) and 9(2)(h) of the OIA. Advice on the operation is withheld as its release would likely prejudice the security or defence of New Zealand by providing insight into operational capability and tactics. Legal advice will not be provided in order to maintain legal professional privilege. The public interest does not outweigh the need to protect that privilege in this instance.

2. The following is a summary of verbal advice provided to the Prime Minister regarding allegations in the book:

- *Nine insurgents were killed during the operation.*
- *A post operation Battle Damage Assessment did not find any non-combatant casualties.*
- *After operation allegations that 20 civilians had been killed and 20 houses destroyed by fire was reported in various international media. In reaction an Initial Assessment Team (Afghan Ministries of Interior and Defence, and ISAF officials) was initiated.*
- *The IAT visited the provincial and district capitals, the hospital where the alleged casualties were taken, viewed the coalition aircraft gun tapes and spoke to NZ SAS. The IAT interviewed the Provincial Governor and Chief of Police.*
- *The Governor reported that 3-4 days after the operation 15 local nationals met with him stating that large operation had been conducted. The locals claimed that 4 adult males, 1 female and 1 child were killed, and two adult females were in hospital.*
- *The IAT described operation to the Governor and Chief of Police including report of two buildings damaged and pictures of arms cache. At end of meeting the Governor changed stance from 'this happened' to 'investigation was needed'.*
- *The IAT was specifically established to investigate such allegations. It found in summary that it was possible that civilian casualties occurred because two buildings were used by insurgents as cover and that women and children were in those buildings.*
- *The insurgents put non-combatants at risk by using the compounds as a base for their operations. Insurgents with machine guns and probable RPGs were clearly visible.*
- *Buildings were not a target, however a gun sight malfunction in one of the helicopters may have lead to rounds falling short. One building caught fire after an ammo cache was destroyed and one other fire occurred as insurgents fled and left a stove unattended.*

3. Despite reasonable attempts to locate communication between the Prime Minister's office and the office of the Minister of Defence regarding the allegations in the book, this part of your request is declined in accordance with section 18(e) of the OIA as the information does not exist or cannot be found.

4. As explained in the response provided for point 1 above, any further communication between the Prime Minister's office and the New Zealand Defence Force regarding the allegations in the book are withheld in accordance with sections 6(a) and 9(2)(h) of the OIA.

5. Communication between the Prime Minister's office and the office of the Minister of Defence regarding Operation Burnham is captured in briefings and notes. All briefings and notes from this period regarding the operation remain classified and are withheld in accordance with section 6(a) of the OIA as their release would likely prejudice the security or defence of New Zealand by providing insight into operational capability and tactics.

I am not aware of any emails or texts between then Defence Minister Wayne Mapp and former Prime Minister John Key regarding Operation Burnham. This part of your request is

declined in accordance with section 18(e) of the OIA as the information does not exist or cannot be found.


6. As explained in the response provided to point 5 above, any information from this period regarding the operation and provided by the New Zealand Defence Force remains classified and is withheld in accordance with section 6(a).

7 and 8. I am not aware of any communications between the Prime Minister, Minister of Defence and the Defence Force relating to the Maori TV story "Collateral Damage". These parts of your request are declined as the information requested does not exist or cannot be found.

Pursuant to section 28(3) of the OIA you have the right to complain to an Ombudsman about my response to your request. The Ombudsman's address is:

The Ombudsman
Office of the Ombudsman
PO Box 10-152
WELLINGTON

Yours sincerely



Hon Mark Mitchell
Minister of Defence

07 JUN 2017

PSR(IC)6

PSR(IC)6

PSR(IC)6



Headquarters NZDF
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www.nzdf.mil.nz

OIA-2017-2698

12 June 2017

PSR(IC)3

Senior Writer – NZ Herald

PSR(IC)3

Dear PSR(IC)3

I refer to your email of 9 June 2017 following up on my response of 7 June 2017. Two cameras were used to capture the images provided. Given storage capacity limitations with that camera only the single image of the RPG was retained following the operation. Other images have been deleted.

A search of the relevant NZDF database was undertaken to ascertain what imagery existed with regard to Operation Burnham.

The body of only one insurgent was checked by NZDF personnel. They were not equipped with a camera and given the prevailing operational conditions, it was not feasible to undertake any further action in respect of the deceased.

You have the right, under section 28(3) of the Official Information Act 1982, to ask an Ombudsman to review my response to your request.

Yours sincerely

G.R. SMITH
Commodore, RNZN
Chief of Staff HQNZDF

Export

From: [KEATING
TIMOTHY
LTGEN](#)

Tue, 13
Jun
2017
01:53:1
6 GMT

To: Chris Hoey

Subject: Hit and Run Update (AC SCE/SOCC/COS/COL Grant Motley)

From: MOTLEY GRANT, COL
Sent: Tuesday, 13 June 2017 9:19 a.m.
To: PSR(IC)3 LTCOL; SMITH ROSS, CDRE
Subject: RE: UNCLASSIFIED: NATO Report

PSR(IC)3 and COS, Sir,

I think 30 mins is sufficient, so 1030 - 1100hrs (?) but I would ask your advice on who ought to attend and what is required.

Recommendation on Content. I would recommend that I recap the HNR FFT directive and what we achieved and discovered against that document.

Recommendation on Attendees. AC SCE, COS, SOCC, myself and CDF.

Grant

From: PSR(IC)3 LTCOL
Sent: Tuesday, 13 June 2017 9:14 a.m.
To: MOTLEY GRANT, COL
Cc: PSR(IC)3
Subject: FW: UNCLASSIFIED: NATO Report

Sir

CDF's best availability is tomorrow (Wed) between 0930-1100 - whilst it wouldn't be all of that time - that would be the 'earliest opportunity' but we will work with you for timings (or more specifically the calendar guru PSR(IC)3 will).
Please note Thursday CDF is committed to GEN Vance's visit and Friday afternoon he is away.

Over to you to advise what suits!

Regards

PSR(IC)3

Lieutenant Colonel PSR(IC)3

Personal Staff Officer to the Chief of Defence Force, Headquarters

New Zealand Defence Force

Freyberg Building, 20 Aitken Street, PO Box 39997, Thorndon, Wellington, 5045

T +PSR(IC)3 M +PSR(IC)3 Internal PSR(I

www.nzdf.mil.nz[<http://force4nz.mil.nz/>](http://force4nz.mil.nz/)**From:** BOSWELL JOHN; BRIG**Sent:** Tuesday, 13 June 2017 8:50 a.m.**To:** MOTLEY GRANT, COL; SMITH ROSS, CDRE; ARNDELL SHANE, CAPT; PSR(IC)3 LTCOL**Cc:** HAYWARD ANTONY, BRIG; WILLIAMS EVAN, BRIG**Subject:** RE: UNCLASSIFIED: NATO Report

Grant/Ross

CDF acks situ re reports and asks that a meeting of the key stakeholders be convened at the first opportunity, to bring this and all other relevant information together, and wrap up Grants results/efforts.

Grant can you please book a time with CDFs staff and forward invites to other attendees

Boz

Sent with BlackBerry Work

[\(www.blackberry.com\)](http://www.blackberry.com)**From:** MOTLEY GRANT, COL <PSR(IC)3**Date:** Monday, 12 Jun 2017, 3:34 PM**To:** BOSWELL JOHN, BRIG <PSR(IC)3 SMITH ROSS, CDRE

PSR(IC)3 ARNDELL SHANE, CAPT <PSR(IC)3

Cc: HAYWARD ANTONY, BRIG <PSR(IC)3 WILLIAMS EVAN, BRIG

<PSR(IC)3

Subject: FW: UNCLASSIFIED: NATO Report

Gents,

See below from MG Z's JAG - COL PSR(IC)3.

I think we should declare the search for a 'full report' concluded and accept that the 15/6 and Exec Sum is all that exists at this point. PSR(IC)4

GM

PSR(IC)4

PSR(IC)4

PSR(IC)4

PSR(IC)4

-----Original Message-----

From: MOTLEY GRANT, COL [[mailto:PSR\(IC\)3](mailto:PSR(IC)3)]

Sent: Thursday, June 01, 2017 7:46 PM

To: PSR(Sen(1)) GS-09 USAF USAFE AFAFRICA/CVS PSR(Sen(1))

Subject: [Non-DoD Source] UNCLASSIFIED: NATO Report

PSR(Sen(1))

It's me again I'm afraid.

Could you ask MG Zadalis whether he is actually in possession of the IAT report from Aug 10 related to my enquiries of 19 May? NZ has the Executive Summary but not the full report PSR(IC)4

PSR(IC)4

NZ has asked for the report officially through US and NATO channels PSR(IC)4

I still am seeking the full IAT report and was hoping MG Zadalis can 1) confirm that he has a copy and therefore that it still exists and 2) provide me with a file reference so that NZ can very specifically request the document.

Kind regards,

Grant Motley

Sent with BlackBerry Work

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PSR(IC)6



NEW ZEALAND DEFENCE FORCE COVER SHEET

To accompany documents to the
Minister of Defence

Title:	NEW ZEALAND DEFENCE FORCE UPDATE: 'HIT AND RUN' ALLEGATIONS		
NZDF File No.	NZDF Tracking # 2017-211 <i>(For OCDF Use Only)</i>		Minister's Tracking#: <i>(For Minister's office)</i>
Importance of the Issue:	High	 	Moderate
Urgency for Attention/Sign-Off:	NOT URGENT		Request Ministerial response by: Not required.
Contacts:	1. Brigadier John Boswell 2. Colonel Grant Motley	Tel: (PSR(IC)3 Tel: (PSR(IC)3	A/H: PSR(IC)3 A/H: PSR(IC)3
Purpose:	To provide an update on New Zealand Defence Force efforts to review all available United States and NATO reports and material regarding the events of 21-22 August 2010.		
Recommendations:	I recommend that you: a. Note the contents of the attached brief.		
MOD/NZDF Consultation	Not required: NZDF matter only.		
Minister's comments:			
Minister's Action:	Signed / Noted / Agreed / Approved / Declined / Discussion required Referred to:		
Signature:	Date:		

T.J. KEATING
Lieutenant General
Chief of Defence Force

Date: 5 July 2017

RESTRICTED

Headquarters NZDF
 Freyberg Building
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 Out of scope
 www.nzdf.mil.nz

NTM 2017-211

5 July 2017

Minister of Defence

NEW ZEALAND DEFENCE FORCE UPDATE: 'HIT AND RUN' ALLEGATIONS

1. This note provides an update on New Zealand Defence Force efforts to review all available United States and NATO reports and material regarding the events of 21-22 August 2010. I received an update on this review on 14 June 2017. The major findings are outlined below.

Review Outcomes

2. The existing and additional information reviewed fully supports the statements made by me to the media on 27 March 2017.

3. The New Zealand Defence Force has now gathered the full reporting made available to us from NATO and United States sources concerning Operation Burnham. The additional information reviewed since 27 March 2017 includes a classified United States military investigation and additional video footage (approximately seven hours in duration). This footage has been viewed in full by a senior New Zealand Defence Force Officer (Colonel Grant Motley) and a New Zealand Defence Force Lawyer and it supports our description of Operation Burnham conduct and outcomes.

4. Colonel Motley has spoken to the August 2010 NATO Incident Assessment Team Leader (a United States General Officer) who investigated the Operation Burnham Civilian Casualty allegations. Significantly the Team Leader:

PSR(R)1, PSR(IC)4

Debriefed the Provincial Governor; Confirmed to COL Motley that the NZDF ground force was discounted as a cause of alleged civilian casualty; Confirmed to COL Motley that the Executive Summary was the NATO 'full report'.

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5. The International Security Assistance Force procedure was to inform the United Nations Assistance Mission in Afghanistan and the International Committee of the Red Cross of any Civilian Casualty investigations. While the New Zealand Defence Force cannot confirm if this occurred or, if it did, what information was provided, the United Nations Assistance Mission in Afghanistan annual report dated March 2011 mentions the possibility of a Civilian Casualty related to Operation Burnham. There is no indication that the United Nations Assistance Mission in Afghanistan or the International Committee of the Red Cross conducted their own enquiries into the incident.

Recommendation

6. I recommend that you:

- a. **Note** the contents of this brief.



T.J. KEATING

Lieutenant General
Chief of Defence Force

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Article Information	
Article Title	<u>Metiria Turei to the Minister of Defence</u>
Source	Parliamentary Questions
Date Published	24/07/2017

6797 (2017). Metiria Turei to the Minister of Defence

Parliamentary Questions 24/07/2017

6797 (2017). Metiria Turei to the Minister of Defence (24 Jul 2017): With reference to the 27 March 2017 “Speech notes for Press Conference on Operation Burnham Chief of Defence Force, Lieutenant General Tim Keating”, which states that the New Zealand SAS shot and killed one insurgent, were any other people killed or injured by New Zealand SAS members during Operation Burnham and, if so, what are the details?

Hon Mark Mitchell (Minister of Defence) replied: No

6798 (2017). Metiria Turei to the Minister of Defence

Parliamentary Questions 24/07/2017

6798 (2017). Metiria Turei to the Minister of Defence (24 Jul 2017): With reference to the 27 March 2017 “Speech notes for Press Conference on Operation Burnham Chief of Defence Force, Lieutenant General Tim Keating”, which states that the New Zealand SAS shot and killed one insurgent, were any other people killed or injured by New Zealand SAS members during Operation Burnham and, if so, what are the details?

Hon Mark Mitchell (Minister of Defence) replied: I refer the member to the response to question for written answer No. 6797 (2017).

6800 (2017). Metiria Turei to the Minister of Defence

Parliamentary Questions 24/07/2017

6800 (2017). Metiria Turei to the Minister of Defence (24 Jul 2017): With reference to the media release “NZ Defence Force operations in Bamyan Province in 22 August 2011”, why did the New Zealand Defence Force say that an International Security Assistance Force investigation “concluded that the allegations of civilian casualties were unfounded”?

Hon Mark Mitchell (Minister of Defence) replied: I refer the member to the response to questions for written answer No. 6799 (2017).

6801 (2017). Metiria Turei to the Minister of Defence

Parliamentary Questions 24/07/2017

6801 (2017). Metiria Turei to the Minister of Defence (24 Jul 2017): With reference to the media release “NZ Defence Force operations in Bamyan Province in 22 August 2011”, why did the New Zealand Defence Force say that an International Security Assistance Force investigation “concluded that the allegations of civilian casualties were unfounded”?

Hon Mark Mitchell (Minister of Defence) replied: Because allegations of civilian casualties attributed to NZDF personnel are unfounded

6802 (2017). Metiria Turei to the Minister of Defence

Parliamentary Questions 24/07/2017

6802 (2017). Metiria Turei to the Minister of Defence (24 Jul 2017): With reference to the New Zealand Defence Force statement to the Maori Television Service on 30 June 2014, why did the defence force write that it stood by its 20 April 2011 statement, which said an International Security Assistance Force investigation “concluded that the allegations of civilian casualties were unfounded”?

Hon Mark Mitchell (Minister of Defence) replied: Because allegations of civilian casualties attributed to NZDF personnel are unfounded

OPERATION SPEAKING NOTES

Good morning, Prime Minister.

I will now talk you through the conduct of the operation, followed by the video footage from the Apache helicopters.

This information has been cross-checked using the operational plans, approved concept-of-operation documents, pilot mission briefs, operational footage and post-operation reports. All locations are taken from GPS coordinates and are accurate within 5m.

The intelligence for this operation was based upon many months of development by Coalition, Afghanistan, New Zealand Intelligence Agencies and NZDF personnel.

It was a Deliberate Detention Operation to detain two insurgent leaders, and developed to the Coalition process and approved by the coalition headquarters, the Afghan Government, and the German Area Commander, **PSR(IC)4**

It was launched from Kabul where the NZSAS were located, and was observed throughout by the NZ Operations Room in Kabul, where the NZ legal officer, ^{PSR(S)2, PSR(S)3} were able to update intelligence and provide guidance to the commander. Near-real time video was available to all headquarters locations, and also to the Air Controller with the ground force.

The operation involved ^{PSR(S)1} Afghan Police from the Crisis Response Unit, Afghan prosecutors from Kabul, interpreters, NZSAS and support staff, as well as a variety of coalition support elements. Intelligence indicated the objectives were in the village, and supported by up to 20 insurgents.

Here you see examples of the types of aircraft in support.

Due to civilian casualty concerns and the Taleban propaganda campaign, numerous tactical directives and rules around targeting were delivered.

This text describes the ISAF procedures around targeting. Even if at the planning stages of an operation it is anticipated that the use of force is likely to be required, the actual use of force is determined at the time it is used. Any actual operation or engagement remained subject to (i) relevant prescriptions set down in ISAF SOPS and (ii) operational command orders and situational context, and (iii) ROE and LOAC. This includes target identification and collateral damage estimates.

This was done with all engagements on this operation.

Walk-Through

In sum, there were six engagements with insurgents during this operation, 3 by the Apaches, 2 by the Gunship, and 1 direct fire engagement.

0035 – Apache

0100 – AC130 to same area

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0119 – Apache

0128 – Sniper on PID insurgent from engagement 1

0252 – AC130 and Apache engagement to PID insurgents above A3

All engagements were reviewed at the completion of the operation by the legal officer, and were in accordance with the appropriate rules of engagement and laws of armed conflict.

In total 3 houses were entered during the operation. Weapons and ammunition were found in two of these. Extensive post-operation damage assessment occurred, including in the areas away from where the ground force operated. This shows fire damage to 2 buildings, and we are unable to find evidence of the 20 reported. The operation was complete by 0420, and no civilian casualties reported.

Subsequently, review of available footage has shown that 30mm bullets from an Apache during the first engagement fell short and struck a building. This was in the location at 2, and as a result civilian casualties from this engagement are a possibility.

NOVA

On the night of the 2nd October 2010 there was a subsequent operation to detain Obj NOVA (Nemutallah). This operation has been reported as destroying the recently re-built houses; however the operation occurred without incident – one house was entered, nothing of interest was found, and a door was damaged as the task force entered.

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Good morning Minister.

I refer you to the first sheet in the Ground Briefing pack in front of you. To orientate you Kabul is in the South East and the provinces are Parwan Wardak in the south Bamiyan to the East and Baghlan in the North East. Operation BURNHAM was conducted in Tirgaran Village, which is located within BAGHLAN Province here denoted by the Blue triangle in the centre of the picture. Tirgaran is approximately 60 KM NE from the former location of the New Zealand Provincial Reconstruction Team in Bamiyan. The terrain within both Bamiyan and Baghlan provinces is characteristically mountainous due to being part of the Hindu Kush mountain range – with nearly all villages and towns located within river valleys. Road access is generally limited to dirt roads and tracks that follow the valley floors.

Of note is that Tirgaran has also been referred to by Afghans in some intelligence reporting as Dahane Nayak.

The name of the village where Operation Burnham occurred has been subject to some debate - both by the authors of Hit and Run, and from the within the media. It is however important to note that within the Geospatial Information Systems used by both ISAF and the NZDF, this location was labelled as Tirgaran Village. It was therefore by this name that this village has been referred to both prior, during, and after Operation Burnham by NZDF and ISAF - regardless of what others may know it by. An internet search on google maps will also show Tirgaran as being the village that Operation BURNHAM took place in.

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If you turn to page two, you will note that there are also significant differences geographically between the two villages named in Hit and Run – shown within the Blue boxes, and Tirgiran Village, which is shown in the Red Box. Firstly, the two villages in Hit and Run lie within a predominantly dry valley that runs East-West, and which has high ground located to the South.

Tirgiran Village lies within a valley that runs predominantly North to South, and is located at the confluence of two rivers and is surrounded by vegetation.

Both these locations are nearly two kilometres apart, and are separated by four major ridge lines, and there is no line of sight between the locations within Hit and Run, and Tirgiran. So in essence - they are geographically vastly different, and on this basis alone would be difficult to confuse

I will now turn your attention to the satellite photo on page three, and specifically to the village of Tirgiran.

Tirgiran village itself consists of approximately 70 buildings, and the area is approximately 500m from North to South and 750m from East to West in size. There are a number of streams running throughout the valley and through the village, and along these streams are a number of fields and paddocks used mainly for growing crops. In the fields to the North West of the village was the location of the Helicopter Landing Zones used for the insertion and extraction of the Ground Forces.

The buildings within the village are predominately of mud-brick construction, with thatched roofing, and are often constructed as compounds. These compounds will have a high external mudbrick wall that surrounds living quarters and an open

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area for farm animals. Entrances into compounds are often covered with solid metal gates or doors that can be locked from the inside.

Buildings identified in areas used for military operations are often numbered for easy identification for both ground and supporting air elements, and for operations in Afghanistan they were given the prefix "Alpha." The main objectives for this operation were known as Alpha 1, the assessed residence of the insurgent leader Abdullah Kalta and Alpha 2, assessed as being a guest house belonging to Kalta. Kalta was known by ISAF forces as OBJ BURNHAM. Alpha 3 was a residence assessed to belong to an insurgent leader known as Nematullah. Nematullah was known as Objective NOVA.

To give an indication of the distances involved during the operation, and a sense of scale, the distance from the Helicopter Landing Zone to Alpha 1 was approximately 350m, and the distance from Alpha 1 to Alpha 3 approx 300m.

Tirgiran Village is surrounded on all sides by high ground, which offers a commanding view over the village by whoever occupies it. It was on a high ridgeline to the south that the Ground Force Commander, the Joint Terminal Attack Controller – or JTAC, and SAS snipers were located for the operation. This location was 500m from Alpha 1 and Alpha 2, and 300m from Alpha 3.

Throughout this briefing you will be shown both still and moving imagery taken from a range of aerial platforms – these include from US Apache Helicopters and from **ISR** that was present during the operation, but which was used purely in a imagery collection role. You will note that the imagery contains text around the periphery. This includes such detail as the platforms altitude, and what sensor it is using to capture the imagery. It also includes the coordinates of what

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the sensor is currently looking at. By comparing these coordinates with maps, and information contained within other intelligence products we are able to geo-locate the locations in the imagery with satellite collected imagery. The location shown in the classified imagery of the operation that you will be shown later in this brief is indicated on the satellite photo. It is because of this that we can state certainty that the operation occurred within Tirgiran Village – and not in the villages identified in Hit and Run.

Sir, that concludes the brief on the ground.

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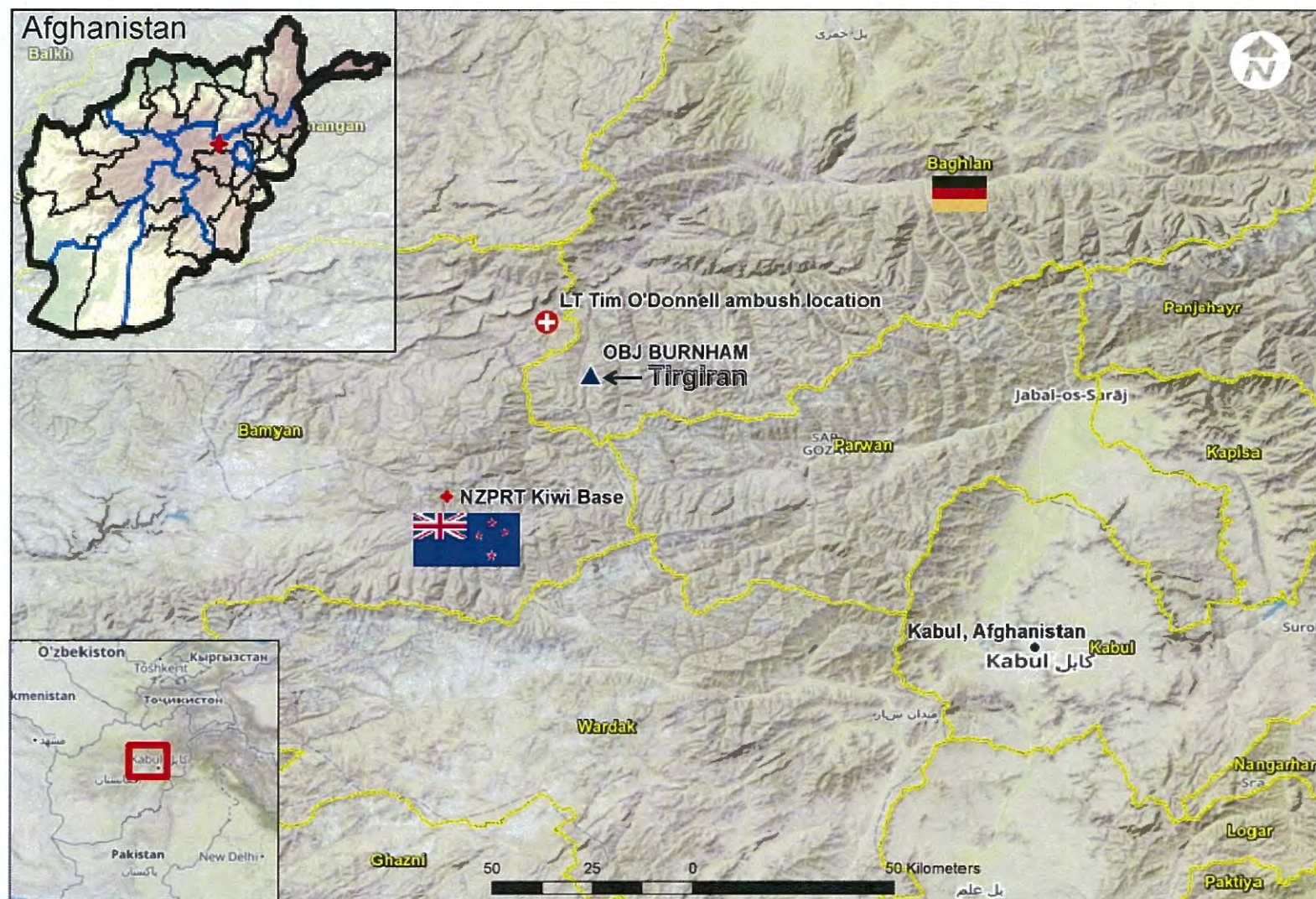
Presented to
Minister of Defence
and Attorney-
General by NZDF
personnel on 31
January 2018. This
presentation
contains slides
previously released
to the public, as
well as classified
slides

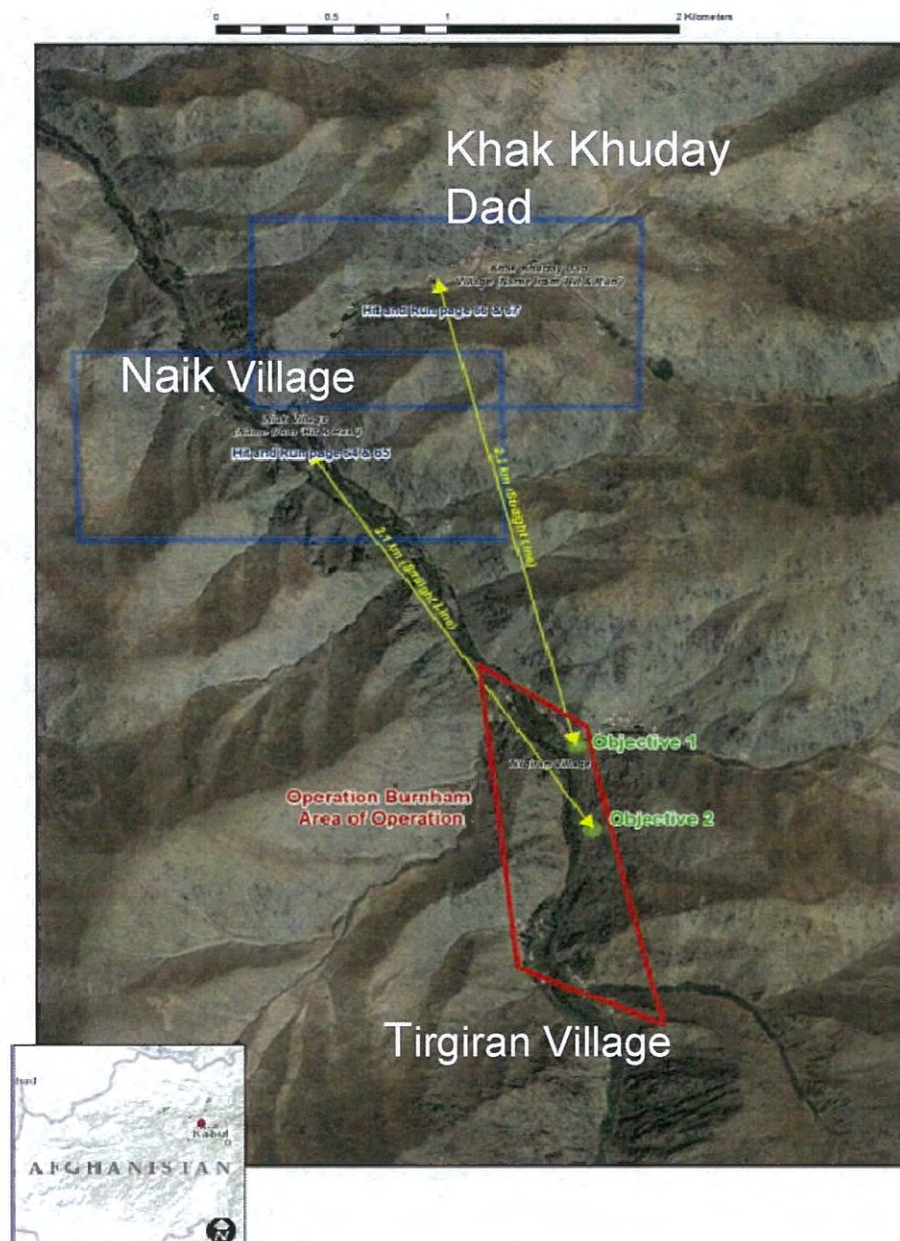
OPERATION BURNHAM

21/22 AUGUST 2010



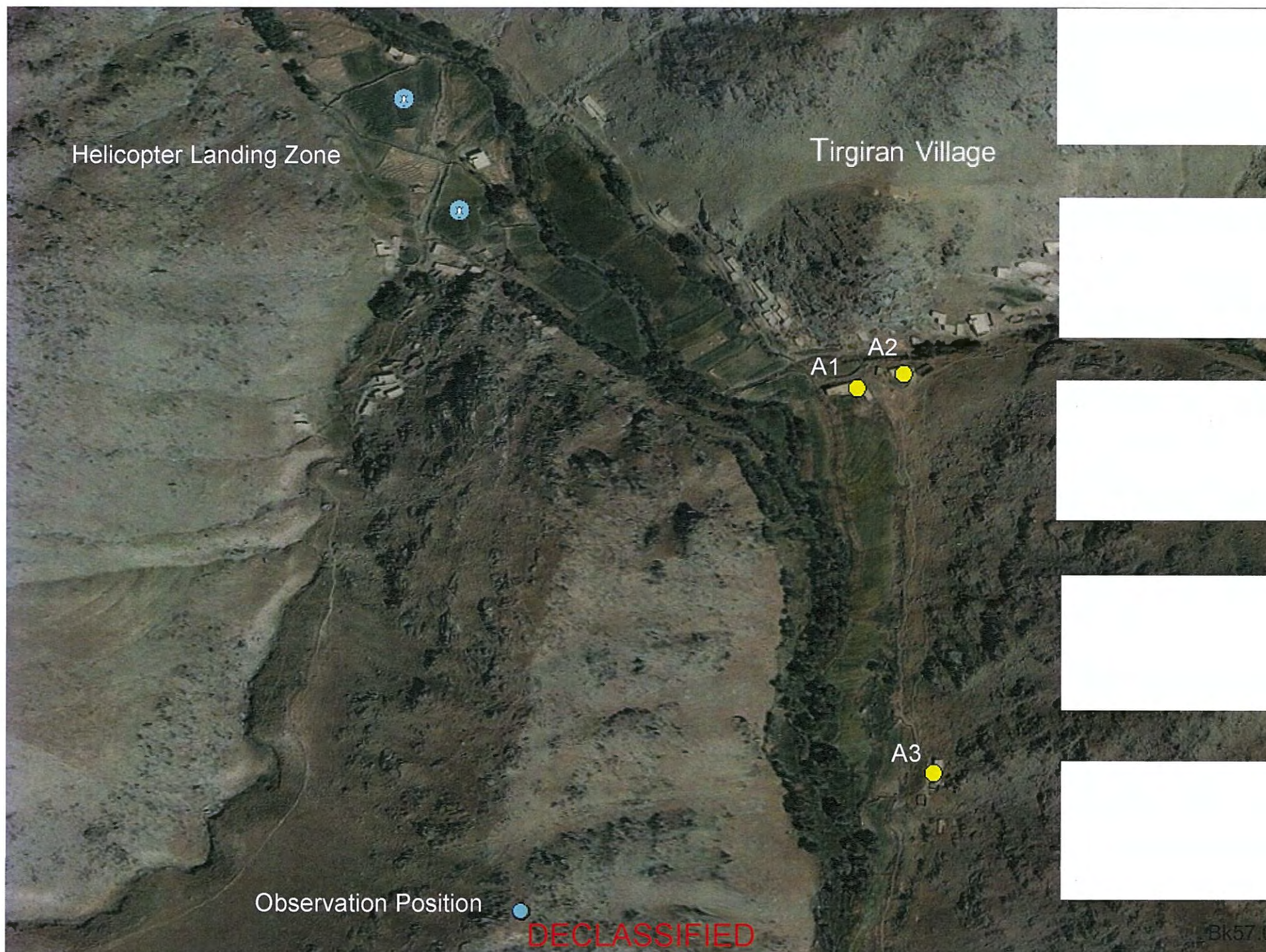
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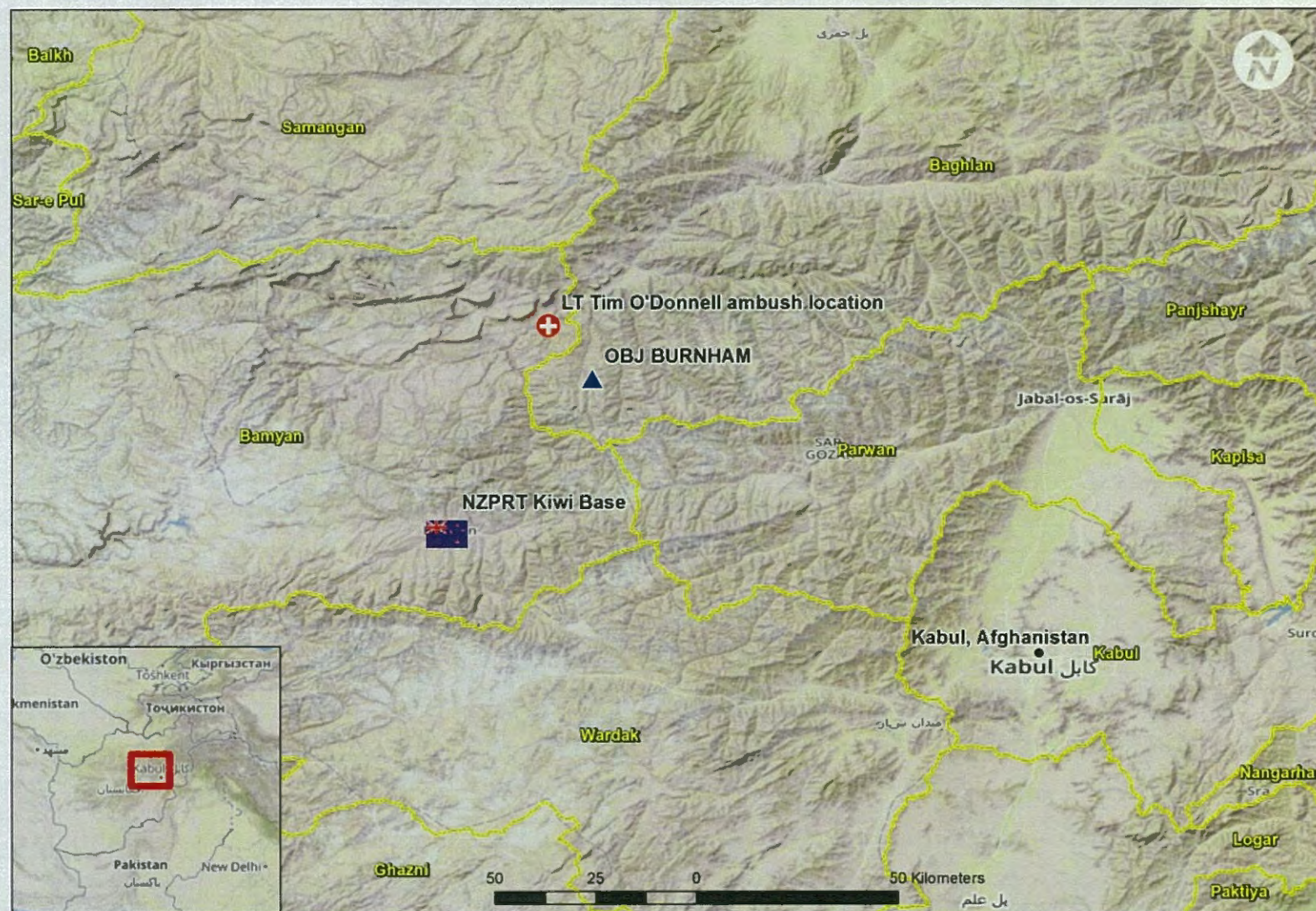


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OPERATION BURNHAM, 21/22 AUG



NZ Command + Sniper

~~SECRET: FOR OFFICIAL USE ONLY~~

PSR(S)1, PSR(S)2, PSR(S)3

1 DEVELOPMENT 42S VD 2300 9145

PSR(S)1, PSR(S)2, PSR(S)3

2 PID WEAPONS 42S VD 2182 9253

PSR(S)1, PSR(S)2, PSR(S)3

3 Call Out at A1' 42S VD 2308 9143

PSR(S)1, PSR(S)2, PSR(S)3

4 Entry at A1 42S VD 2307 9144

PSR(S)1, PSR(S)2, PSR(S)3

5 Fire at A1 42S VD 2300 9149

PSR(S)1, PSR(S)2, PSR(S)3

Partner imagery

PSR(S)1, PSR(S)2, PSR(S)3

Partner imagery

PSR(S)1, PSR(S)2, PSR(S)3

Partner imagery

PSR(S)1, PSR(S)2, PSR(S)3

Partner imagery

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Weapons and Ammunition Recovered

PSR(S)1, PSR(S)2, PSR(S)3



1 x RPG launcher,
1 x AK47,
7 x RPG rockets,
5 x RPG rocket motors,
1 x bipod,
6 x boxes of small arms ammunition,
2 x RPK belts,
1 x AK-47 magazine (full),
1 x pistol holster,
1 x drum mag.
These items were destroyed on the location



PSR(S)1, PSR(S)2, PSR(S)3

Partner imagery

PSR(S)1, PSR(S)2, PSR(S)3

Partner imagery

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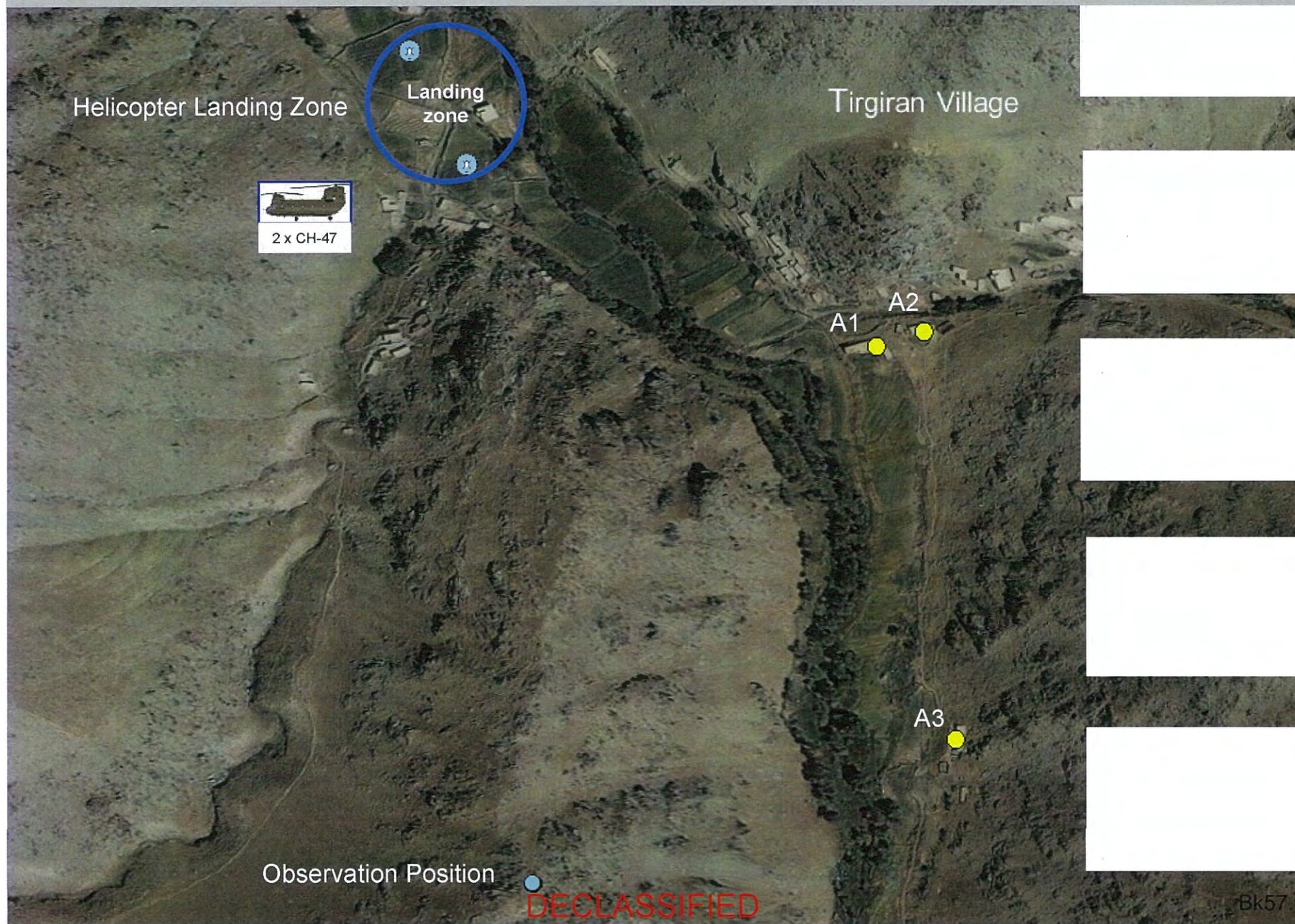
Equipment claimed to have
been used by NZSAS on 22
August 2010



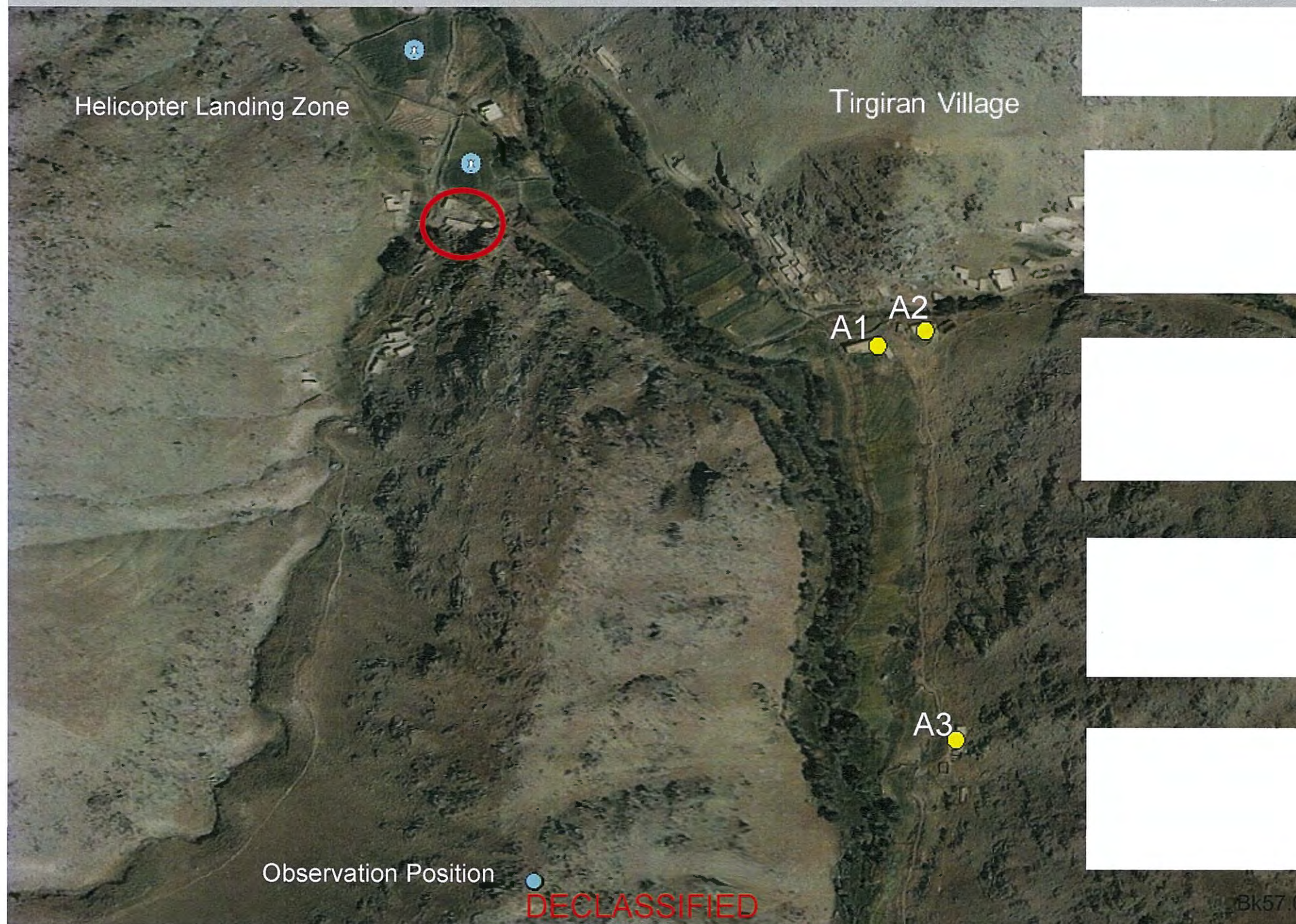
Types of equipment used
by NZSAS on 22 August
2010



22 August 0030 – 2 Helicopters Land at Landing Zone



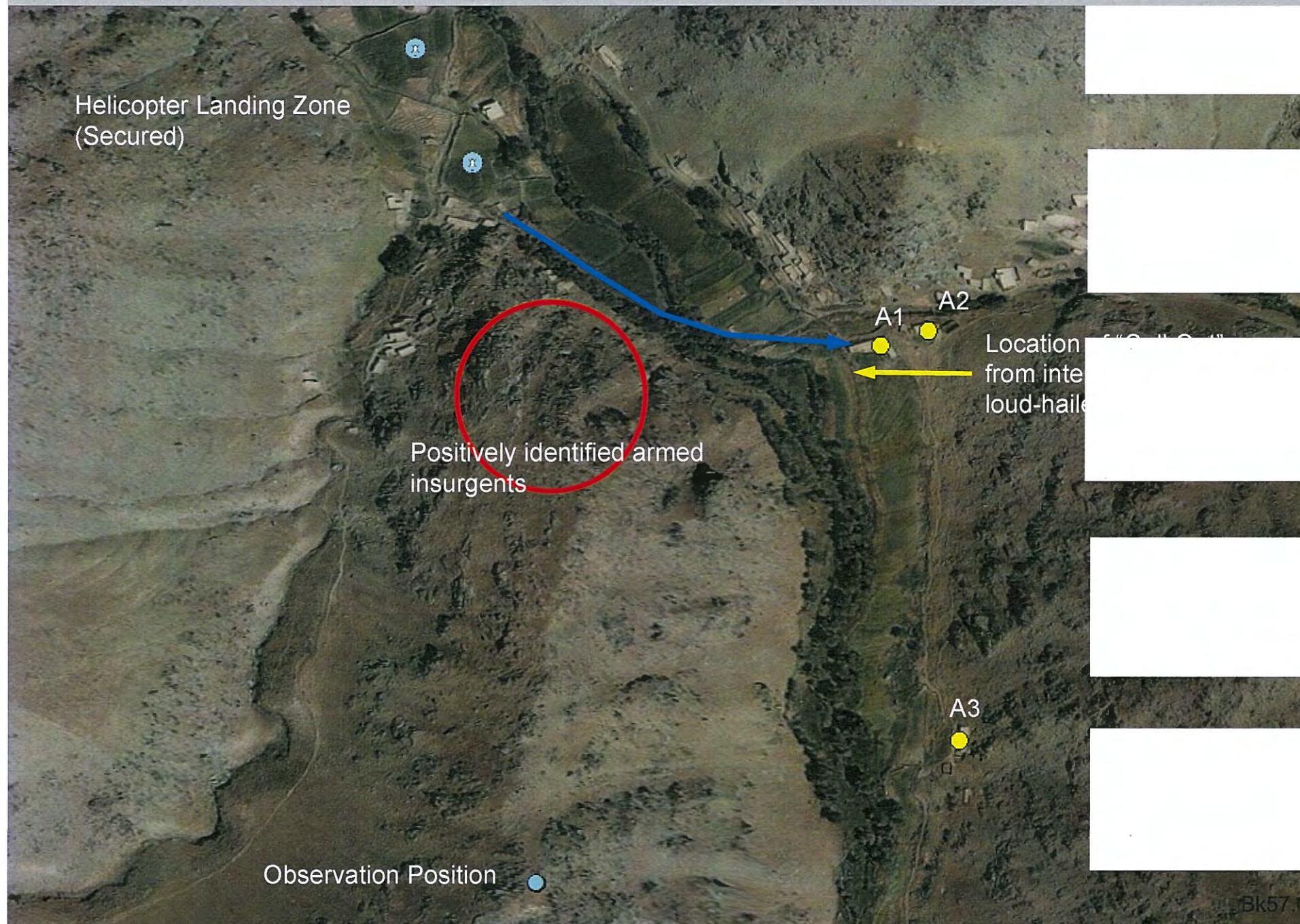
0030 – Surveillance aircraft and support helicopters positively identify armed insurgents



0035 hrs – Positively Identified Armed insurgents move above landing zone. Clearance is given to engage if no civilians are in the area and there are no collateral damage concerns identified.



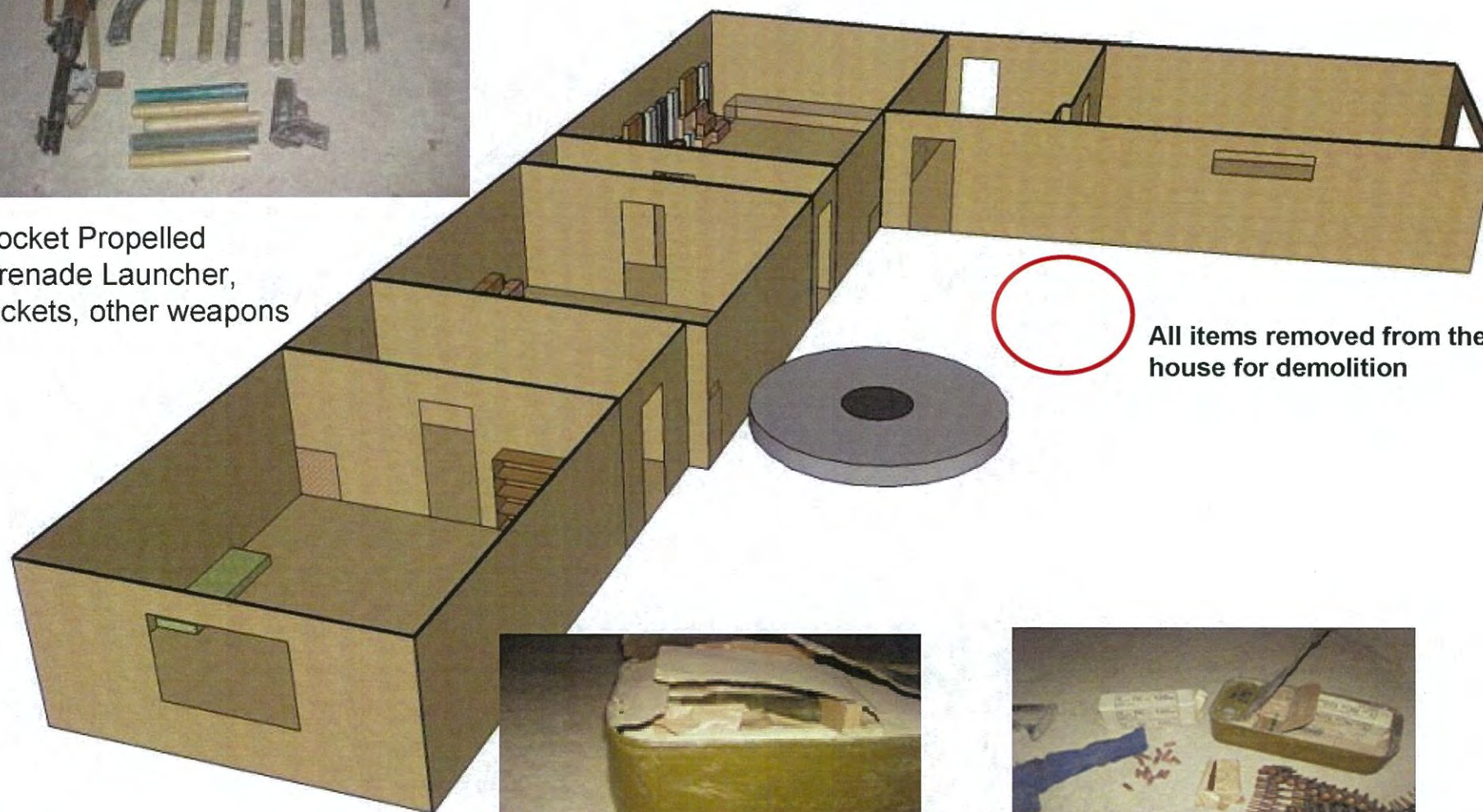
0053 – Entry is made into first residence “A1”. NZ Casualty sustained.





Items of
ammunition found
in this area

Rocket Propelled
Grenade Launcher,
rockets, other weapons



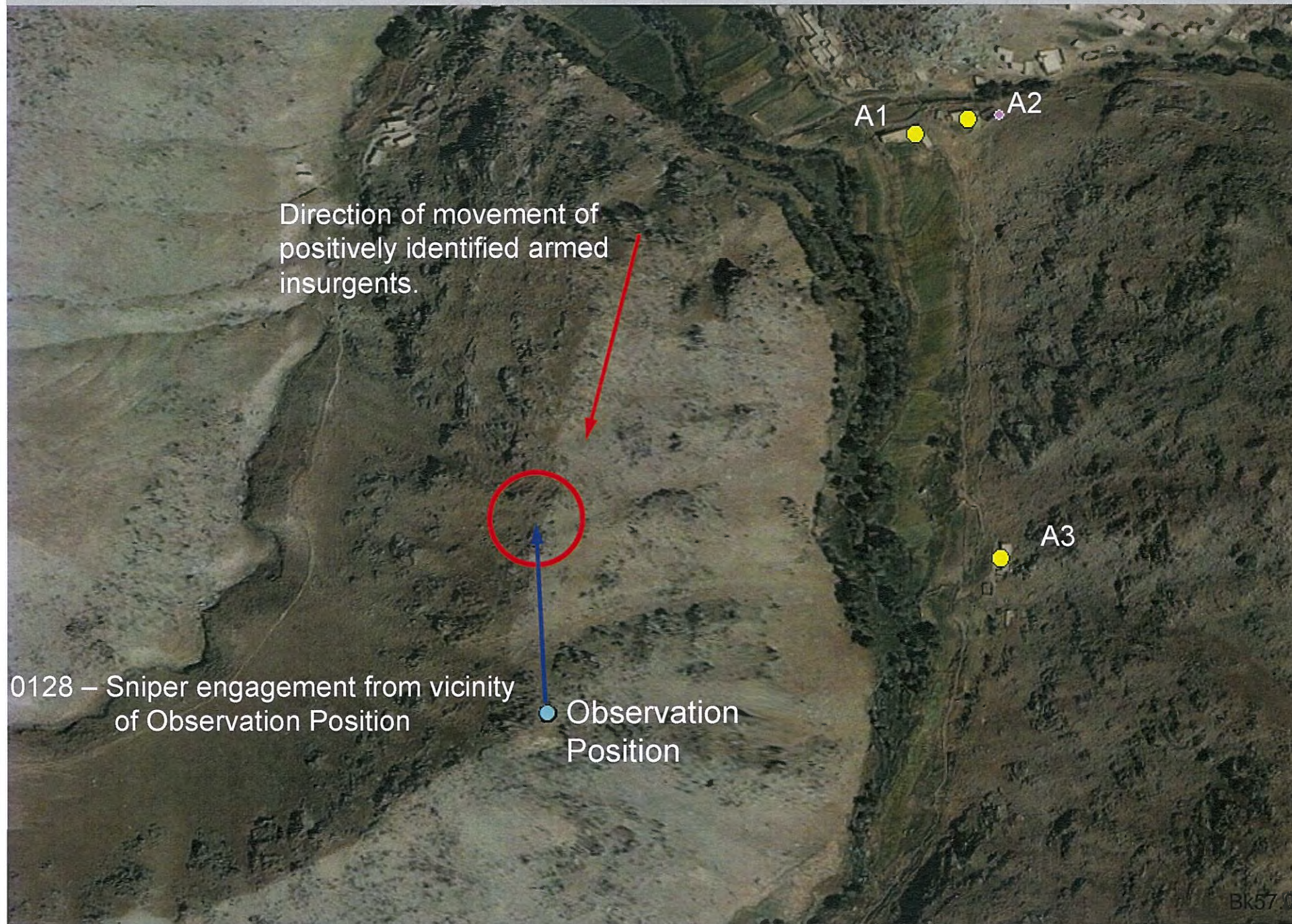
All items removed from the
house for demolition

Boxes of ammunition



Machine gun
ammunition

0128 – Sniper Engagement at one insurgent



0245 (APPROX) – NZ CASUALTY EXTRACTED



0345 – ALL NZSOF EXTRACTED OFF OBJECTIVE





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OIA-2017-2939

OIA-2017-2940

13 February 2018

Dear [REDACTED]

I refer to your emails of 29 December 2017, and 2 January 2018, asking for information under the Official Information Act 1982 (OIA) in relation to the August 2010 Operation Burnham. Following discussions with the Chief Ombudsman regarding his investigation into the NZDF's response to a number of requests made regarding the *Hit & Run* allegations about Operation Burnham, the NZDF will publicly release a package of information shortly. Much of that information will address many of your questions and a response to each of these is provided below:

Request of 29 December 2017

1. Was a pistol lost by Afghan CRU man during the operation? Please provide a copy of the report or reports that note the loss.

The NZDF does not hold any reports in relation to a pistol lost by an Afghan CRU member during the operation. This part of your request is declined in accordance with section 18((g)(i) of the OIA as the information requested is not held by the NZDF and there are no grounds for believing the information is held by another department or Minister of the Crown or organisation.

2. You have stated publicly that only two buildings were damaged during the operation (including one of them by an unattended cooking fire). Please show the position of each of these two houses on a map or satellite image of the village you call "Tirgiran" (such as the images of "Tirgiran" on the powerpoint shown during your "Hit and Run" press conference in late March 2017, available on the NZDF website), indicating which was the one harmed by the unattended cooking fire.

Slides from the PowerPoint presentation of 29 March 2017, are publicly available on the NZDF website. The two buildings damaged by fire are marked on these slides as A1 and A3. The building marked as A3 was damaged as a result of the unattended cooking fire.

3. Have you located any other video or photographs taken during the operation, since the initial statements about there only being one piece of video (shown to Bill English) and one photograph? If so, please provide a list of all further video and photographs, including a description of each. Also, please provide a copy of each.

Enclosed are all photographs held by the NZDF that were taken during the operation. The NZDF did not record any video footage during the operation.

Since the initial statements additional video footage from an aerial platform of the operation area before, during and after Operation Burnham has been located. Further Information relating to this footage is withheld in accordance with section 6(b)(i) of the OIA as making that information available would likely prejudice the entrusting of information to the Government of New Zealand on the basis of confidence by the Government of another country.

4. In your 29 June 2017 OIA response to me, you provided a copy of a report to the Minister called "Tirgiran Village: evidence of correct name." Has the NZDF Geospatial Intelligence Branch done any further work on the subject of Operation Burnham/Hit and Run locations since that 7 April 2017 report? If so what are the names of the reports and other documents produced on this subject. Please provide me with copies of these documents.

No further work on the subject of location has been undertaken by the NZDF Geospatial Intelligence Branch. This part of your request is declined in accordance with section 18(e) of the OIA as the information requested does not exist.

5. Did NZDF personnel obtain any spent ammunition shell casings (eg Apache cannon shell casings) from the operation and, if so, how many and what types? Were they brought back to New Zealand?

No NZDF personnel obtained any spent ammunition shell casings from the operation. This part of your request is declined in accordance with section 18(e) of the OIA as the information requested does not exist.

6. Please provide a copy of all NZDF briefings and reports provided to the incoming Minister of Defence on Operation Burnham, and/or briefing notes if some of the briefings were verbal.

The incoming Minister of Defence received the same brief as his predecessors since the publication of the book *Hit & Run*. This brief is based on the same information and contained the same reports. Outside of that information already provided, other information is withheld in accordance with sections 6(a) and 9(2)(h) of the OIA. Respectively, release of this information would likely prejudice the security and defence of New Zealand by providing insight into operational capability and tactics, and to protect legal professional privilege. The public interest does not outweigh the need to protect that privilege in this instance.

Enclosed is a list of reports following the operation that informed these briefings. Names are withheld in order to protect the privacy of individuals in accordance with section 9(2)(a) of the OIA. The public interest does not outweigh the need to protect that privacy in this instance. Operation specific information is withheld in accordance with sections 6(a) and 6(b) of the OIA as release of this classified information would likely prejudice the international relations of the Government of New Zealand, and the entrusting of information to the Government of New Zealand on a basis of confidence by the Government or agency of another country or an international organisation.

7. The book Hit and Run describes NZSAS staff helping to capture an insurgent called Qari Miraj and his subsequent torture by the NDS. Did NZDF conduct any inquiries into

the allegations of torture of Qari Miraj? If so, what inquiries occurred and what was concluded? Please provide relevant documents. If not, why not?

The NZDF did not detain Mr Miraj, but searched him before and after he was transported to the National Directorate of Security detention facility. The NZDF Military Police have investigated an allegation in *Hit & Run* that Mr Miraj had been assaulted by a member of the NZDF. Documents related to this investigation will be released shortly as part of the information package. This part of your request is declined in accordance with section 18(d) of the OIA as the information will soon be publicly available.

Request of 2 January 2018

1. Have you, Lieutenant General Tim Keating, personally read the book Hit and Run?

Lieutenant General Tim Keating has personally read the book *Hit & Run*.

2 a) Have you or your staff taken any actions to investigate the Independent Directorate of Local Governance list of dead and injured villagers from the 22 August 2010 operation (reproduced in Dari and English at the back of Hit and Run)?

b) If so, please provide all correspondence and other documents on this subject.

A copy of the 30 March 2017 note to the Minister of Defence regarding the allegations of offending was provided to you in my response dated 24 May 2017. This summarises the actions taken by the NZDF in response to information presented in the book *Hit & Run*.

Related documentation will not be released in accordance with sections 6(a) and 6(b) of the OIA. The documents are classified correspondence and reports. Making them available would be likely to prejudice: the security or defence of New Zealand or the international relations of the Government of New Zealand, and; the entrusting of information to the government of New Zealand on a basis of confidence by the Government of another country and an international organisation. A list of the reports following the operation is enclosed.

The package of information being released shortly will address questions 3 and 4 of this request.

5. a) Did any post-activity reports from Operation Burnham refer to the death of a child?

b) If yes, what was the title and date of the report(s)?

c) And what action was taken to follow up the report or reports?

Reports following Operation Burnham mention the death of a child which were unconfirmed. The relevant reports in the enclosed list are the *Updates* and *2010-08-26 Int Summary Report on OBJ Burnham 22 Aug 10.doc*. This information informed the joint ISAF/Afghanistan Government investigation.

6. a) Did any post-activity reports from Operation Burnham refer to the death of an old man?

b) If yes, what was the title and date of the report(s)?

c) And what action was taken to follow up the report or reports?

There are no reports following Operation Burnham that refer to the death of an old man. This part of your request is declined in accordance with section 18(e) of the OIA as the information does not exist.

7. a) *Did any post-activity reports from Operation Burnham refer to the injury of a woman?*

b) *If yes, what was the title and date of the report(s)?*

c) *And what action was taken to follow up the report or reports?*

Reports following Operation Burnham mention the injury of a woman which were unconfirmed. The relevant reports in the enclosed list are the *Updates* and *2010-08-26 Int Summary Report on OBJ Burnham 22 Aug 10.doc*. This information informed the joint ISAF/Afghanistan Government investigation.

8. *Were the main targets of Operation Burnham Abdullah Kalta and Maulawi Naimatullah, as the book has already stated publicly?*

Yes.

9. *Did NZSAS troopers in Afghanistan from 2009-2013 sometimes wear helmet cams or recorders on their night vision equipment? If yes, in what situations did they wear it? Please provide documents on the policy governing this.*

Helmet cameras were trialled by NZSAS troopers for use in Afghanistan from 2008-2013. This trial did not include night vision equipment. Information on how they were used and in what situations is withheld in accordance with section 6(a) of the OIA as its release will provide insight into operational capability.

11. a) *How much footage from NZSAS helmets or night-vision equipment was collected during Operation Burnham and of this total, how much exists today.*

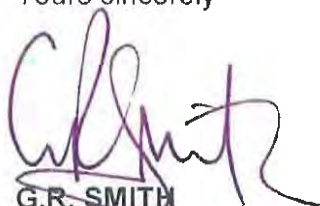
b) *Where is it?*

c) *If there is none, why was it not collected on such an important operation?*

No helmet cameras were used by NZSAS troopers during Operation Burnham as they were being trialled. This part of your request is declined in accordance with section 18(e) of the OIA as the information requested does not exist.

You have a right, under section 28(3) of the OIA, to ask an Ombudsman to review this response.

Yours sincerely



G.R. SMITH

Commodore, RNZN
Chief of Staff HQNZDF

Enclosures

1. Imagery captured by the NZDF during Operation Burnham
2. List of reports created following Operation Burnham

Abbreviations used in report titles:

BDA	Battle Damage Assessment
Civ	Civilian
HLZ	Helicopter Landing Zone
Int	Intelligence
IO	Information Operations
MINDEF	Minister of Defence
Ops	Operations
Post Op	Post Operation

Imagery captured by the NZDF during Operation Burnham

 IMG_0026	22/08/2010 9:21 AM	JPG File	2,810 KB
 IMG_0027	22/08/2010 9:21 AM	JPG File	2,854 KB
 IMG_0028	22/08/2010 9:21 AM	JPG File	3,157 KB
 IMG_0029	22/08/2010 9:23 AM	JPG File	2,912 KB
 P8220037	22/08/2010 9:14 AM	JPG File	1,938 KB



IMG_0026



IMG_0027



IMG_0028



IMG_0029



P8220037

IMG0026 = Sunday, 22 August 2010, 9:21:00 AM NZST (AFG LOCAL TIME = 01:51:00AM)

IMG0027 = Sunday, 22 August 2010, 9:21:28 AM NZST (AFG LOCAL TIME = 01:51:28AM)

IMG0028 = Sunday, 22 August 2010, 9:21:56 AM NZST (AFG LOCAL TIME = 01:51:56AM)

IMG0029 = Sunday, 22 August 2010, 9:23:00 AM NZST (AFG LOCAL TIME = 01:53:00AM)

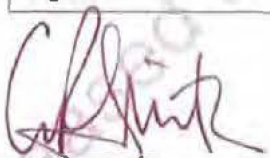
PB220037 = Sunday, 22 August 2010, 9:14:32 AM NZST (AFG LOCAL TIME = 01:44:32AM)

Name	Date modified	Type	Size
 2010-08-25 Cover Sheet - HQ ISAF Civ Casualty Investigation into Op BURNHAM.doc	8/07/2011 3:22 p.m.	Microsoft Word 9...	51 KB
 2010-08-25 MINDEF Note - HQ ISAF Civ Casualty Investigation on Op BURNHAM.doc	8/07/2011 3:27 p.m.	Microsoft Word 9...	52 KB
 2010-08-24 Update on s. 9(2)(a) Wounded in Action - MINDEF Note Coversheet.doc	28/07/2011 9:50 a.m.	Microsoft Word 9...	52 KB
 HLZ Statement (SS0).docx	24/08/2010 5:49 p.m.	Microsoft Word D...	1,418 KB
 HLZ Statement (SS2).docx	24/08/2010 5:49 p.m.	Microsoft Word D...	1,416 KB
 Obj BURNHAM BDA.docx	24/08/2010 10:07 ...	Microsoft Word D...	22 KB
 20100823-6(a), 6(b) -DEBRIEF-Obj BURNHAM ^{6(a),6(b)} .doc	31/08/2010 10:25 ...	Microsoft Word 9...	4,284 KB
 2010-08-22 Baghlan Operation - OPJ BURNHAM.ppt	21/03/2011 3:39 p.m.	Microsoft PowerP...	2,550 KB
 2010-08-22 6(a), 6(b) OBJ BURNHAM Storyboard.ppt	8/07/2011 3:27 p.m.	Microsoft PowerP...	2,341 KB
 2010-08-22 OPJ BURNHAM Storyboards.ppt	21/03/2011 3:38 p.m.	Microsoft PowerP...	2,550 KB
 2010-08-23 Int Update Obj BURNHAM Op.doc	24/08/2010 7:59 a.m.	Microsoft Word 9...	32 KB
 2010-08-26 Int Summary Report on OBJ Burnham 22 Aug 10.doc	27/07/2011 11:24 a.m.	Microsoft Word 9...	52 KB
 2010-08-30 OBJ Burnham Post-Op Report.doc	21/07/2011 3:08 p.m.	Microsoft Word 9...	26 KB
 2010-08-24 CDF Ops Brief.ppt	23/08/2010 12:12 ...	Microsoft PowerP...	19,306 KB
 2010-08-31 CDF Ops Brief.ppt	30/08/2010 1:48 p.m.	Microsoft PowerP...	16,619 KB
 OBJ Burnham Post Op report.doc	31/08/2010 11:15 ...	Microsoft Word 9...	21 KB
 Update Obj Burnham Op 21 Aug 10 Update 2.doc	25/08/2010 2:45 a.m.	Microsoft Word 9...	39 KB
 Update Obj Burnham Op 21 Aug 10 Update 3.doc	26/08/2010 2:03 a.m.	Microsoft Word 9...	42 KB
 Update Obj Burnham Op 21 Aug 10.doc	24/08/2010 5:24 a.m.	Microsoft Word 9...	37 KB
 Update Obj Burnham Op 21 Aug 10 Update 1.doc	24/08/2010 9:53 p.m.	Microsoft Word 9...	38 KB
 Post operation IO Message.docx	24/08/2010 3:54 a.m.	Microsoft Word D...	23 KB
 100914 1430 s. 9(2)(a) doc	16/09/2010 1:43 ...	Microsoft Word 9...	45 KB



New Zealand
**DEFENCE
FORCE**
Te Ope Kaitiaki O Aotearoa

BRIEFING NOTE FOR MINISTER OF DEFENCE

Title:	OPERATION BURNHAM - TALKING POINTS FOR PRIME MINISTER AND MINISTER OF DEFENCE ON RELEASE OF FURTHER OIA MATERIAL		
NZDF File No:	NZDF Tracking #: 2018-059 (For OCDF Use Only)	Minister's Tracking# (For Minister's Office)	
Importance of the Issue:	<input type="checkbox"/> High	<input type="checkbox"/> Moderate	<input checked="" type="checkbox"/> Routine
Request Ministerial response by:	Not required		
Contact:	ss 9(2)(a), 9(2)(g)(i)	Tel: ss 9(2)(a), 9(2)(k)	A/H: ss 9(2)(a), 9(2)(k)
<p>1. Enclosed are talking points for the Minister of Defence and Prime Minister relating to the planned release of further information relating to Operation Burnham. The information intended for release is in response to five investigations conducted by the Ombudsman. The material proposed for release has already been forwarded to your office.</p> <p>Recommendations</p> <p>2. I recommend that you:</p> <ul style="list-style-type: none"> a. Note the enclosed talking points, and b. Forward a copy to the Prime Minister. 			
Minister's Comments:			
Minister's Action:	Signed / Noted / Agreed / Approved / Declined / Discussion Required		
	Referred to:		
<p>Signature:  Date: 23/2/18</p>			

G.R. SMITH
Commodore, RNZN
Chief of Staff HQNZDF

Date: 23/2/18

ANNEX A TO
NTM 2018-059
DATED 23 FEBRUARY 2018

TALKING POINTS FOR
THE PRIME MINISTER AND MINISTER OF DEFENCE

KEY MESSAGES – OPERATION BURNHAM

Overarching Messages

- The book *Hit & Run*, published in March 2017, alleges war crimes were committed by the New Zealand Special Air Service (NZSAS) during an operation in Afghanistan in August 2010.
- A detailed rebuttal was provided by the New Zealand Defence Force (NZDF) after the book was published.
- Operation Burnham did not occur in the villages named in the book, but in a place called Tirgiran Village, 2km away.
- In all respects, the conduct of the New Zealand ground forces during the operation was exemplary.
- After the operation, claims of civilian casualties were made to the provincial governor. A joint International Security Assistance Force (ISAF) / Afghan Government team investigated the claims.
- The investigation team concluded that civilian casualties may have been possible due to the malfunction of a weapon system in a supporting Apache helicopter, as was made public by ISAF on 29 August 2010.
- The team concluded the NZSAS appears to have complied with the ISAF commander's tactical directive, the rules of engagement, and accordingly the law of armed conflict. The investigation concluded that no further action be taken.

Detailed Key Points (a summary of events around release of the book and the information presented at the Chief of Defence Force's press conference 27 March 2017)

- In March 2017, Nicky Hager published a book called *Hit & Run*, alleging war crimes were carried out by the NZSAS in an operation in Afghanistan in August 2010.
- The Chief of Defence Force, Lieutenant General Tim Keating, issued a detailed rebuttal at a press conference on 27 March 2017, and described an operation, called Operation Burnham, carried out on the night of 21-22 August 2010.

- The detailed rebuttal followed the release of a media statement by the NZDF which confirmed the location of Operation Burnham was different to the location alleged in the book.
- The NZDF rebutted the book's claims that the NZSAS committed war crimes or acted inappropriately during Operation Burnham. In all respects, the conduct of the New Zealand ground forces during the operation was exemplary.
- The operation was conducted in Tirgiran Village, a village in the north-east of Bamyān Province. The operation followed the attack on 3 August 2010 on the New Zealand Provincial Reconstruction Team (PRT) that killed Lieutenant Tim O'Donnell.
- The operation was not, as the book alleges, "revenge" over Lieutenant O'Donnell's death. Operation Burnham was aimed at disrupting the Taliban insurgent network and ensuring that there was an impact on future threats to the PRT's operations by the insurgents. The NZDF's primary concern was the security of its people, and that of the Afghani and other development people working in Bamyān province.
- NZDF knew in a matter of days from local and ISAF intelligence who had attacked the patrol.
- The New Zealand Government gave permission to use the NZSAS, who were operating out of Kabul with the Afghan Crisis Response Unit, to see if they could help enhance the PRT's security. Greater security would allow the PRT to continue with the progress it had achieved to date in its mission.
- Hit & Run alleges the NZSAS conducted an operation in Khak Khuday Dad Village and Naik Village. It provided detailed lists of the dead and wounded from those two villages, and lists of the houses destroyed.
- The underlying premise of the book was that the NZSAS conducted an operation in Khak Khuday Dad Village and Naik Village that inflicted considerable damage to property and deliberately killed civilians, and which added up to war crimes that need to be investigated.
- However, Operation Burnham was conducted in Tirgiran Village, some two kilometres away.
- A feature of all NZSAS operations, was the involvement in the planning, conduct and subsequent debriefs and review of the operation by a lawyer.
- New Zealand was one of the first in the ISAF coalition to adopt this practice of legal oversight at the tactical level -- which was aimed to provide a level of additional assurance to the commander and troops on the ground that their actions were within their operational directive and any offensive actions were within the Rules of Engagement.

- The NZSAS and partner ground forces arrived at the Helicopter Landing Zone at 0030 on 22 August 2010. They were provided covering support by Coalition Aircraft. The role of these aircraft was to provide protection to the ground patrols.
- The ground force commander was an NZSAS Officer who controlled both the ground activities and provided clearance, after the appropriate criteria had been met, for any involvement of the aircraft. These elements were co-ordinated by an air controller in his location.
- The criteria were that the target was positively identified as a direct participant in hostilities and that any collateral damage would be minimised.
- On arrival of the ground patrols by helicopters, insurgents with weapons were identified leaving the village to take up positions on the high ground and within the village which were deemed, appropriately, by the ground force Commander to threaten the ground force. On meeting the necessary criteria within the Rules of Engagement, coalition aircraft were given permission to engage these insurgent groups.
- Meanwhile, the ground forces entered a number of the buildings where intelligence had indicated insurgent leadership was staying. While the insurgents themselves had left, significant quantities of weapons and ammunition were found and destroyed on site.
- During the destruction of the ammunition, two dwellings caught fire, one through exploding ammunition falling on the roof and one by an unattended cooking fire.
- The SAS suffered one casualty, who was injured by falling debris during the operation.
- Planning for the operation went to great lengths to protect all civilians on the ground, and this was followed through meticulously by the ground force during the conduct of the operation.
- Part of this included a procedure known as a callout, where before entering the village, the ground forces announced their presence and intention to the villagers through loudhailers, advising the villagers that this was a security operation. The obvious downside of this approach is that it gave away the element of surprise and allowed the insurgents time to respond -- thereby putting the ground forces at greater risk.
- Two shots fired by the NZSAS ground force were targeted at an insurgent who was approaching one of the ground force positions. The insurgent was shot and killed.
- After the operation, the Provincial Governor was approached by villagers claiming that civilian casualties occurred.

- The situation in Afghanistan at the time was considered by New Zealand to be one of a non-international armed conflict. The legal framework governing the conduct of members of the NZDF was one regulated by international humanitarian law also called the Law of Armed Conflict.
- For many operations, the NZDF will also develop its own rules of engagement. These are rules drafted with input from legal officers and operators and signed off at the highest level. These rules can never exceed the limits of the Law of Armed Conflict.
- All members of the Armed Forces, and indeed all members of this deployment, are required to undergo training in the Law of Armed Conflict – it is a baseline training requirement for all members of the Armed Forces. All members of this deployment undertook specific pre-deployment training that incorporated briefs and scenario-based training involving the application of the rules of engagement. All personnel were issued with a Code of Conduct card which outlined their obligations under international law.
- As part of this NZSAS deployment, the NZDF sent a legal officer to accompany the deployment at the tactical level.
- The legal officer did not observe any activity in relation to Operation Burnham which gave them any cause for concern around compliance with the law of armed conflict or the rules of engagement.
- It is a tragic reality that civilian casualties occur in times of armed conflict. Civilian casualties however, are not necessarily unlawful at international law.
- Subsequent information received after Operation Burnham indicated that civilian casualties may have been possible.
- ISAF was required to assess all reports of possible civilian casualties and was also required to notify such instances to the United Nations Assistance Mission in Afghanistan and the International Committee of the Red Cross.
- After the operation, reports of civilian casualties were made to the Afghan regional governor. ISAF stood up an investigation team lead by an ISAF Brigadier General and supported by a team including an ISAF Legal Officer as well as the Afghan Government representatives.
- The investigation team concluded that civilian casualties may have been possible due to the malfunction of a weapon system in a supporting Apache helicopter, as was made public by ISAF on 29 August 2010.
- The investigation team also concluded that members of the NZSAS appear to have complied with the ISAF commander's tactical directive, the rules of engagement, and accordingly the law of armed conflict. The investigation concluded no further action be taken.

- The NZDF rebuts any claim that the NZSAS committed war crimes or acted in any way inappropriately during the operation.
- In all respects, the conduct of the New Zealand ground forces during Operation Burnham was exemplary.

**Table of documents/information indicating what has already been released
what is planned for release to answer OIA investigations**

Document/Info	Publicly Available	Already Released (OIA)	To Be Released in Response to OIA Investigations
GPS Coordinates		Released by Minister of Defence in May 2017	
US Joint Ops Chart 1982		To [REDACTED] in June 2017	
Fairchild Survey Map 1967		To [REDACTED] in June 2017	
Geolocated Photos from book			X
Location comparison			X
PowerPoint slides	X		
Photos taken by NZDF	X	To [REDACTED] in June 2017	
Citation summaries			X
NZDF inquiries into allegations		To 30+ requesters in April 2017	
Reports on detainee			X
List of reports		To [REDACTED] on 13 February 2018	



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OIA-2018-2973

23 March 2018

Dear [REDACTED]

I refer to your request of 19 February 2018, under the Official Information Act 1982 (OIA), for information concerning the 2010 Operation Burnham. Responses to each of your points are provided below:

1. *NZDF has stated publicly that during Op Burnham an insurgent was shot as he threateningly approached SAS troops. In the same way that you have recently identified of the locations of the two houses destroyed by fire (OIA response 13 Feb 2018), please provide a satellite image of the village (eg as in the powerpoint you showed in your press conference on Op Burnham) with the precise location marked on where this insurgent was shot.*

Two houses were not destroyed by fire. The location where the insurgent was shot by the NZSAS ground force is indicated on slide 13 (0128 – *Sniper engagement at one insurgent*) of the PowerPoint presentation publicly available on the NZDF website. Any further precision is withheld as it would provide detail on the capability of NZDF personnel. This is in accordance with section 6(a) of the OIA.

2. *NZDF has also stated publicly that during Op Burnham a group of insurgents were engaged as they threatened New Zealand troops. In the same way that you have recently identified of the locations of the two houses destroyed by fire (OIA response 13 Feb 2018), please provide a satellite image of the village (eg as in the powerpoint you showed in your press conference on Op Burnham) with the precise location marked on where this group of insurgents was engaged. Did NZSAS give it this operation name?*

The precise location where the group of insurgents who were threatening the ground force is indicated by the circle on slide 10 of the PowerPoint presentation publicly available on the NZDF website (0035 hrs – *Positively Identified Armed insurgents move above landing zone. Clearance is given to engage if no civilians are in the area and there are no collateral damage concerns identified*). It is important to note there is a 19 minute period from when the insurgents are identified at 0035, procedures followed to ensure compliance with the rules of engagement, clearance given to engage, and firing on the insurgents at 0054 hrs.

As the precise location is publicly available on the aforementioned PowerPoint presentation slide, this part of your request is declined in accordance with section 18(d) of the OIA. The NZSAS did not give Operation Burnham its name.

3. *Likewise, please provide a satellite image that indicates the building where the SAS trooper was injured.*

On those series of slides from the same PowerPoint presentation publicly available on the NZDF website indicating buildings A1, A2 and A3, the NZSAS trooper was injured at building A1.

4. *Likewise, please provide a satellite image that indicates precisely where unidentified males were seen gathering further down the valley.*

The NZDF has not created a satellite image that indicates precisely where unidentified males were seen gathering further down the valley. This part of your request is declined in accordance with section 18(e) of the OIA as the information requested does not exist.

5. *Finally, please provide a satellite image that indicates precisely where you believe a child may have been killed during the raid.*

The NZDF has no grounds for believing or not believing a child may have been killed during the operation. This part of your request is declined in accordance with section 18(e) of the OIA, as the information requested does not exist.

You have the right, under section 28(3) of the OIA, to ask an Ombudsman to review my response to your request.

Yours sincerely



G.R. SMITH
Commodore, RNZN
Chief of Staff HQNZDF



New Zealand
**DEFENCE
FORCE**
Te Ope Kātua O Aotearoa

NEW ZEALAND DEFENCE FORCE COVER SHEET

To accompany documents to the
Minister of Defence

Title:	OPERATION BURNHAM – UPDATE ON A NUMBER OF ISSUES INCLUDING FURTHER ANALYSIS OF THE BOOK HIT AND RUN		
NZDF File No.	NZDF Tracking # 2018-124 (For OCDF Use Only)	Minister's Tracking#: (For Minister's office)	
Importance of the Issue:	<input checked="" type="checkbox"/> High	<input type="checkbox"/> Moderate	<input type="checkbox"/> Routine
Urgency for Attention/Sign-Off:	NOT URGENT		Request Ministerial response by: Not required
Contacts:	1. s9(2)(a) 2.	Tel: s9(2)(a) Tel:	A/H: s9(2)(a) A/H:
Purpose:	This note is to update you on several issues related to Operation Burnham s9(2)(g)(i)		
Recommendations:	<p>I recommend that you:</p> <ul style="list-style-type: none"> a. Note the greater detail of analysis of the <i>Hit and Run</i> book, s9(2)(g)(i) b. Note that it further considers this in the context of the approximately eight hours of near continuous ISR s6(a), s6(b)(i) footage; c. Note the update on attempts by the NZDF to have the ISR s6(a), s6(b)(i) footage cleared by our US counterparts for public release, as well as the NATO/ISAF investigation report (known as the 'executive summary') cleared for public release; d. Note s9(2)(g)(i) e. Consider contacting the Attorney General directly to again extend an offer to him to view the ISR s6(a), s6(b)(i) footage, s9(2)(g)(i) 		
MOD/NZDF Consultation	Not required: NZDF matter only.		
Minister's comments:			
Minister's Action:	Signed / Noted / Agreed / Approved / Declined / Discussion required Referred to:		
Signature:	Date:		

T.J. KEATING
Lieutenant General
Chief of Defence Force

Date: 4 April 2018



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NTM 2018-124

4 April 2018

Minister of Defence

OPERATION BURNHAM – UPDATE ON A NUMBER OF ISSUES INCLUDING FURTHER ANALYSIS OF THE BOOK *HIT AND RUN*

Purpose

1. This note is to update you on several issues related to Operation Burnham s9(2)(g)(i)

Specifically:

- a. It provides a greater detail of analysis of the *Hit and Run* book, s9(2)(g)(i)
- b. It further considers this in the context of the approximately eight hours of near continuous Coalition Intelligence, Surveillance and Reconnaissance s6(a), s6(b)(i) footage. s9(2)(g)(i)
- c. It updates you on attempts by the New Zealand Defence Force (NZDF) to have the ISR s6(a), s6(b)(i) footage cleared by our US counterparts for public release, as well as the NATO/International Security Assistance Force (ISAF) investigation report (known as the 'executive summary') cleared for public release. s9(2)(g)(i)
- d. Late last week I received a communique from the Chief Executive of Internal Affairs, Colin MacDonald, who administers statutory inquiries under the Inquiries Act 2013. s9(2)(g)(i)

2. s9(2)(g)(i)

I am in no doubt would expeditiously exonerate the NZDF based on the other issues mentioned in this note – especially the more detailed analysis, and the available ISR s6(a), s6(b)(i) and helicopter footage of the operation, which directly contradicts the main thrusts of *Hit and Run*.

Further Analysis of *Hit and Run*

3. After the release of the book *Hit and Run*, the NZDF came under considerable pressure to respond quickly to the allegations. Due to the limited time available, in the media conference I led on 27 March 2017, my rebuttal therefore concentrated largely on the actual operation conducted by the New Zealand Special Air Service (NZSAS), Crisis Response Unit (CRU) and Coalition support elements, as opposed to focusing on elements of the book itself. The only real exception to this was pointing out the striking error in the book which had Operation Burnham being conducted in two separate villages in east-west running valleys labelled as Naik Village and Khak Khuday Dad Village [see *Hit and Run* description page 33, and detailed maps provided on pages 64-67], when obviously the actual operation was in the single village of Tirgiran, a north-south orientated village. Nonetheless, my rebuttal focused on presenting the actual events of the operation, which obviously run counter to the main thrusts of the *Hit and Run* account (which essentially claims swathes of civilians were killed, and these two villages were left decimated and in flames in a "vengeance" operation that amounted, in the authors' eyes at least, to war crimes) – showing them to be wholly without merit.

4. Since then, the NZDF has had an opportunity for an experienced analyst to consider the detailed content of *Hit and Run* in a systematic way. That analysis is complete and presented in the table attached at Annex A. s9(2)(g)(i)

5. The analysis identifies some 105 factual issues. It must be noted that, in carrying out this kind of analysis, the NZDF has had to suspend the authors' claims which state that *Hit and Run* is about events in Naik Village and Khak Khuday Dad Village. This isn't an entirely satisfactory approach as obviously the authors have described two locations and not one, and have assembled villages laid out against specific geography – for example, they make claims as to where atrocities are alleged to have occurred relative to buildings, mountains, rivers and the like. Of course, the authors place all these alleged activities in these specific locations as, they say (at page 7), the result of talking with a dozen Afghan villagers and "through multiple interviews and months of cross-checking they consider to be reliable". They set out these locations on satellite maps on pages 64-65 (Naik Village) and 66-67 (Khak Khuday Dad Village). Consequently, the NZDF has focused on the general sequence of events, and descriptors of activities, even when geographic descriptors make the events impossible to have occurred as they have been described. It is a far from satisfactory way to consider 'evidence', but seemed the only possible way to proceed in attempting to further refute the reliability of allegations made in *Hit and Run* that – which as I laid out in my 27 March media conference – are patently false.

6. Putting to one side relatively minor discrepancies, inconsequential to the major thematic allegations (for example, around alleged timings related to the operation, and travel routes of helicopters – though even these do, in my view, speak to the reliability of the supposed 'NZSAS sources' claimed to have been involved in the

operation and given information to Mr Hager or Mr Stephenson), the major discrepancies are abundantly clear. I summarise the main features of these here:

a. **Narrative about the nature of the helicopter engagement, i.e. targeting the village with weapons fire is completely incorrect:**

- (1) On page 41 the book maintains "it was about now that the Apaches reappeared, circling around over the small village firing at houses."

In fact: The Apaches did not do strafing runs through the village. s6(a), s6(b)(i) video shows all engagements where the weapons systems were used, which completely contradicts the account of firing upon the village. Also, the number of rounds expended by the helicopters and reported on do not match these accounts.

- (2) Later on page 41: "I've been in ambushes but I didn't feel as threatened as I did that night," an SAS member recalled. The Apache fire was "really heavy" and "it was very close".

In fact: At no point did the Apache helicopters fire near ground forces. No 'danger close' application of force was taken. Apaches observed ground forces and held off any engagement, even when Positively Identified Insurgents were less than 20 metres from SAS ground forces, who were at that time separated by a tree line.

- (3) Page 41 also contains a detailed account of how a wall "weakened from being hit with rounds, said one, hit by a rocket fire by an Apache said another" – collapsed on an SAS member.

In fact: The SAS trooper was injured when a wall collapsed after the NZSAS detonated a directional charge to facilitate entry to target building A1 (the building that intelligence reports suggested was in use by a named insurgent leader). As this location was a critical milestone of the Operation, there is continuous ISR s6(a), s6(b)(i) imagery of the extended period leading up to and including this moment.

At no time does building A1 come under fire from rounds or rockets. [It should be noted that the Apache helicopters did not possess 'rockets' on this mission, despite multiple mentions in *Hit and Run* that they fired rockets. They did possess s6(a), s6(b)(i)

however, in the course of the entire operation only a s6(a), s6(b)(i)

confirms it was in the mountain range to the south of the village, not near any built-up area, s6(a), s6(b)(i)

b. Accusations around deliberate burning of buildings do not stack up:

- (1) Page 39: "There is little doubt that these were calculated acts, because along the hill the first SAS team was doing the same [setting fire] at Abdullah Kalta's house."

In fact: ISR s6(a), s6(b)(i) footage shows Kalta's house didn't catch fire until after the teams had left the area. Review of the footage confirms hot debris – almost certainly a rocket propelled grenade motor – from the insurgent arms cache destroyed by Explosive Ordnance Device (EOD) members in a controlled detonation in the open and away from buildings, travelled upward, eventually igniting the roof. Review of the s6(a), s6(b)(i) imagery indeed shows s6(a), s6(b)(i) on the roof, in the spot that later catches alight.

- (2) Page 40: Accusation 'commandoes' fired weapons into cotton mattresses to set them alight, not possible.

In fact: No shots were fired by the SAS during the entire operation – except the two rounds fired by the sniper team, that NZDF has always acknowledged. This is confirmed by the after-action debriefs. [Additionally, expert advice is that bullets from the weapons used by the NZSAS wouldn't set cotton bedding alight in any event.]

- (3) On page 53 the book maintains that "the commandoes' [CRU] final action before leaving was to blow up the building where they had found the ammunition: 'it was a very big explosion'."

In fact: All ammunition was handled by NZSAS EOD operators and not commandoes. All insurgent items were secured and detonated in a single controlled explosion – away from and not inside any buildings. ISR s6(a), s6(b)(i) footage confirms the site of the EOD controlled explosion of the arms cache away from buildings.

c. Narrative about the nature of ground force operations in the village is completely incorrect:

- (1) The book maintains separate assault teams headed to two separate targets, while other teams began a house-to-house search of the village (page 38).

In fact: The single assault team never subdivided and moved from the Helicopter Landing Zone sequentially to target buildings A1, A2 and then A3 only. There was no house-to-house search conducted in the village – no approval had been given for a house-to-house search; the operation did not possess Ministry for the Interior warrants for such searches, and there wasn't the manpower on the operation to undertake such searches in any event.

- (2) The book notes on page 61: "The houses were not being used by the insurgents for military purposes; they were civilian homes."

In fact: In two of the three buildings that were the focus of the operation, those designated by the NZDF as 'A1' and 'A3', military grade equipment was found including rocket propelled grenades, small arms, and ammunition. s6(a), s6(b)(i)

s6(a), s6(b)(i), s6(b)(ii)

d. **Significant specific details that could not have happened, include:**

- (1) On page 41 it says Apache helicopters destroyed Abdullah Kalta's house, "which was already burning but the Apaches fired a rocket or missile through the roof of the neighbouring guest house to destroy it as well..."

In fact: Kalta's guest house – target designated A2 – is untouched throughout the operation. The ISR s6(a), s6(b)(i) stays in the valley s6(a), s6(b)(i) and footage of the building intact is captured until the ISR s6(a), s6(b)(i) leaves the zone. [And, as elsewhere in this document, the s6(a), s6(b)(i) used in the entire operation is captured on helicopter camera footage being s6(a), s6(b)(i) at a mountainous area to the south, approximately 2 kilometres away from the designated building structures.]

- (2) On page 48 it references three tents only about 250 metres from the troop helicopters, with a family including women, children and a grandfather (identified by *Hit and Run* as Deen Mohammad, a village elder). The book claims they ran away and "that's when the helicopters started shooting".

In fact: The ISR s6(a), s6(b)(i) role was to inspect or 'sweep' the Tirgiran landing zone prior to the arrival of the Chinooks. It would have picked up the s6(a), s6(b)(i) of the tents and any people before the landing of the Chinook – the presence of any people on the ground would have been a 'red flag' forcing the helicopter to make for a pre-designated alternate landing zone, as possible insurgent use of rocket propelled grenades was an identified threat to Chinook use. No tents or people are seen in either the ISR s6(a), s6(b)(i) or Apache s6(a), s6(b)(i) footage.

- (3) On page 50 it notes that: "As families ran from their houses, they were shot at by Apache gunships. 'Everyone was trying to get out of their houses and escape,' Deen said. The most concentrated fire was at three side-by-side houses owned by three brothers, on the south side of the river. The helicopters rained down cannon fire and rockets, destroying the houses, injuring two of the mothers and five

of their children and killing a sixth small child as she was held in her mother's arms [Fatima]."

In fact: *Hit and Run* provides an image of the three side-by-side houses on page 53, with the caption confirming that these belonged to the three brothers. Distinctive features in the image – including building shape, curved rocky wall in front, position of a well, location and type of terrain behind the building – mean that the NZDF has positively identified this building as a building in Tirgiran Village. In direct contradiction of the narrative provided by *Hit and Run*, ISR s6(a), s6(b)(i) and satellite imagery all confirm that in 2010 the left-hand house of the three shown in the image had not yet been built.

This two-building structure was one of the three critical locations on this operation (designated A3), and so was under considerable surveillance by the ISR s6(a), s6(b)(i), with imagery confirming that the two buildings were not damaged by aircraft, as claimed by *Hit and Run*. This is the structure that did catch alight by what has been attributed to an unattended cooking fire, causing damage to the roof. This is supported by after-action debrief of NZSAS troopers that recorded a cooking fire and warm food on the table as they entered.

- (4) But most significantly, details in *Hit and Run* about the moments leading up to Fatima's alleged death, and that of her fellow family members [found on page 55 – top paragraph], note that Fatima and her family had gone a short distance behind their house and were hit by helicopter fire because of their proximity to the approaching NZSAS and CRU troops.

In fact: As building A3 was so significant to the operation, there is ISR s6(a), s6(b)(i) imagery of this entire section of the operation as the NZSAS/CRU team approached. They do not show any villagers running from the building, they pick up no villagers and no movement whatsoever. The ISR s6(a), s6(b)(i) footage shows no fire from helicopter or ground forces at, on, or around the target designated A3. It shows no bodies anywhere around the house, especially in the area behind the house. It should be noted that the ISR s6(a), s6(b)(i) footage at times includes wide angle views showing a considerable expanse of the surrounding areas, and these wider scans of the environment also show no movement, people, or bodies. When the NZSAS troopers searched the house, it was empty.

- e. **There are significant issues with many pictures contained in *Hit and Run* – which often cannot represent what the authors claim they show:**

- (1) On page 58 *Hit and Run* presents a photo where the authors allege 'Islamuddin' was shot. The book describes the location as 50 metres up the hill behind his family home. Further, on the map on page 67

the authors of *Hit and Run* draw a location up the hillside, in proximity to a "presumed SAS sniper position".

In fact: The photo is of terrain covered in vegetation including large mature trees as is found in the lower valley of the village identified as Khak Khuday Dad in the book, some 2 kilometres away from the single SAS sniper team engagement zone. Where the sniper team operated, and as is clearly visible from the ISR s6(a), s6(b)(i) footage, and where the sole insurgent falls when shot and killed by the SAS sniper team is on the ridgeline above the target building designated A3 – there is no green vegetation and certainly no large trees present in that location.

- (2) On page 60 the authors of *Hit and Run* present a photo they label as "Naik village in summer." The house in the middle of the shot, on the valley floor, is labelled thusly: "The long house in the centre of the photo was Abdullah Kalta's."

In fact: This is entirely inconsistent with the satellite image they provide on page 64, which labels a house on the western side of the valley as "Abdullah Kalta's house and guest house destroyed". That is not in the centre of the valley (as claimed in the page 60 photo and caption).

- (3) The page 60 image also labels "the L-shaped house in the foreground as Naimatullah's father's" [who *Hit and Run* name as Mohammad Iqbal].

In fact: This is contradicted by the satellite image provided by *Hit and Run* on page 64, which shows the compound occupied by Mohammad Iqbal, labelling it "Mohammad Iqbal's house burnt". This shows the L-shaped house on page 60 is the wrong shape, and is in the wrong location – it sits on the west side of the valley on page 64 – not the east side as in the photos.

Additionally, this L-shaped house is the same house as in the image as page 53, and represents the building on page 53 to the left-hand side of the "three brother's houses". As above, it is established that this house did not exist in 2010.

Moreover, NZDF would also note that the photo on page 60 shows the valley running south to north (bottom to top). However, the *Hit and Run* description on page 50 and the map on page 67 describes the three brother's houses as "on the south side of the river".

The photos, the satellite map, and the book's narrative, are continually inconsistent and cannot be reconciled.

- (4) A photo on page 63 is captioned: "The villagers put flags at the locations where Mohammad Iqbal and Abdul Qayoom were killed as they fled from the raid". The photo shows a flag placed on an elevated ridgeline.

In fact: Tracks between villages are at the base of the valley, not on a ridgeline as pictured. Moreover, the satellite image provided (on page 64) in *Hit and Run* shows the "path downstream to where Mohammad Iqbal and Abdul Qayoom were killed", confirming the location of the track on the valley floor, not in the high ground as pictured. [It is also noted that the map on page 64 mentions "downstream" when in fact that is the upstream direction.]

- (5) The satellite image on page 67 marks the area where villagers say a "Chinook helicopter landed here".

In fact: This location does not match the narrative provided by *Hit and Run* on page 48, which describes the helicopter landing in the fields – within 250 metres of villagers in tents. The satellite image in fact has the Chinook allegedly landing on a steep slope – in contradiction of the narrative provided by the authors on page 68. In actuality, in Operation Burnham the Chinook helicopters landed on flat ground in Tirgiran village.

- (6) On page 132 the photo atop the page shows "Abdul Qayoom's house, Khak Khuday Dad." At the back of this house can be seen a second structure, with a distinctive crack running down through the facing wall. This structure is no more than 15 metres away. This structure can be identified from the image atop the page before (page 131), from the same distinctive crack and is labelled "Abdul Faqir's house, Khak Khuday Dad".

In fact: The satellite map provided by *Hit and Run* (on pages 66 and 67) show Abdul Qayoom's house and Abdul Faqir's house to be around 250 metres apart – not the less than 15 metres shown in the photo.

- (7) Significantly, the photo atop page 132 of Abdul Qayoom's house is the same house (according to the authors) photographed on page 53. In the photo on page 53, we are told Abdul Qayoom's house is the left-hand building.

In fact: If the photo on page 132 is Abdul Qayoom's house, it would not have another building to its left (the house pictured with the distinctive crack) – as the photo and caption on page 53 confirm Abdul Qayoom's house is the furthestmost left of the three brother's series of houses.

- (8) Finally, the bottom photo on page 132 is labelled "Mullah Rahimullah's house, Naik [village]".

In fact: Close examination of this photo – including the window formation with carved niches, brown curving mud colouration on the sill, and distinctive pattern of rocks below the sill – allows NZDF to conclude this is the same house featured in the photo atop page 131 (that was labelled 'Abdul Faqir's house, Khak Khuday Dad). Indeed, that means the photo atop page 131 and the two photos on page 132 represent photos taken of the same buildings, in the same location – only from different directions. However, there is no reliable evidence as to where this location is, and the captions and maps provided in the book are entirely contradictory and unreliable.

f. **The reliability of quoted sources is raised:**

- (1) On page 59 it quotes an SAS member 'present at the raid' saying he did not think there were insurgents in the village and assumed "people were running to move to higher ground. 'Just to escape?' he was asked. 'Yeah to escape'. It was an attack on 'a group of innocent people'."

In fact: Villagers are not seen running during the operation in the village of Tirgiran, either by Apaches, ISR s6(a), s6(b)(i) or ground forces, including the Ground Force Commander in an overwatch position.

Further, there is significant evidence insurgents (rather than "innocent people") were active in Tirgiran village and that NZSAS people actually "present at the raid" would have been aware of, including: s6(a), s6(b)(i), s6(b)(ii) before and after the operation, and the seizure of military equipment at houses within the village (at designations A1 and A3 – photos of which the NZDF has released publicly).

- (2) On page 78 *Hit and Run* quotes the Governor of Tala wa Barfak, a district in Baghlan province, saying locals had been killed in the village of Naik, early on Sunday by what appeared to have been a raid carried out by special forces.

In fact: The District Governor on a radio broadcast on 22 August 2010 stated: "Based on our information, two to three nights ago 12 to 12.30 at night, about 11 foreign helicopters appeared around the space of Teergaran (SIC) village and of those 11 choppers, five landed down and dropped off militaries and just started firing and the rest six helicopters supporting the troops and as well as bombing the village until five in the morning." When the NATO/ISAF Initial Assessment Team interviewed the Governor, he admitted that the information was passed to him by third parties.

- (3) On page 79 the authors of *Hit and Run* assert that video taken from US aircraft during the raid of the village 'being shot up' was circulating among the New Zealand troops.

In fact: Video footage of the operation (both the Apache helicopter footage and the near continuous s6(a), s6(b)(i) footage) was controlled by US forces in Afghanistan. No video footage was released to the NZDF until a formal request was made some time after the event. Of course, neither the Apache nor ISR s6(a), s6(b)(i) footage show the village being 'shot up'. s6(a), s6(b)(i), s6(c)

- (4) On page 91 the authors of *Hit and Run* describe how the SAS "organised the killing of another August 2010 attacker, a man named Qari Musa... SAS and allied troops tracked him and several colleagues to a house on 23 May 2011, then called in a US air strike that killed all the men in a large blast."

In fact: Qari Musa was not killed in May 2011. Open source reporting confirms he was promoted to Shadow Governor of Tala wa Barfak in September 2012 and was still alive at the end of the SAS deployment.

7. The inescapable conclusion is that a great many details put forward by the authors to sustain their narrative are erroneous.

ISR s6(a), s6(b)(i) Footage s9(2)(g)(i)

8. The NZDF analysis is heavily informed by the review of the near continuous imagery captured by the ISR s6(a), s6(b)(i)

It is this footage (along with the helicopter gunship footage) that contributed to the surety of the narrative I presented at my 27 March 2017 media conference.

9. The ISR s6(a), s6(b)(i) footage contradicts many of the major assertions of *Hit and Run* and I summarise some of the most significant of these below (see paragraph 12).

10. From the new analysis above, and this further summary of issues made clear by the ISR s6(a), s6(b)(i) footage set out here, the ISR footage is clearly of significant probative value to anyone considering what actually happened on this operation.

11. s6(a), s6(b)(i), s9(2)(g)(i)

s9(2)(g)(i)

12. Significant issues clarified by the ISR s6(a), s6(b)(i) footage include:

- a. Homes were never engaged by the helicopters or any kind of air assets s6(b)(i), s6(c)

This is contrary to accounts such as at the bottom of page 54 where it states "As the Apaches [helicopters] attacked house after house..."

- b. Rockets/missiles were not fired at buildings. Contrary to the *Hit and Run* account (e.g. description on pages 60-61 relating to Khak Khuday Dad "...the ferocious attack by rockets and explosives broke the walls and left the homes unsafe to rebuild."), s6(a), s6(b)(i), s6(c)

- c. Villagers were not attacked and killed either by ground forces or air assets – indeed, villagers are not seen running from houses (as is claimed, for example, on page 51: "Khadija ran outside, holding her young child, also called Fatima. Helicopter fire wounded Khadija and instantly killed Fatima.").

- d. Early in the Operation, insurgents are positively identified running to a building being used as a weapons/ammunition cache and the ISR s6(a), s6(b)(i) footage clearly shows weapons and ammunition being hurriedly moved. s6(b)(i), s6(c)

contrary to the claim on page 50: "None of them were part of an insurgent group... they were simply farmers". This is also contradicted by the weapons cache found in Tirgiran which included rocket propelled grenades and launcher, and tins of ammunition, including Armour Piercing Incendiary ammunition – hardly the equipment of farmers.

- e. The village is not set alight and left burning. The *Hit and Run* account in many places refers to buildings set alight either from air attacks or deliberately by ground forces, for example, listing on page 130 some 12 buildings destroyed. Yet ISR s6(a), s6(b)(i) footage confirms just the two buildings burning – one presumed to have started from an unattended cooking fire (the cooking fire was recorded as burning, along with warm food being left on the table, in the after-action debrief of NZSAS troopers who had entered this building), and the second when hot debris from the destroyed weapons cache ignites roofing of a nearby building s6(a), s6(b)(i)

A second ember from the controlled detonation of the insurgent weapons

cache is believed to have travelled away from the area in the opposite direction and set a small amount of a field alight.

- f. The only building to be significantly damaged by ground forces was the one where the NZSAS used a directional charge to gain access, and the destabilised wall collapsed on an NZSAS trooper. The found weapons caches were taken away from the buildings and destroyed in the open by a charge by EOD operators, and can be seen burning in the open ground. This, the two building fires (cooking fire and debris fire mentioned above) and field fire (also above) are the only fires recorded by the ISR during/at the conclusion of the operation.
- g. The book claims (on page 126) that six people were killed and a further 15 wounded. Yet the ISR s6(a), s6(b)(i) shows no bodies being brought from homes, or streets or fields of the village, to be buried. Indeed, it shows no preparations, for example graves being dug at that time, despite the Islamic custom to bury any dead as quickly as possible. Nor can obviously injured people be seen being assisted. Villagers amass in the centre of the village, presumably discussing the events of the previous night, but there is no visible evidence of any dead or injured persons s6(b)(i), s6(c)

Update on NZDF Seeking US Permission to Release ISR Footage

13. As you have previously been briefed, as the ISR footage is so compelling and contradicts the veracity of so many of the claims made in *Hit and Run*, the NZDF has sought permission from the US to be able to publicly release this footage. I have recently received a letter from s6(b)(i)

regretfully informing the NZDF that the videos are not approved for declassification and public release as, after analysis and consideration, s6(b)(i)

See letter s6(b)(i)

at Annex B.

Update on NZDF seeking NATO/ISAF Permission to Release their Investigation

14. Similarly, you will also be aware that I have sought permission from NATO to be able to publicly release the NATO/ISAF executive summary of the investigation they conducted into Operation Burnham, in which they concluded the NZSAS had operated entirely within the laws of war. On s6(b)(ii)

s6(b)(ii)

I received a letter from which also declines

release s6(b)(ii)

This letter is attached at Annex C.

Inquiry Options

15. As mentioned in paragraph 1d above, the Chief Executive of Internal Affairs, Colin MacDonald, has written to me s9(2)(g)(i)

s9(2)(g)(i)

16. s9(2)(g)(i)

17. s9(2)(g)(i)

18. s9(2)(g)(i)

19. s9(2)(g)(i)

20. s9(2)(g)(i)

21. s9(2)(g)(i)

Released under the Official Information Act 1982

Recommendations

22. I recommend that you:

- a. **Note** the greater detail of analysis of the *Hit and Run* book, s9(2)(g)(i);
- b. **Note** that it further considers this in the context of the approximately eight hours of near continuous ISR s6(a), s6(b)(i) footage;
- c. **Note** the update on attempts by the NZDF to have the ISR s6(a), s6(b)(i) footage cleared by our US counterparts for public release, as well as the NATO/ISAF investigation report (known as the 'executive summary') cleared for public release;
- d. **Note** s9(2)(g)(i)
- e. **Consider** contacting the Attorney General directly to again extend an offer to him to view the ISR s6(a), s6(b)(i) footage, s9(2)(g)(i)



T.J. KEATING
Lieutenant General
Chief of Defence Force

Annexes:

- A. Table of Analysis
- B. Letter dated 20 February 2018 from General Joseph Dunford, Jr
- C. Letter dated 14 March 2018 from General Petr Pavel

Topic	Context	Data point	Page	Paragraph	Sentence	Answer
Apache	"They arranged to have US Apache attack helicopters in support of the Raid. The use of Apaches was unusual on SAS operations."	N/A	26	4	6	Apaches were to be used with all CH-47 flights. This is SOP for US aviation assets.
Numbers	"Crammed inside were some 60 -70 New Zealand SAS and Afghan CRU troops."		32	1	2	s. 6(a) . 2 X CH-47's would not have been able to fly with 60 -70 troops / weapons / armour / ground kit and flight crew.
Rank	"SAS ground commander for the raid was an officer, Captain D.."		32	3	1	GFC was a Major, and was flown to the area s6(b)(i) to be placed on the ridgeline overseeing A1 / A2 / A3
CRU	"The Afghan troops were there for backup and for show, so it could officially be claimed to be an operation by 'Afghan and coalition' forces."		32	3	2	CRU invested with arresting powers, HLZ security and first line civilian interaction. NZSAS troopers did not have the language skill sets to achieve the callouts, this was done by Afghan forces.
Timings	"The first stop was in Bamiyan province, at the helicopter landing area just outside the walls of the New Zealand provincial reconstruction team base. The senior personnel went inside for a final update on the operation while the helicopter refuelled; the rest of the commandos were instructed to stay onboard. About 40 minutes later, after midnight, the two helicopters took off again flying north east into the rugged mountains of Tala wa Barfak."		32	4	3	Flight from Camp Warehouse to Bagram Air Force Base (depart 23:40 local) to target, no stop at Provincial Reconstruction Team. Only CH-47 went to PRT after drop off for refuelling. Troops picked up then back to PRT consolidation and return to Camp Warehouse.
Location	"The lead helicopter was heading to Khak Khudau Dad, the other to Niak."		33	1	4	Both CH-47, were due to touch down in the same position North of Tirgiran Village. There was an 18 minute delay due to an INS (insurgents) being identified with an RPG that forced the second CH-47 to land 18 minutes later
Timings	"There was also a third, smaller group of SAS troops on a US Blackhawk helicopter, which was scheduled to arrive in the valley before the main group."		33	1	5	Plan was to sequentially land / GFC was out by 7 minutes.
Plan	"We do not have a copy of the SAS operational documents, but the plan for the raid appeared to follow the same blueprint used for many special forces operations in Afghanistan. The idea was to encircle the target location with troops, including spotters and snipers on high lookouts, and then send in assault teams to burst into the buildings."		33	2	2	s. 6(a) Only one Sniper / Spotter pair were on the mission, with GFC above A3. The operation was designed around s6(a) (callout, followed by a controlled s6(a) if there was no reply s6(a) If the troops were not part of the s6(a) team then they were around the target house s6(a) to provide security and keep people safely away from s6(a)
Map	Map representing key locations		35	\	\	Second map scale is incorrect and doesn't match up with the description on page 33 (para 1, sentence 2). Additionally marker is off a secondary valley and not primary as stated on page 33.
Timings	"The first moves in the raid occurred about 12:30am, when the Blackhawk helicopter, carrying some two - person SAS sniper teams, reached the Tirgiran Valley. Each team was dropped off at a pre-arranged point in the mountains above the villages and moved into its lookout point."		36	2	1	Only one landing zone was designated for the s6(b)(i) with GFC team dropped off on the ridgeline above A3 (at an alternative point at 00:46 after the primary HLZ was deemed unacceptable, causing the GFC team to be late in arriving at their over watch position).
Timings	"The main force arrived after 01:00"		36	3	1	Initial force was on the ground at 00:30 moving towards A1, second half landed 18 minutes later in the same spot (due to being waved off as INS were PID with RPGs). A1 was breached at 00:52 after call out.
Timings	"Before they moved from the landing zone ground forces heard shooting from above them."		36	3	6	Troops had already moved off HLZ and were at A1 when first shots were fired (00:54) by the Apaches
Weapons	"Apaches were armed with 30mm cannon, rockets and missiles."		36	4	1	Apaches were not armed with rockets. s6(a), s6(b)(i)
Event	"... could see the Apache armaments crashing into the houses..."		36	4	3	Ground forces could not see any rounds crashing into houses, distance and treelines and terrain prevented this.

Timings	"... after 10 long minutes of circling and firing the Apaches were gone..."	36	5	1	AH-64 support stayed with the ground force the full duration of the operation, alternating for fuel resupply
Event	"Through all this the commandos from the first Chinook helicopter had not seen a single person. They had not approached any houses in the village."	37	1	2 & 3	s6(a) team with CRU members saw movement at a house near the HLZ they approached and saw 3 pers (2 Females, 1 male). CRU interacted with the villagers, females were asked to go back inside, the male ran off into darkness and reappeared two times during the engagement, was PID every time and not engaged.
Event	"It appears the SAS thought the insurgents were attacking and called the Apache for support."	37	2	2	Insurgents were PID with weapons before information was relayed to JTAC, they were observed moving weapons, including RPGs which are a threat to helicopters / ground forces. Targets ID at 00:31Z, approval to engage at 00:36Z relayed to JTAC, engagement held due to ground forces being within 20m of INS.
Event	"The second Chinook landed, shortly after the first, in a farmers field on the edge of Niak village."	38	1	2	Second Chinook landed in the same place as first after an 18 minute delay due to INS activity.
Event	"The SAS and CRU troops were divided into assault teams of five to 10 people assigned to different targets in the village."	38	1	4	Ground forces s6(a) for entry into the village. s6(a) waited with s6(a) force until called on. A1-A3 were sequentially cleared. There were no separate s6(a) teams allocated to separate buildings or areas.
Event	"The two main targets on the SAS maps of Naik were the family homes of two of the insurgent leaders, Maulawi Naimatullah and Abdullah Kalta, about 300 metres apart on the southern side of the river."	38	2	1	The river in Tirgiran runs North - South. Both houses are on the Eastern side of the river.
Event	" Assault teams headed to each of these targets, while other teams began a house to house search of the village."	38	2	2	Assault team never subdivided and execute a house to house search. Assault team moved from HLZ to A1 then A2 then A3, returning to HLZ. No approval was given for a house to house search or search warrants from Ministry of the Interior.
Event	"The first team, led by the SAS commander Captain D went to Abdullah Kalta's three room house..."	38	3	1	GFC was a Major, s6(a) did not enter village. Kalta's house had seven rooms.
Photo	On the outskirts of Niak, the SAS burned down these houses (since rebuilt, as in this photograph) belonging to insurgent leader Naimatullah (furthest house) and Naimatullah father Mohammed Iqbal, who did not support his son's activities (nearest house)."	39	-	-	Nearest house didn't exist in 2010. Photograph is later contradicted by the photo and description on page 53. Next house is A3. A3 is located over 300M south of A1 in the village of Tirgiran, not Naik. s6(b)(i)
Event	"The assault team that went to his house consisted entirely of SAS troops who had kept all the major roles to themselves."	39	1	1	s6(a) team was a combination of CRU and NZSAS. CRU were used as the voice for the callouts and to interact with any pers found at the target locations, they were the only ones vested with arresting powers by the MOI.
Event	"The SAS could see immediately that no one was home."	39	1	2	NZSAS / CRU initiated the call out procedures, when no reply was given entry was made to the property.
Event	"... but the man they were looking for was obviously not staying there."	39	1	2	Multiple RPG rounds, weapons and ammunition were found in the house.
Event	"They set fire to the room containing his religious books and personal possessions and left with the house burning in the night"	39	2	2	On entry into A3, hot food and a fire were found. Signs of recent occupation were present in the building. Food and fire were not touched and s6(a) RPG components and AK47 were found. s6(a) force extracted. Only two out of 6 rooms were damaged by the unattended fire, as a solid wall split the house (4/2).
Event	"About 20 metres away, the house of Naimatullah father, who disapproved of his son being part of the Taliban, was also set alight and 'was burned completely'."	39	2	3	House did not exist in 2010. s6(a), s6(b)(i), s6(b)(ii)
Event	"There is little doubt that these were calculated acts, because along the hill the first SAS team were doing the same at Abdullah Kalta's house."	39	3	1	Kalta's house was hit by a RPG motor that had been ignited and then propelled upwards after being detonated by EOD members. House didn't catch on fire until the teams had left the area.

Event	They later learned that one of the commandos fired his weapon into cotton mattresses and blankets because 'when you shoot into cotton it will burn'."	40	1	2	No shots were fired by the assault force (NZSAS / CRU) during the entire operation.
Event	"The SAS would later blow up the whole building where the ammunition was found;"	40	2	2	RPG rounds and motors were disposed of by EOD elements outside A1. The only explosives used were for the initial entry.
Event	" Apart from this, the commandos gradually reported back that their wider house searches, conducted jointly by SAS and CRU troops, were fruitless."	40	3	1	No houses outside A1 /A2/A3 were searched. Additional house searches were not approved.
Event	"One directed to search five houses found only 'elderly people and women...no young men'. They did not bother searching the people:' it was clear they weren't insurgents.' It was the same for another commando, whose team searched 10 houses."	40	3	2, 3, 4	Ground forces did not split up into sub team, additionally there would not have been enough time to search 15 houses while INS forces were approaching from the south.
Event	""It was a Kiwi operation. The CRU had nothing to do,' one said"	40	4	2, 3	CRU were used as HLZ security (including responding to the sighting of villagers), part of the assault force, used to call out at A1 / A2 / A3 in the local language.
Event	"it was about now that the Apaches reappeared, ' circling around over the small village' firing at houses."	41	41	1	Apache gun sight video shows all engagements where weapon systems were used and number of rounds expended.
Event	"There is always communication between Apache pilots and ground troops"	41	1	3	All radio access to the Apaches went via the JTAC who had the responsibility to relay the GFC intent, approval or disapproval of any engagement and confirm CDE were completed.
Event	"it is not known what the SAS - helicopter communications were, but since they appeared after the search was over it appears likely the SAS called them in."	41	1	4	Apache helicopters were onsite for the duration of the operation, with one always in the area while the other refuelled.
Event	"During the bombardment of the houses, many of the troops gathered in an open area."	41	2	1	s6(b)(i)
Event	" They could see the rockets and cannon fire hitting the houses."	41	2	3	Apache helicopters were south of A3 while troops moved back towards HLZ, with multiple ridgelines and valleys between them. No rockets were on the Apaches.
Event	"For instance, Abdullah Kalta's house was already burning but the Apaches fired a rocket or missile through the roof of the neighbouring guest house to destroy it as well."	41	2	6	A2 was intact / untouched and observed up until the ISR s6(a), s6(b)(i) left the zone.
Event	"The Apache fire was 'really heavy' and it was very close'."	41	3	3	At no point was Apache fire near ground troops, no danger close application of force was applied. Apaches observed ground forces and held off any engagement, even when PID INS were <20m from ground forces.
Event	"The commandos said the wall of a house had been fired on by the Apache - "weakened from being hit with rounds" said one, hit by a rocket fired by an Apache said another - and collapsed on an SAS member."	41	4	2	A1 was breached on the Western end by a controlled charge. As entry was made the western wall collapsed on to the SAS trooper. ISR captured the entire event. No "A" designated target was fired at by the Apaches.
Event	"The final phase of the assault began with the Apaches pursuing some squinters. The commandos heard over the radio that 'the Taliban had run to the mountains'."	42	2	1 & 2	Apaches engaged PID INS through out the operation. INS were PID with weapons and moving towards the area of operation. All engagement complied with the active ROE. An additional safeguard was in place with the requirement of prior approval from GFC before engaging, confirming collateral damage assessment (CDE) was not an issue.
Event	"The commando's final action before leaving was to blow up the building where they had found the ammunition:' it was a very big explosion'."	43	1	3	All ammunition was handled by EOD operators and not Commandos (NZSAS/CRU). All items were secured and detonated in a controlled area, not inside a building.

Event	"The other thing that happened, as they walked along the valley wearing their night-vision equipment, was that they saw an old man, apparently from Khak Khuday Dad coming towards them crying. He staggered out of the darkness, in shock, and terrified, with shrapnel wound in his leg."	43 / 44	2	4 & 5	No reports of an encounter with a wounded man. s6(a) orders clearly state that aid will be given to any injured person during the operation. s6(a) Only encounter with an elderly man was at the HLZ.
Event	"Soon the troops were in the helicopters, flying over the mountains through the early morning light back to Camp Warehouse in Kabul"	44	3	1	Ground forces and air support went back to PRT, CRU and NZSAS moved into separate helicopters, NZSAS went back to Camp Warehouse, CRU went to Bagram AF. No CRU commandos went to Camp Warehouse.
Event	"As the commando's said, the first sign of the raid was when locals heard a helicopter about 12:30 a.m. as it dropped off the snipers."	48	3	4	Apaches were on sight before this time doing visual inspection of the landing zones in accordance with SOPs. The first helicopter to land was a CH-47 with the Assault team.
Event	"in three of the tents, only about 250 metres from the troop helicopters..."	48	5	1	ISR would have picked up the s6(a), s6(b)(i) of the tents before the landing of the CH -47, this would have been a red flag and alternative landing zones taken. No tents have been seen on the ISR / Apache footage.
Event	"The most concentrated fire was at three side by side houses owned by three brothers on the south side of the river."	50	2	4	The three side by side houses referenced in the book have been identified as in vicinity of A3 based on the photo on page 53. However one of the houses did not exist in 2010, the 2nd / 3rd house is A3 s6(a), s6(b)(i) was not damaged by any aircraft. A3 was affected by an unattended fire causing damage to the roof of A3.
Event	"Next door was his aunt Khadija and uncle Abdul Khaliq. Khadija ran outside, holding her young child, also called Fatima. Helicopter fire wounded Khadija and instantly killed Fatima."	51	3	1-3	Fatima's house was identified in the book as being the same place as A3. ISR saw no people moving, s6(a), s6(b)(i) near the location as ground forces approach. A3 was not hit by any aircraft rounds.
Image	Photo	53	\	\	Photo is of A3, left house didn't exist in 2010, ground forces entered this place. No indication of women / children on ISR running from the scene before ground forces arrive. Photo description contradicts the description for the photo on page 39.
Target	"The SAS main target in Khak Khuday Dad, Abdul Ghafar..."	54	2	1	Abdul Ghafar was not a primary target of the operation. He was not a person of interest for the operation.
Event	"Fatima and her family, for instance, had gone a short distance behind their house before being attacked, which was roughly in the direction of the heavily armed contingent of SAS and CRU troops."	55	1	4	Fatima's house was identified in the book as being the same place as A3. ISR saw no people moving, s6(a), s6(b)(i) near the location as ground forces approach. Troops did not cross any fields and came from the North on a local path.
Planning	" The SAS had decided the targets and the Apaches were part of the operation at their request."	55	3	5	Apache support was a condition of use for US helo air lift assets. Air lift assets would not have been released without them. CH-47 could not defend themselves against INS RPG fire (leading cause of CH-47 losses).
SOP / TTP	"It is standard practice ... for the ground commander in these situations to make the decision for actions by the supporting aircraft, unless they are too far away (which in this case, clearly, they were not)."	55	4	1	GFC was not on the ground when the first INS was identified (20:01Z). Air support did not engage as GFC had not given approval. First approval for INS engagement was at (20:05Z) if INS were around the objective area s6(a), s6(b)(i) No action was taken by support aircraft as the INS were not in the OBJ area. Second approval came at 20:17Z once the GFC was on the ground and PID / CDE was completed s6(a), s6(b)(i)
Event	" The SAS may have called for the Apaches when they believed, based on information from SAS spotters or US drones overhead, that they were under attack..."	55	4	4	Information on INS threats was relayed to the GFC by the Apaches after PID with weapons / RPGs. It was the Apaches asking for permission to engage the PID threats.

Mapping	"As part of the research for this book, some Tirgiran locals agreed to travel to Kabul and were shown close-up satellite images of different parts of the Tirgiran Valley. Bit by bit, they found their villages and homes, and pointed out key locations from the raid. Over the next day and a half they marked the satellite maps with all the main houses and events discussed in these chapters. The locations included where each person was when they were injured or killed, like reconstructing a crime scene years later."	56	2	2	No locations identified in the book by the villagers match up to SAS locations. Reference houses are incorrectly identified and do not match other images.
Event	"They also marked a lookout point above the village where, when they were searching for bodies that morning, they found two unfamiliar plastic drink bottles."	56	5	3	The same style of drinking bottle is present in the background of the Fatima photo on page 52, hanging in the tree with the same style of string as present in the photo on page 59.
Event	"Islamuddin had gone about 50 metres up the hill behind his family home, apparently running directly towards the assumed SAS position. When he was about 30 meters from the empty bottle spot, he was shot in the chest with three bullets."	58	1	1-2	The only NZSAS sniper team were part of the s6(a) team with the GFC above A3 on the eastern side of the Valley. The terrain is rocky with no vegetation. The INS engaged by the Sniper team was PID by Apaches by the HLZ, tracked s6(a), s6(b)(i) and PID then engaged by the team. Only two shots were fired, with one striking a rock. INS was PID by the team as an older male with a beard who was described as "Living rough". Distance from building to point of engagement was approximately 400m and not 50m.
Photo	"Where Islamuddin was shot."	58	-	-	Photo is of terrain covered in vegetation in the lower valley of Khak Khuday Dad, 2 KM away from the sniper team engagement zone. No green vegetation is present in the ridgeline above A3.
Event	"In addition to terrified children running with torches in the dark..."	58	2	2	Any light source would have been visible s6(a), s6(b)(i) any moving light sources would have been observed and identified.
Photo	"Villagers found strange drink bottles at a lookout point on a ridge above the village"	59	-	-	These types of drinking bottle are not used by NZDF or any professional military force. Same style of bottle is identified hanging up in the background of the photo on page 52, including the same string type.
Source	"One of the SAS men present at the raid said he did not think there were any insurgents in the village and assumed 'people were running to move to higher ground'. 'Just to escape?' he was asked. 'Yeah, to escape'. It was an attack on a group of innocent people'."	59	2	4-7	No large groups were seen during the event by either the Apaches, s6(a), s6(b)(i) ISR, ground forces, GFC over watch position walking or running from the village. Apache and s6(a), s6(b)(i) As is shown in the after action surveillance. Only PID INS were observed moving up hill. No ground forces observed or encountered large groups of people in the village.
Photo	"Naik village in summer. The valley to Khak Khuday Dad begins on the rocky ridge on the left. The L-shaped house in the foreground was Naimatullah father's. The long house in the centre of the picture was Abdullah Kalta's. Their families have rebuilt the houses."	60	-	-	Photo is contradicted by the photo and caption on page 53. Photo is orientated with the view from South to North. Book description says that the houses were on the South side of the river. Location cannot be overlaid with the valley junction near Niak (geography doesn't match, would have to be a North to South photo)
Event	"Some houses in the village had minor damage from the bombardment, such as broken windows, but six were thoroughly wrecked: the one belonging to the insurgents father and the ones from which the fleeing families and individuals attacked by the Apache had come."	60	2	2	Father's house didn't exist in 2010. No houses were destroyed by rockets as no rockets were present on the Apaches s6(a), s6(b)(i) Fleeing families and Neimatullah locations have been merged.
Event	"The houses were not being used by the insurgents for military purposes; they were civilian homes."	61	2	1	A1 and A3 were found with military weapons and equipment, including RPGs, small arms and ammunition. A third location was observed with heavy weapon systems / RPG being taken out of it.

Event	"Some homes were destroyed by fires started by SAS troops (the locals reported seeing the foreign commandos pouring something into the houses to set them alight), some by explosives laid by the SAS troops and some by firing from the helicopters above."	61	4	4	NZSAS troops do not carry volatile liquids with them on operations. This is both a risk to the individual trooper and to any air platform they are carried in. All explosives used on the operation (for EMOE) were logged and recorded by the EOD specialists and reported on after the operation. No explosions were observed away from A1 and A3 where EMOE was used. Only two locations suffered damage (A1 and A3).
Event	"This body was what was left of a 55 year old farmer named Mohammad Iqbal, the father of insurgent Naimatullah, the one who had disapproved of his sons activities. Nearby was the similarly shattered body of his son Abdul Qayoom (the same name as another man killed in Khak Khuday Dad), who was in his teens or early twenties and worked with his father on their farm."	62	4	1-2	s6(b)(i), s6(c) Clear identification had to be established before any weapon system could be used. There was only one Abdul Qayoom (Qayoom / Qiyim / Qayim / Qiyum) present in Tirgiran, so he could not be in two places at once (sniper shot or Apache engagement).
Photo	"The villagers put flags at the locations where Mohammad Iqbal and Abdul Qayoom were killed as they fled from the raid."	63	-	-	Book states that the bodies were found on the track between villages (Page 62 - Para 3 - sentence 2). Photo is of a ridgeline, tracks between villages are at the base of the valley. This is an over watch position for high ground advantage. Photo is also contradicted by the map on page 64 which has the event happening on low ground. All INS engagements took place around Tirgiran, south of Niak.
Permission	"There was no authorisation to kill them and, since they were fleeing from the New Zealand and Afghan troops during the raid, no credible suggestion that they posed any kind of threat."	63	2	4	s6(b)(i), s6(c) Engagement of the PID INS was under a controlled environment which complied with both the NZDF and ISAF ROE.
Map	Niak Village Marker: Path downstream to where Mohammad Iqbal and Abdul Quayoom were killed Marker: Nematullah's house burnt Marker: Mohammad Iqbal's house burnt Marker: Abdullah Kalta's house and guest house destroyed Marker: Chinook Helicopter landed here Khak Khuday Dad village Marker: Three brothers' houses destroyed: Abdul Qayoom, Abdul Khaliq and Abdul Qadus Marker: Chinook Helicopter landed here	64 / 65 66/67			Dated 09 Feb 2011 - 09 Feb 2016 - 8 months after the operation. Map arrow direction is up stream Wrong location, house is the wrong shape, house is orientated East - West, sitting on west side of the valley (not east side as in photos), not hard against valley wall, not right next to Iqbal house. Wrong location, house is the wrong shape, multi dwellings in the area, house is orientated East - West, sitting on west side of the valley (not east side as in photos), not hard against valley wall, not right next to Naimatullah house. Wrong location, house is the wrong shape, house is orientated East - West, sitting on west side of the valley (not centre of the valley as in photos), not near a valley divergent point Not the right location, too close to the valley edge and too small (would not have been approved as a HLZ), would have forced the ground forces to walk back over it to move between Kalta and Neimatullah locations. Dated 09 Feb 2011 - 09 Feb 2016 - 8 months after the operation. Houses are the wrong shape compared to the picture on page 53. Shapes of the houses will not overlay. Houses confused for Nematullah's location. Location was stated to be on the south side of the river, Tirgiran river doesn't come from that valley. Location does not fit the narrative given on page 48, location is more than 250m away as stated in the book, HLZ is on the side of the mountain not on flat ground. Location would not have been selected as a HLZ.
Statement	" The SAS had acted as if they were going into the heart of enemy territory,..."	68	2	3	The Tirgiran area had not been visited by Coalition forces for 8 years and was known as a Taliban area.
Event	"No military aid was offered. The farmer Abdul Faqir lay for nine hours impaled by a piece of rocket. No urgent evacuation was called."	69	4	3-5	No approaches were made to ground forces by any supposed injured villagers. Ground forces did not see or hear any wounded or injured villagers. Standing orders s6(a) clearly stated that any CIVCAS was to be treated as the highest priority, s6(a) NZSAS medics are highly trained and spend time with emergency services to ensure their skills are constantly refined.

Statement	"In the Tirgiran raid, however, 'they were civilians. All of them were civilians. They are not Taliban. It was very clear.'"	70	1	4-7	INS within Tirgiran village were PID with weapons, including small arms and RPGs.
News coverage	"Details were sketchy, but the governor of Tala wa Barfak, a district in Baghlan province, said the Afghans had been killed in the village of Naik, early Sunday by what appeared to have been a raid carried out by Special Forces"	78	2	3	The district governor also stated "Based on our information, two to three nights ago at 12 to 12:30 at night, about 11 foreign helicopters appeared around the space of Tirgiran (SIC) village and of those 11 choppers, 5 landed down and dropped off militaries and just started firing and the rest 6 helicopters supporting the troops and as well as bombing the village until 05:00 in the morning." 22.08.10 Radio transcript of interview the district governor and Moh. Salim Amin. When the IAT team interviewed the governor he admitted that the information he had was passed to him by 3rd parties.
Investigation	"A fuller investigation would follow and the results would be 'provided upon completion'. But they never were"	78	3	6-7	s6(b)(i)
Event	Video taken from a US aircraft during the raid of the village being 'shot up' was circulating among the New Zealand troops."	79	2	4	Videos of the operation were controlled by the US forces based in Afghanistan. No videos were released to the NZDF until a formal request was made. The Apache video shows the engagement of PID INS, there is no video of the village being "shot up".
Event	"About 10 days after the first raid, the SAS launched a second raid on Naik. There would be no press release this time. There would be no searching or arresting either. This time, it is hard to see their actions were born of anything but revenge."	79	4	3 - 6	10 days after the operation the NZSAS were 65KM away from the location. The return mission to Tirgiran was OBJ s6(a) on 03 OCT 2010 and focused on A3.
Event	"An assault team, consisting entirely of SAS commandos, left the rest of the troops and headed straight to Abdul Kalta's house."	80	2	3	Troops were focused on A3, the home of Neimatullah. A combination of CRU and NZSAS (who were the blocking force between the villagers and A3) investigated A1 and A2 but found no signs of life.
Event	"They were told that Qari Maraj was spending the night in a Mosque in Khair Khan, a suburb on the northern edge of Kabul. His phone was turned off while he was at the mosque, so the tip-off probably came from an informant."	82	3	2-3	s6(a), s6(b)(i), s6(b)(ii) The NZSAS moved into the cordon protection role while the NDS team arrested the five INS as they were the only personnel with arresting / detaining powers.
Event	"The Qari Miraj capture operation was a New Zealand one, and, according to a New Zealand Officer involved, the mood was entirely of 'we got him'. The SAS troops processed Qari Miraj and took a photo of him holding a sheet of paper with his JPEL 'objective name' written on it in English. He was blindfolded and his hands were flexi-tied. They put him in the back of one of the SAS Land cruisers."	83	2	2-5	Qari Miraj was captured under a NDS led operation. NZSAS troops were not authorised to enter mosques and arrest people in Kabul. s6(c)
Event	"A secret provincial reconstruction team report said the New Zealanders tracked Alawuddin to his home in a town called Turmush, in Tala Wa Barfak and launched the operation against him on Friday the 20th of May 2011."	91	4	3	NZSAS were engaged in training the CRU in Kabul / Sarobi between the 19 and 26 of May 2011 and were not part of this operation. Additionally this operation was outside of the SAS mandated area and would have had to be approved by RC North and RC Capital commands.
Event	"Three days later the SAS organised the killing of another suspected August 2010 attacker, a man named Qari Musa...SAS and allied troops tracked him and several colleagues to a house on 23 May 2011, then called in a US air strike that killed all the men in a large blast."	91	5	1, 4	Qari Musa was not killed in May 2011. He was promoted to Shadow Governor of TWB in September 2012, and was still alive at the end of the NZSAS deployment.
Event	"His body guards were just hired help and who knows who the 'several other insurgent fighters were?'"	91	6	2	The other INS fighter were identified as Taliban.

Rank	"The Defence Force needs a radical restructure at the senior levels, cutting the excessive numbers of feuding squadron leaders and colonels, and promoting staff who are serious about legality, ethics and accountability"	118	1	1	Squadron Leaders are not classed as senior leadership, they are not the same rank equivalency. Air Force equivalent to a Army Colonel is Group Captain.
Appendices:					
Family tree	Listings of houses destroyed	128			List doesn't match up with house destroyed list on page 130 or map on page 67
List	Houses Destroyed: Naik: 12. Abdul Rahimullah	130			Missing from Map on page 64/65,
Photos	Abdul Faqirs house, Khak Khuday Dad	132			House is identified in photo as next to Abdul Qayoom house (Large crack in side wall seen in photo on page 132), yet the map on page 66 has it 100M away.
Photo	Abdul Khaliq's (and Fatima's) house, Khak Khuday	131			Doesn't match the photo from page 53, entrance doesn't fit the photo. Next door to close. Wrong shape compared to map on page 67
Photos	Abdul Qayoom house, Khak Khuday Dad	132			Abdul Qayoom's house is suppose to be the first of three, not the second house as shown in the photo. This contradicts the description given on page 53.
Photos	Mullah Rahimullah house, Niak	132			Photo is of a different angle of the one used for Abdul Faqir's house. The window formation and the rock formation ar

Released under the Official Information Act 1982

Glossary of Terms

AF- Airfield

CDE- Collateral Damage Estimates

CIVCAS- Civilian Casualties

CRU- Afghan Crisis Response Unit (part of Afghan Interior Ministry)

EMOE- Explosive Methods of Entry

EOD- Explosive Ordnance Disposal

GFC- Ground Force Commander

HLZ- Helicopter Landing Zone

ISR- Intelligence Surveillance and Reconnaissance

JTAC- Joint Terminal Air Controller

MOI- Afghan Interior Ministry

NDS- National Directorate of Security (part of Afghan Interior Ministry)

OBJ- Objective

PID- Positively Identified

PRT- Provincial Reconstruction Team

RC- Regional Command (NATO International Security Assistance Force command)

ROE- Rules of Engagement

RPG- Rocket-Propelled Grenade

SOP- Standard Operating Procedure

TWB- Tala Wa Barfak District, Afghanistan



OPERATION BURNHAM

Where did Operation Burnham take place?

As released by the NZDF during its public media conference on 27 March, 2017, Operation Burnham took place in Tirgiran Village. The geographic coordinates for the village are:

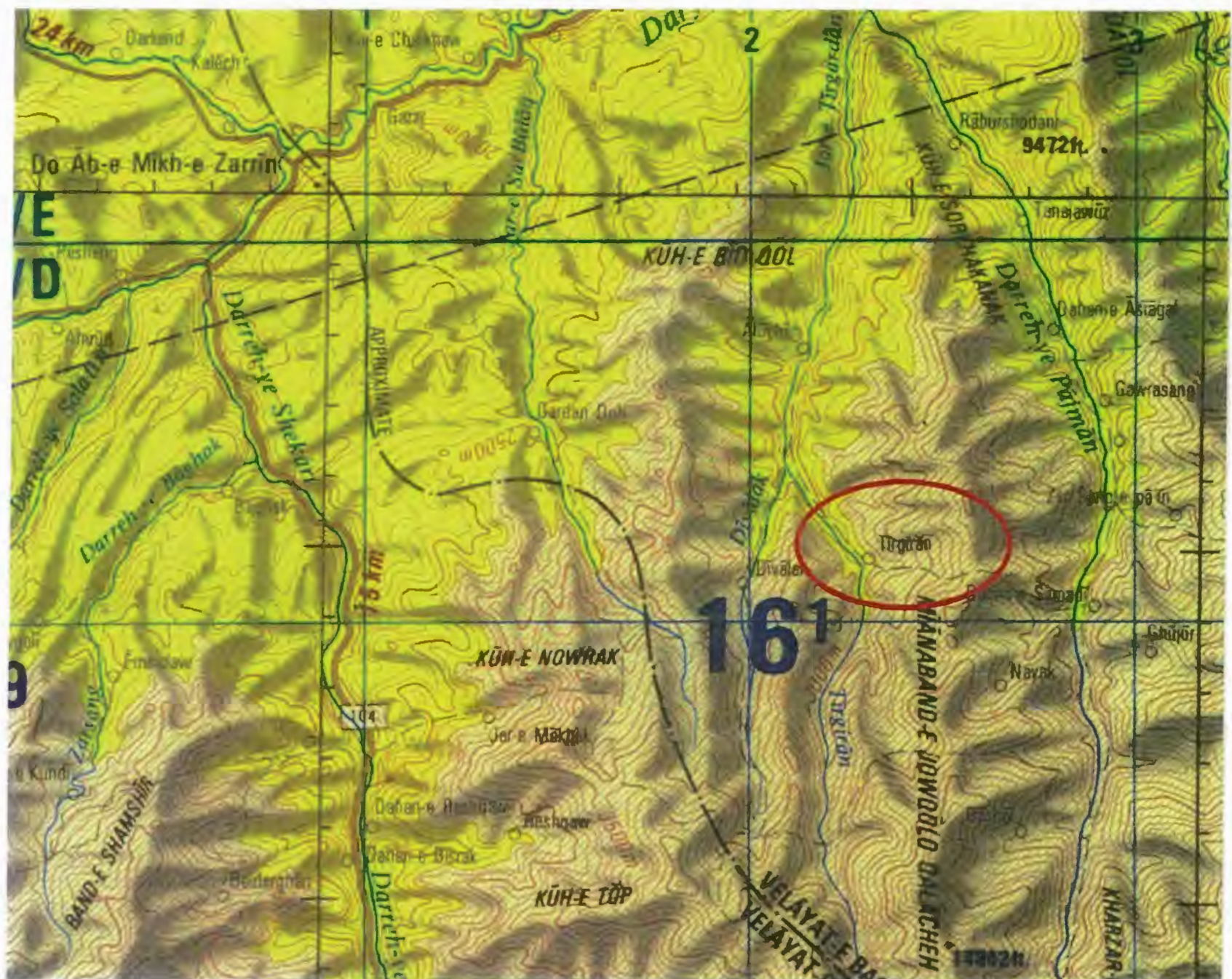
35°09'47.98"N
068°09'16.29"E

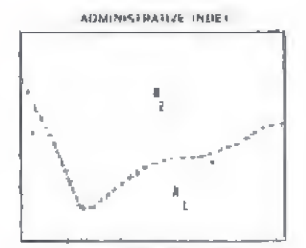
The village has been named Tirgiran since the 1960s, at the latest. That is in accordance with historical information held by the Government of Afghanistan. Other sources, including bodies such as the British Permanent Committee on Geographic Names, concur. Documents One through Three refer.

Supporting Documents:

1. US Joint Operations Graphic Chart 1982
2. Afghan Ministry of Mines, Fairchild Aerial Surveys Map 1967
3. Enhanced version of Tirgiran from previous map

US 1:250K JOG:





4. **PARMIAN**
1. Parmen

5. **SALPICHA**
2. Poly Kagan

INDEX TO ADJOINING SHEETS

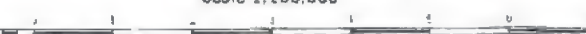
圖 5	圖 6	圖 7
圖 8	圖 9	圖 10
圖 11	圖 12	圖 13

11-001 5000 10 2 1000 500

Compiled by Farchild Aerial Surveys, Los Angeles, Calif., USA, by means of automatic methods. Contact: Farchild Aerial Surveys, Encrypted for the Ministry of Defense and Industry, Rural Development of Aegean, Aegean Photography, 10101 Sep. D. (1991).

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Scale 1:100,000

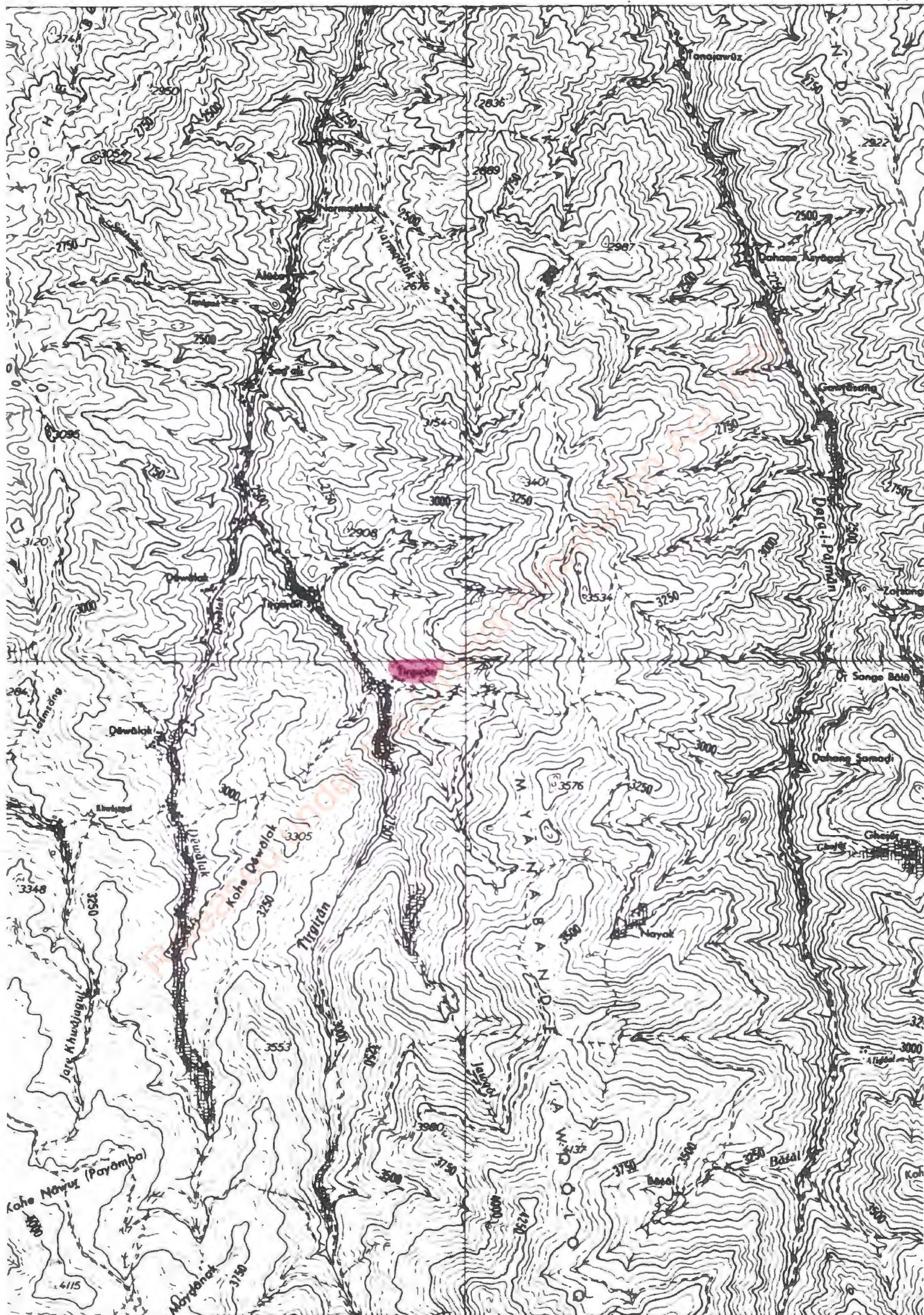


CONTOUR INTERVAL 50 METERS
WITH SUPPLEMENTARY CONTOURS AT 25 METER INTERVALS
VERTICAL DATUM: MEAN LEVEL OF THE BALTIC SEA

TRANSVERSE MERCATOR PROJECTION
MERIDIONAL DATUM: BASED ON ASTRONOMICAL POINT
NEAR HORNBY HAYDOVE INTERNATIONAL SPHEROID
GEODESIC COORDINATES: JAYTS BY MEANS OF
AUTHORISED BY THE ROYAL GOVERNMENT OF AUSTRALASIA

Glossary

GLOSSARY						
As Ogh	water	Kāfē	undergrowth and undergrowth with thistles	Asm, Sāgh, Sāh	son	
Aslā Bāghān	summer quarters		with thistles		caravanway camp	
Aslāh	garden vineyard orchard	Khūz Rāmsh	little small	Asl	small	
Aslāh Wāzān	waterfall	Kāh, Ghā	mountain	Asl Qāzān Sā	stone, hill	
Bānd	dark mountainous		mountain range	Sāgh Lāh, Aslān	stone, hill	
Bān	dark	Kāfē, Ghāzānā	small part of saddle	Sāgh Sā	stone, hill	
Chā Gāzān	well, spring			Sāgh Sāh	stone, hill	
Chāzān	openness, openness	Khūzān	old	Sāgh Sāh	stone, hill	
	cutting, ridge	Kāfē Khūzān Bāh		Sāgh Sāh	stone, hill	
Chāzān Wāzān Māzān	valley	Māzān Ghān	lake, small lake	Sāgh Sāh	stone, hill	
Chāzān Wāzān	valley	Sāgh Rāh Lāh	road, track path	Māzān Sāh	stone, hill	
Chāzān Wāzān	valley	Māzān	lake	Sāgh Sāh	stone, hill	
Chāzān Wāzān	valley		lake	Sāgh Sāh	stone, hill	



The authors of *Hit & Run* provided images in their book in support of locations they say the NZSAS were operating, what can be made of them?

Three photographs in the book are of Tirgiran Village (as demonstrated in Document Four).

The scale in this document indicates that the target buildings (highlighted by a blue box and a yellow box) were about 300 metres apart.

However, the authors of *Hit & Run*, place the building identified by the blue box in Naik village, and the second building identified by the yellow box as being in Khak Khuday Dad village. They describe the distance between the two villages as being about one kilometre.

Supporting Documents:

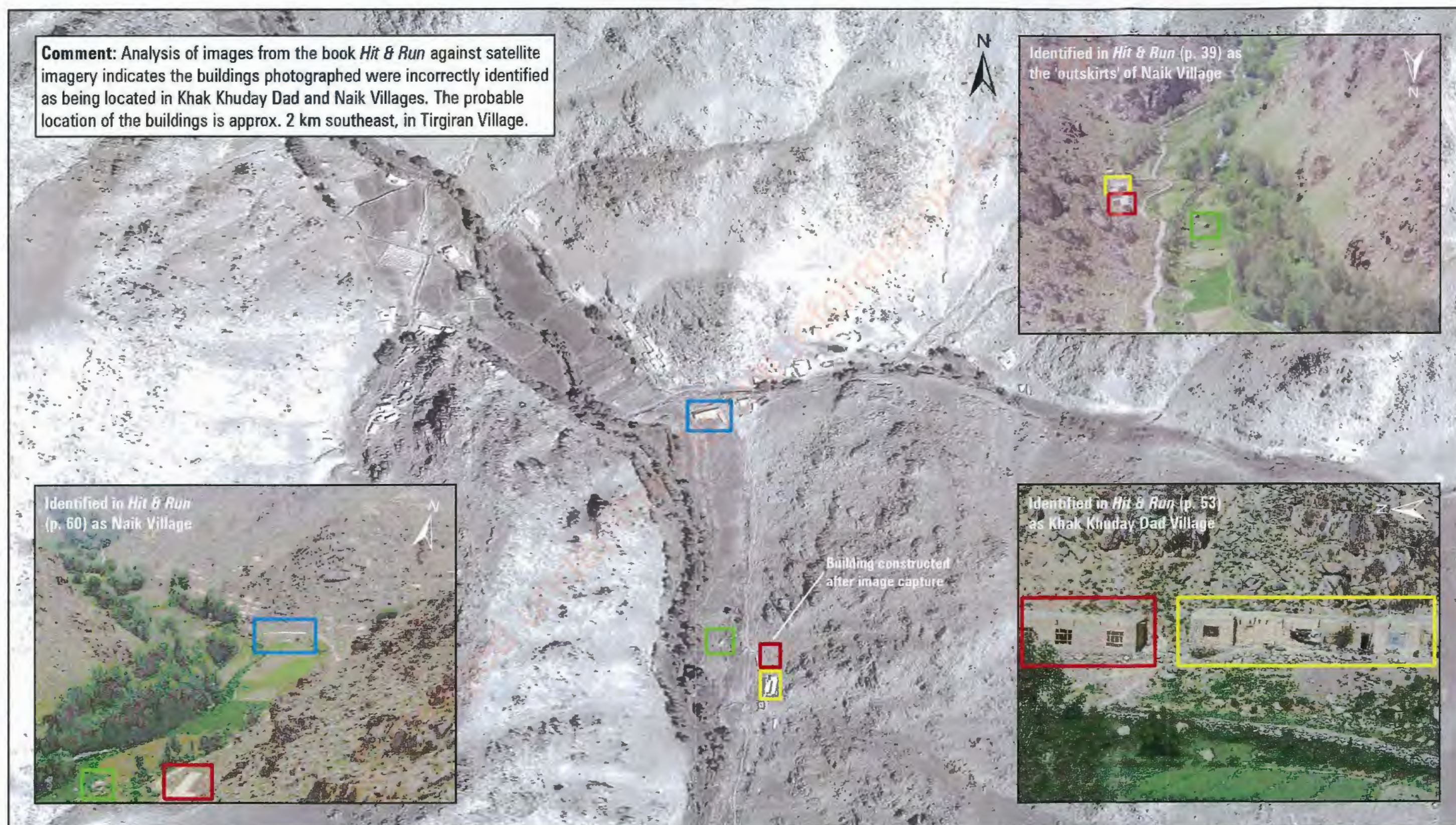
4. Afghanistan: Geolocated Photographs from *Hit & Run*
5. Afghanistan: Operation Burnham Location Hit and Run Book Location



Afghanistan: Geolocated Photographs from *Hit & Run*

Tirgiran Village, Bahglan Province (Geo: 350947N/0680916E)

UNCLASSIFIED



1:6,000

0 50 100 200 300 400 500 Meters

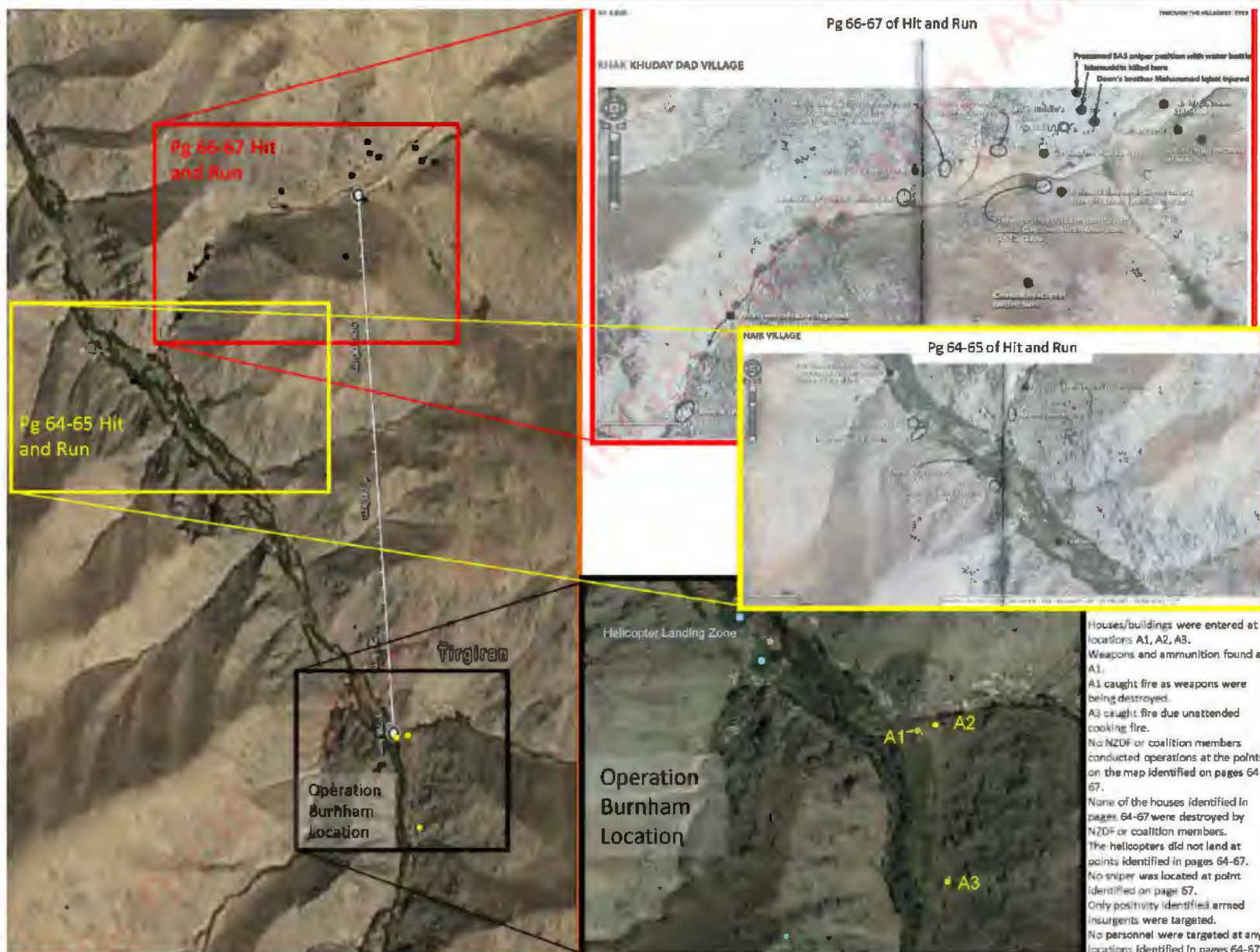
2 of 2 | April 2017 | GNZ-17-5153-U

UNCLASSIFIED

Includes data sourced from ESRI, Earthstar Geographics,
CNES/Airbus DS. Photographs by Jon Stephenson.



Afghanistan: Operation Burnham Location Hit and Run Book Location



What are the events of Operation Burnham?

The NZDF has publicly released a detailed account of Operation Burnham.

At 0030 on 22 August 2010, two helicopters carrying NZSAS personnel and members of the Afghan Crisis Response Unit landed on the outskirts of Tirgiran. It should be noted that the authors of *Hit & Run* claimed that the two helicopters landed separately at the different villages of Naik and Khak Khuday Dad.

Afghan and New Zealand personnel dismounted from the helicopters with covering support provided by Coalition aircraft.

The supporting aircraft soon identified and reported numbers of insurgents with weapons taking up positions on high ground, and within Tirgiran, that the Ground Force Commander deemed to be a threat to the helicopters and the Coalition forces on the ground.

At 0054, after the targets were positively identified as direct participants in hostilities and that collateral damage would be avoided, coalition aircraft were given permission to engage the insurgent groups. Those engagements took place in an area to the southwest of the landing zone.

During this time, Coalition aircraft observed that rounds from a Coalition helicopter had fallen short of its target. According to the report of a later joint ISAF/Afghanistan Government investigation, civilian casualties may have occurred as a result of these rounds falling short and striking two buildings. Please see Document Six, a PowerPoint slide from the presentation of 27 March 2017, with the buildings circled.

Supporting Documents:

6. Slide nine from PowerPoint presentation of 27 March 2017

What were the ground forces doing?

The Coalition force made a “callout” – an announcement by an interpreter - to the villagers, of the presence of the ground force and its general intention.

The first residence (marked as A1 in Document Seven, a PowerPoint slide from the presentation of 27 March 2017) was entered at 0053.

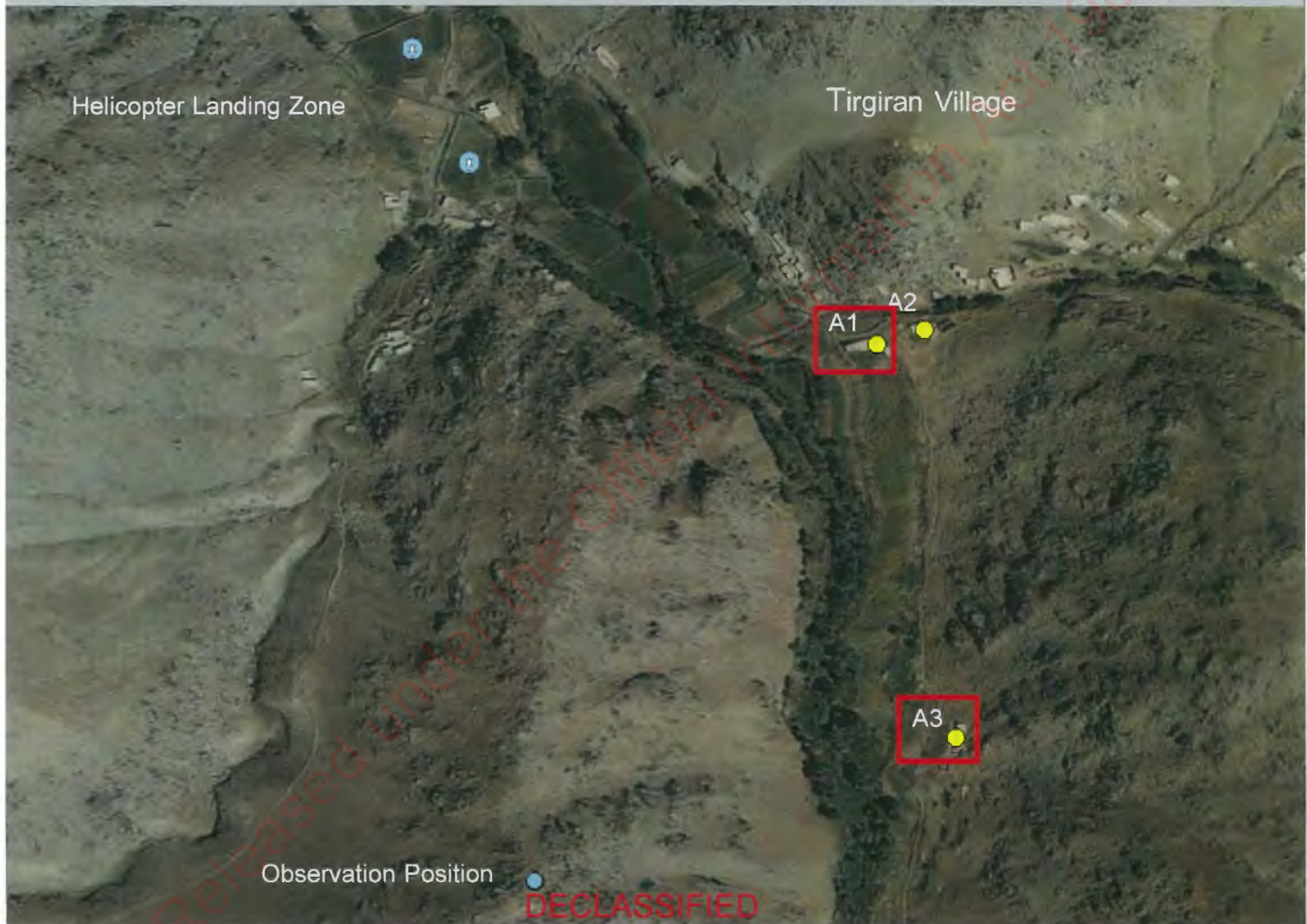
Supporting Document:

7. Slide seven from PowerPoint presentation of 27 March 2017 with buildings that caught fire marked

0030 – Surveillance aircraft and support helicopters positively identify armed insurgents



22 August 0030 – 2 Helicopters Land at Landing Zone



What did the ground forces find in Tirgiran village?

The insurgent targeted for capture was not present.

However, what was captured instead was a quantity of weapons and ammunition:

- one Rocket Propelled Grenade launcher with seven grenades;
- a bipod (a two-legged rifle rest);
- five Rocket Propelled Grenade rocket motors;
- a full 7.62mm magazine;
- a drum magazine;
- five tins of loose 7.62mm ammunition;
- one tin of 14.55mm Armour Piercing Incendiary ammunition;
- two non-disintegrating belts of 7.62mm ammunition;
- a quantity of 9mm rounds;
- a leather pistol holster; and
- an AK47 rifle.

All imagery of the arms cache, and imagery data, is provided in Document Eight.

Supporting Document:

8. Imagery captured by the NZDF during Operation Burnham

Did the NZDF ground forces shoot any people during Operation Burnham?

As previously confirmed by the NZDF at its 27 March, 2017, media conference, at approximately 0128, an insurgent who was approaching one of the ground force positions was identified as presenting a threat and was shot and killed by the NZSAS ground force.

Two shots were fired.

Those two shots were the only shots fired by NZDF personnel during the entire operation.

Were the NZSAS patrol able to identify the insurgent they had killed?

Yes, his identity as an insurgent was confirmed. Security conditions on the ground precluded the collection of the deceased or biometric data from the deceased which may have led to a conclusive personal identification during the operation.

Imagery captured by NZDF during Operation Burnham

IMG_0026	22/08/2010 9:21 AM	JPG File	2,810 KB
IMG_0027	22/08/2010 9:21 AM	JPG File	2,854 KB
IMG_0028	22/08/2010 9:21 AM	JPG File	3,157 KB
IMG_0029	22/08/2010 9:23 AM	JPG File	2,912 KB
P8220037	22/08/2010 9:14 AM	JPG File	1,938 KB



IMG_0026



IMG_0027



IMG_0028



IMG_0029



P8220037

IMG0026 = Sunday, 22 August 2010, 9:21:00 AM NZST (AFG LOCAL TIME = 01:51:00AM)

IMG0027 = Sunday, 22 August 2010, 9:21:28 AM NZST (AFG LOCAL TIME = 01:51:28AM)

IMG0028 = Sunday, 22 August 2010, 9:21:56 AM NZST (AFG LOCAL TIME = 01:51:56AM)

IMG0029 = Sunday, 22 August 2010, 9:23:00 AM NZST (AFG LOCAL TIME = 01:53:00AM)

PB220037 = Sunday, 22 August 2010, 9:14:32 AM NZST (AFG LOCAL TIME = 01:44:32AM)

Did the NZSAS blow a building up?

Residence A1 was not “blown up” as claimed in *Hit & Run*. Explosive entry was used. The NZSAS ground force did not deliberately set fire to any houses or personal possessions.

Nor did they call in coalition aircraft to deliberately destroy houses.

How did the operation conclude?

The interpreter addressed the village by loud-hailer as the ground forces withdrew. An ISAF information pamphlet on the operation was distributed and the ground forces were airlifted out by 0345.

Were any members of the NZSAS injured during the operation in Tirgiran village?

One NZSAS member was injured after entering the residence (A1 - see Document Seven), when a wall and part of the roof collapsed upon him.

The injury was not the result of the wall of a house falling after being damaged by Coalition helicopter fire, as described in *Hit & Run*. Coalition aircraft did not deliberately fire on any buildings during the course of the operation.

At approximately 0245, the NZSAS casualty was evacuated from Tirgiran.

Notwithstanding the injury to the member of the NZSAS, on-ground search operations continued.

Summaries of the citations for the awarding of the New Zealand Gallantry Medal are provided in Documents Nine and Ten.

Supporting Documents:

9. Summary of citation for Serviceman F
10. Summary of citation for Serviceman A

It has been suggested that buildings were deliberately set alight by coalition forces?

After the NZSAS casualty was evacuated from Tirgiran, at approximately 0245, other members of the ground force proceeded south to another residence (marked as A3 in Document Seven).

An interpreter made another “callout” before the location was cleared and searched.

The building marked as A3 was a residence that later caught fire due to what has been attributed to a cooking fire that had been left unattended.

On return to the first residence (A1), the insurgent arms cache in the village was destroyed outside the building.

As the NZDF has previously confirmed, this residence caught fire when debris from the destruction of the insurgent weapons and ammunition fell on the roof setting the highly combustible roofing material alight.

At no point during the operation were NZDF personnel aware of damage to buildings as a result of rounds falling short from a Coalition helicopter or from fire.

THE NEW ZEALAND GALLANTRY MEDAL (NZGM)**TE MĒTARA TOHU TOA O AOTEAROA****SERVICEMAN F
THE NEW ZEALAND SPECIAL AIR SERVICE***Citation*

Serviceman F served in Afghanistan between March and August 2010 as part of the New Zealand Special Air Service (NZSAS) Task Force operating with and training the Afghani Police Crisis Response Unit. He developed a number of new tactics for use in close quarter fighting. On 20 August 2010, he took part in a night mission in northern Afghanistan to arrest two known insurgents responsible for numerous attacks and killings, including the death of Lieutenant O'Donnell. He and his team were dropped off by helicopter in the isolated and mountainous target area. As they made their way towards a compound, they passed a number of insurgents moving through a line of trees. As it was not possible to identify what weapons were being carried, the NZSAS group withheld their fire, at some personal risk, in order to avoid civilian casualties. On arrival at the compound, Serviceman F was tasked to gain entry. At the same time, the first insurgent group had got themselves in to a position from where they could fight and other insurgents were attempting to flank the NZSAS patrol. As he prepared to gain entry to a building, close air support was engaging the insurgents about 150 metres away. With no time to lose, he and another NZSAS soldier entered the building. As he did so, a wall and the roof of the building collapsed, dropping several hundred kilograms from a height on to him. He now found himself trapped under the debris, having sustained severe injuries. As a qualified NZSAS medic, he intuitively knew the severity and consequences of his wounds. He also knew time was of the essence and every moment of delay spelt danger for his colleagues. In spite of his injuries and while still trapped in the rubble, he provided a running commentary on the tactical situation. This timely and accurate information ensured the plan was able to be quickly reoriented and the assault was able to succeed.

Such was Serviceman F's focus on the mission, despite being in severe pain and while trapped under rubble, and the accuracy of the communications that he provided, that the troop commander was completely unaware of his situation and of the injuries he had sustained. His leadership skills were such that in spite of his incapacitation, his group were able to continue and bring the assault to a successful conclusion.

THE NEW ZEALAND DISTINGUISHED SERVICE DECORATION**TE TOHU RATONGA RONGONUI O AOTEAROA****SERVICEMAN A
THE NEW ZEALAND SPECIAL AIR SERVICE***Citation*

Serviceman A served in Afghanistan between March and October 2010 as part of the New Zealand Special Air Service (NZSAS) Task Force operating with and training the Afghani Police Crisis Response Unit. His role was that of a Joint Tactical Air Controller. On 20 August 2010, he took part in a night mission in northern Afghanistan to arrest two known insurgents responsible for numerous attacks and killings, including the death of Lieutenant O'Donnell. He was a member of the group, whose personnel were to have been pre-positioned by helicopter on high ground to the west of the target area, so that they were in an over watch position. Due however to the extremely rugged nature of the terrain, this was not possible. Instead the personnel were dropped off over two kilometres south west of the planned location. After disembarkation, it quickly became clear from aerial reporting that the situation was urgent. Insurgents had been observed gathering weapons, ammunition and rockets to prepare for attack. They had attempted contact with NZSAS personnel in the base of the valley, coming within forty metres of them, but darkness had thwarted engagement. They had then started making for higher ground. It was essential that Serviceman A and other members of the group quickly gain an over watch position. They began a rapid and sustained traverse over rocky terrain in complete darkness. Throughout, he maintained constant communications with the aerial support, while keeping pace with his colleagues and maintaining vigilance for insurgent ambush. The reports he provided brought effective aerial fire to bear on the enemy, during which a number were killed, negating their ability to engage the main body of NZSAS personnel. As compounds were searched, the insurgents massed for two further attacks. At one stage a member of the Squadron sustained serious injuries. Serviceman A then had the dual task of continuing to direct combat aircraft, while controlling the air evacuation of the casualty.

Were the NZSAS aware during Operation Burnham that civilian injuries or deaths may have occurred?

No. The NZSAS participants in this operation were not aware of any civilian injuries or deaths at any point during the operation, nor were they aware of any rounds striking a building.

Were there in fact any civilian casualties?

A joint ISAF and Afghanistan Government investigation concluded that civilian casualties may have occurred when a gunsight malfunction on one of the helicopters engaging insurgents on a nearby hillside, caused rounds to fall short of the intended target and strike two buildings.

Coalition aircraft had been given permission to engage the insurgents with weapons, as they were considered to be a threat to the ground force. As already mentioned, Coalition aircraft did not deliberately target and fire on any buildings, notwithstanding that claim in *Hit & Run*.

The NZDF is conscious of its responsibilities regarding allegations of use of force against civilians not participating in hostilities by its personnel. Document Eleven relates to the actions taken by the Defence Force following the allegations of offending.

Supporting Documents:

11. Defence Force Inquiries into Allegations of Offending

If ISAF had said civilian casualties may have occurred, why did the NZDF maintain that reports of civilian casualties were “unfounded”?

There has been some confusion regarding statements made in the ISAF press release of 29 August 2010 and subsequent NZDF press releases stating that allegations of civilian casualties were unfounded.

The term “unfounded” was intended to address the suggestion that the NZDF was responsible for civilian casualties.

In so far as there may have been civilian casualties caused by a malfunction on a coalition helicopter in the same operation, the NZDF acknowledges that use of the term “unfounded” may have suggested that the NZDF does not accept this possibility. This is not the case.



NEW ZEALAND DEFENCE FORCE COVER SHEET

To accompany documents to the
Minister of Defence

Title:	DEFENCE FORCE INQUIRIES INTO ALLEGATIONS OF OFFENDING				
NZDF File No.	NZDF Tracking # 2017-098 (For OCDF Use Only)			Minister's Tracking#: (For Minister's office)	
Importance of the Issue:	<input checked="" type="checkbox"/> High	<input type="checkbox"/>	<input type="checkbox"/> Moderate	<input type="checkbox"/>	<input type="checkbox"/> Routine
Urgency for Attention/Sign-Off:	URGENT			Request Ministerial response by: Not required	
Contacts:	1. Colonel [s. 9(2)(a)]				
Purpose:	Allegations have been publicly made that members of the NZSAS committed offences while participating in a specific operational mission on 22 August 2010 in Afghanistan. This note provides you with the advice you sought around the legal options and obligations that the Chief of Defence Force has to investigate allegations.				
Recommendations:	<p>I recommend that you:</p> <ul style="list-style-type: none"> a. Note the legal authority and duty vested in me as the Chief of Defence Force under the Armed Forces Discipline Act 1971; b. Note that, based upon the information I have considered, I do not consider that the obligation to conduct an internal Defence Force inquiry into Operation Burnham has been triggered; c. Note that I have openly stated that I will welcome and consider any new credible evidence, and would re-evaluate my decision on the basis of that evidence; and d. Forward a copy of this note to the Prime Minister. 				
MOD/NZDF Consultation	Not required: Defence Force matter only.				
Minister's comments:					
Minister's Action:	Signed / Noted / Agreed / Approved / Declined / Discussion required Referred to:				
Signature:	Date:				

T.J. KEATING
Lieutenant General
Chief of Defence Force

Date: 3 March 2017



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30 March 2017

Minister of Defence

DEFENCE FORCE INQUIRIES INTO ALLEGATIONS OF OFFENDING

1. Information in the recently released book 'Hit and Run' can be construed as suggesting that members of the New Zealand Special Air Service may have engaged in unlawful conduct while participating in a specific operational mission on 21/22 August 2010 in Afghanistan (Operation Burnham). This note provides you with advice about the legal obligations that the Chief of Defence Force has under law, to inquire into such suggestions of unlawful conduct and the form of any subsequent legal action should that be required. The following paragraphs describe these obligations and avenues for action.

Investigations

2. This note sets out information about the inquiries that I am obliged and empowered to direct or conduct pursuant to the Armed Forces Discipline Act 1971 within the military jurisdiction. The military jurisdiction is fundamentally concerned with Defence Force personnel, and dealing lawfully and appropriately with allegations of unlawful conduct by Defence Force personnel.

3. Any decision made by Defence Force personnel on whether or not a Defence Force investigation should be conducted does not preclude another authority exercising their lawful jurisdiction, for instance the New Zealand Police.

Defence Force Investigations

4. There are essentially three forms of inquiry available to me as Chief of Defence Force within the military jurisdiction in respect of the conduct of my personnel. These are command investigations, a court of inquiry and a disciplinary investigation.

5. The internal inquiries that have been conducted to date in respect of this matter essentially take the form of a command investigation. However, a command investigation is not suitable for formally investigating allegations of unlawful conduct, if there were an evidential basis to do so.

6. The Armed Forces Discipline Act sets out the basis on which officers of the New Zealand Defence Force, including the Chief of Defence Force, might assemble a Court of Inquiry. The purpose of a Court of Inquiry is to provide an expeditious fact finding procedure so that a matter can be promptly investigated and if necessary, prompt remedial action can be taken. A Court of Inquiry is not considered necessary or appropriate at this time, given the unsubstantiated allegations are essentially of unlawful conduct, the environment within which the unlawful conduct occurred, and when it is alleged unlawful conduct occurred.

Disciplinary Investigation

7. The Armed Forces Discipline Act, in particular section 102, sets out the statutory basis for the conduct of a disciplinary investigation under the Armed Forces Discipline Act.

8. The Armed Forces Discipline Act vests specific duties in commanding officers, and gives them specific options to deal with allegations of unlawful conduct. Where there are grounds to do so, the matter will either be referred to the civil authorities or dealt with in accordance with the Act. The commanding officer of a person about whom an allegation of unlawful conduct is made needs to determine what action they will take based on the information available to them at the time they make their decision. The exercise of their lawful authority in making this decision should not be unlawfully fettered. As the Chief of Defence Force, authority to direct investigations also vests in me.

9. To date, no commanding officer has decided it is necessary to direct an investigation pursuant to the Armed Forces Discipline Act in respect of the conduct of Defence Force personnel during this Operation.

10. The book 'Hit and Run' can be construed as alleging that Defence Force personnel were involved in an operation that:

- a. Deliberately targeted civilians; and
- b. Deliberately destroyed property on a large-scale.

11. Such allegations are of serious concern to me because they strike at the heart of the professionalism and integrity I expect of Defence Force personnel. I expect my personnel, as part of a trained and disciplined force, to comply with the Law of Armed Conflict and with the rules of engagement when deployed on operations. The rules of engagement are designed, amongst other things, to ensure the protection of non-combatants as required by the Law of Armed Conflict. I further expect Defence Force personnel to, and will myself, take steps to ensure any allegations of unlawful conduct are appropriately investigated.

12. In this context, and in light of the perceived allegations, I have considered the following information, relating to the planning, execution and subsequent review of the Operation, in forming a view whether I am currently obliged to direct or conduct an investigation pursuant to the Armed Forces Discipline Act. I have also considered the material provided in the book 'Hit and Run' in forming my view. I have set aside any inaccuracies of location that may exist in making my decision, although I have seen highly accurate information regarding the location in which the Operation was conducted. The information I have seen included:

- a. New Zealand Defence Force and coalition intelligence and operational documentation generated prior to the Operation, during the Operation and following the Operation;
- b. The rules of engagement in place for the Operation; and
- c. The executive summary of the investigation conducted by the International Security Assistance Force, the Afghan Ministry of Interior, and the Afghan Ministry of Defence, as it was released to the New Zealand Defence Force.

13. The information I have seen clearly shows Defence Force and coalition personnel involved in the Operation taking deliberate steps to ensure the Operation was conducted in accordance with the Law of Armed Conflict and the rules of engagement. This includes ensuring the positive identification of individuals as lawful targets and taking all feasible precautions to minimise potential civilian casualties. The Operation was reviewed throughout by a New Zealand Defence Force legal officer. The Operation was based on a comprehensive intelligence picture distilled from various sources. Additionally, intelligence was gathered after the Operation to measure its outcome.

14. I do not currently consider that the information I have in respect of the allegations requires me to direct further action pursuant to section 102 of the Armed Forces Discipline Act.

15. Where a matter has not been disposed of finally in accordance with the Armed Forces Discipline Act, further action under the Armed Forces Discipline Act might still be taken. As such, if further credible evidence were to come to light, I would reassess whether my decision should still stand.

16. The Defence Force has, and will continue to be, explicit in its request that anyone with relevant information should draw that information to the attention of the Defence Force so that any allegations might be appropriately investigated where the information warrants doing so.

Coalition Forces

17. Defence Force personnel cannot compel foreign service personnel to give evidence in any disciplinary investigation of Defence Force service members pursuant to section 102 of the Armed Forces Discipline Act, although it could make a request for foreign service personnel to do so. This is not an issue at present, given my decision that an investigation is not required. However, if I were to decide at any later point that an investigation were required, the availability of witnesses may constrain the scope of any investigation.

18. The allegations in the book could potentially be construed as suggesting that the conduct of foreign service personnel may have been unlawful. New Zealand Defence Force personnel have no statutory authority to conduct investigations into the conduct of foreign service personnel in situations such as this. However, if I were concerned with the conduct of foreign service personnel it is my duty, under the Law of Armed Conflict, to bring it to the attention of the appropriate national authorities. In reviewing the information available to me, I have not seen any information to substantiate a suggestion foreign service personnel engaged in unlawful conduct.

Disclosure of Information

19. Any requests for access to information relating to the Operation that have been made will be managed in accordance with the requirements of the Official Information Act 1982 and the Privacy Act 1993. While Defence Force personnel are no longer serving in this location, I am still obliged to ensure that release does not have an impact on future operations or foreign relations when determining what information may be released.

Conclusion

20. At the time that earlier allegations were made, the Chief of Defence Force of the day concluded that there was no basis for the conduct of an inquiry. I have studied the Defence Force's own records, including coalition material made available to us, around the conduct of Defence Force personnel during Operation Burnham, in the context of the allegations made.

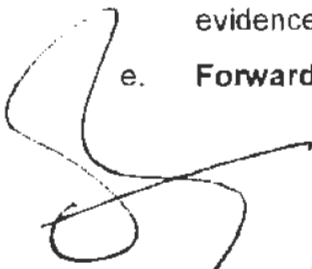
21. Having reviewed the material available to me and the information presented in the book 'Hit and Run', I have decided that the requirement to conduct an internal Defence Force inquiry into Operation Burnham has not been triggered at this stage.

22. As I stated at my press conference on Monday 27 March 2017, I would consider any new evidence presented by any individual. If any such evidence were to trigger my obligation under section 102 of the Armed Forces Discipline Act 1971 to initiate an appropriate inquiry, for which I have the statutory duty and authority to do, I would do so

Recommendations

23. I recommend that you:

- a. **Note** the legal authority and duty vested in me as the Chief of Defence Force under the Armed Forces Discipline Act 1971;
- b. **Note** that, based upon the information I have considered, I do not consider that the obligation to conduct an internal Defence Force inquiry into Operation Burnham has been triggered;
- c. **Note** that I have openly stated that I will welcome and consider any new credible evidence, and would re-evaluate my decision on the basis of that evidence; and
- e. **Forward** a copy of this note to the Prime Minister.



T.J. KEATING
Lieutenant General
Chief of Defence Force

At the NZDF press conference in 2017, doesn't CDF say that NZSAS members observed helicopter rounds falling short into village buildings?

At the 27 March, 2017, media conference, Chief of Defence Force, Lieutenant General Tim Keating was making remarks about how the insurgents live and operate among the civilian population, in effect using civilians as human shields.

This then led LTGEN Keating to say that during the operation "it was noted by ground forces, the NZSAS forces, that some of the [Coalition helicopter] rounds were falling short and went into a building where it was believed there were civilians as well as armed insurgents".

After the media conference, what LTGEN Keating had said about the issue was queried by at least one commentator. LTGEN Keating said that, at the media conference, he had thought that NZSAS observers on the ground observed the short rounds. That observation had instead been made onboard a Coalition helicopter.

On checking this detail, the NZSAS was able to confirm that none of its members were in a position to see the helicopter rounds fall short. The NZSAS patrol had already passed the location and were at the residence marked as A1 in Document Seven.

On further review of the Coalition helicopter video, LTGEN Keating concluded that the call stating that rounds were falling short, was from a member of the helicopter crew that fired those rounds.

Doesn't the CDF go on to suggest that NZDF knew civilians were in the building struck by rounds from the helicopter?

During the press conference of 17 March, 2017, the Chief of Defence Force, LTGEN Tim Keating, says:

"It is noted that the building, there were armed insurgents in there. But it's believed there may have been civilians in the building. So the weapon malfunctioned and some rounds went into that building. There is no confirmation that any casualties occurred, but there may have been."

By way of amplification, LTGEN Keating confirms that he was referring to subsequent analysis of imagery from the period of the raid that showed that the building in question was used at various times by insurgents and civilian villagers.

There is no imagery to suggest that any casualties occurred, hence his conclusion: "There is no confirmation that any casualties occurred, but there may have been."

What has been the outcome of an accusation that a prisoner in the care of the NZDF was abused?

The NZDF stand by all of its legal obligations, including the obligation to investigate allegations of any wrongdoing by its members.

The book *Hit & Run* alleged that a Mr Qari Miraj had been assaulted by a member of the NZDF. The allegation was investigated by the NZDF Military Police.

NZDF personnel did not detain Mr Qari Miraj, but searched him before and after he was transported to the National Directorate of Security detention facility. NZDF personnel present were interviewed by Military Police. Mr Miraj had also been photographed and then checked by a New Zealand Medical Officer.

No evidence of any ill-treatment was observed by the Medical Officer or recorded in the photographs.

The Military Police investigation concluded there was insufficient evidence to support the allegation that Mr Qari Miraj had been assaulted.

Supporting Documents

12. NZDF MP Final Report: Ill-treatment of a detainee
13. Preliminary Investigation into Allegation of Detainee Mistreatment

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NEW ZEALAND DEFENCE FORCE
Headquarters NZDF Military Police
Serious Investigation Branch
MINUTE

20170503001

06 Sep 17

HQ JFNZ (Attention: SOCC)

For Information:

1 NZSAS Regt (Attention: CO)
HQNZDF (Attention: PM)

NZDF MP FINAL REPORT: ILL-TREATMENT OF A DETAINEE

References:

- A. NZDF / SOC/1 of 11 Apr 17
- B. NZDF MP Incident Report 20170503001 dated 4 May 17
- C. AFDA s 102

1. IAW ref A, NZDF MP commenced an investigation into an allegation made in the book *'Hit and Run: the New Zealand SAS in Afghanistan and the Meaning of Honour'* by N. Hager and J. Stephenson, specifically that an Afghan national had been assaulted by a member of the NZDF, while he was being transported to an Afghan run detention facility.

2. The NZDF MP SIB investigation has established the following:

- a. on the night of 15 Jan, Mr Qari MIRAJ was located s. 6(a) in a residential area of Kabul;
- b. a NZDF patrol deployed and put in a cordon s. 6(a)
- c. members of the Afghan Critical Response Unit (CRU) s. 6(a) s. 6(a) took Mr Qari MIRAJ into custody;
- d. the NZDF patrol did not take part in the detention, s. 6(a)
- e. Mr Qari MIRAJ confirmed his identity to the CRU and was escorted out s. 6(a) without resistance;
- f. s. 6(a) members of the NZDF patrol conducted an initial search of Mr Qari MIRAJ, prior to placing him in a vehicle and transporting him to the National Directorate of Security (NDS) detention facility;

~~RESTRICTED~~

~~RESTRICTED~~

-2-

- g. at the NDS detention facility, a thorough search was conducted of Mr Qari MIRAJ by members of the NZDF patrol;
- h. Mr Qari MIRAJ was then photographed and given an initial medical check by a New Zealand Medical Officer (MO);
- i. no evidence of any ill-treatment or assault was observed by the MO or recorded on the photographs taken of Mr Qari MIRAJ; and
- j. Mr Qari MIRAJ was then handed back into the custody of the NDS.

3. NZDF MP SIB inquiries identified s. 6(a) NZDF personnel deployed on the patrol. s. 6(a) have been interviewed with one witness, now a civilian, being unavailable.

4. The NZDF MP SIB investigation has concluded that there is insufficient evidence to support the allegation that a member of the NZDF assaulted Mr Qari MIRAJ. No further reports will be submitted regarding this matter, unless further information or evidence is obtained.

5. IAW ref C, the decision to proceed with any disciplinary action is for SOCC to make. It is further requested that any decision and the results of any unit action regarding this matter, including any findings and / or punishment awarded, be forwarded to s. 9(2)(a) NZDF MP, NZDF MP Criminal Intelligence ss. 6(a), 9(2)(a)

6. Any queries regarding this matter can be referred to s. 9(2)(a) s. 9(2)(a) NZDF MP, s. 9(2)(a)

s. 9(2)(a)

PP LTCOL
CO



DTelN: s. 9(2)(a)

~~RESTRICTED~~

HEADQUARTERS NEW ZEALAND DEFENCE FORCE
Special Operations Command
MINUTE

NZDF /SOC/1

4 Oct 17

CDF (Through: CoS OCDF)

For information:

CA

PM NZDF

PRELIMINARY INVESTIGATION INTO ALLEGATION OF DETAINEE MISTREATMENT**Refs:**

- A. Minute SOCC to CO NZDF MP dated 11 Apr 17
- B. Minute CO NZDF MP to SOCC dated 6 Sep 17
- C. Armed Forces Discipline Act 1971, s 102

1. At Ref A I requested a preliminary investigation be conducted by the NZDF Military Police into an allegation of detainee mistreatment made by Nicky Hager and John Stephenson in their book Hit & Run.

2. Ref B is the final report on the NZDF MP SIB investigation. s. 6(a) personnel that formed the NZDF patrol were interviewed. One witness, now a civilian, was unavailable. According to Ref B, the investigation established the following:

- a) Members of the Afghan Crisis Response Unit took Mr Qari MIRAJ into custody in Kabul on 15 Jan 2011. Members of the NZDF were not present in the building when Mr MIRAJ was taken into custody;
- b) Outside the building, an initial search of Mr MIRAJ was conducted by members of the NZDF and he was transported by vehicle to the National Directorate of Security (NDS) detention facility;
- c) At the NDS facility, members of the NZDF conducted a thorough search of Mr MIRAJ, he was photographed, and then medically checked by a New Zealand Medical Officer (MO); and
- d) No evidence of any ill-treatment was observed by the MO or recorded in the photographs taken of Mr MIRAJ.

3. Ref B concluded that there is insufficient evidence to support the allegation of detainee mistreatment.

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4. In light of this conclusion, I do not consider that an obligation to conduct any further internal Defence Force inquiry into the allegation has been triggered. No further action will be taken unless additional information or evidence becomes available.

s. 9(2)(a)

COL
SOCC

Released under the Official Information Act 1982

~~RESTRICTED~~

After *Hit & Run* was released, did the NZDF provide a briefing to the New Zealand Government on Operation Burnham?

Yes. The former Prime Minister, Bill English, current and former Ministers of Defence, Ron Mark, Gerry Brownlee, and Mark Mitchell, and most recently the Attorney General, David Parker, have all been briefed about Operation Burnham, its objectives and its conduct.

The briefing material is based, in part, on the list of reports enclosed. These files also contain highly classified operational and intelligence information. The NZDF is unable to share the contents of those files publicly.























The information includes a more detailed account of the operation than was presented publicly at the press conference of 27 March 2017. Supporting material also included up to 15 minutes and 52 seconds of video footage from the weapons system of coalition aircraft. The footage shows the identification and engagement of insurgents.

Supporting Documents

14. List of reports created following Operation Burnham

Abbreviations used in report titles:

BDA	Battle Damage Assessment
Civ	Civilian
HLZ	Helicopter Landing Zone
Int	Intelligence
IO	Information Operations
MINDEF	Minister of Defence
Ops	Operations
Post Op	Post Operation

Name	Date modified	Type	Size
 2010-08-25 Cover Sheet - HQ ISAF Civ Casualty Investigation into Op BURNHAM.doc	8/07/2011 3:22 p.m.	Microsoft Word 9...	51 KB
 2010-08-25 MINDEF Note - HQ ISAF Civ Casualty Investigation on Op BURNHAM.doc	8/07/2011 3:27 p.m.	Microsoft Word 9...	52 KB
 2010-08-24 Update on s. 9(2)(a) Wounded in Action - MINDEF Note Coversheet.doc	28/07/2011 9:50 a....	Microsoft Word 9...	52 KB
 HLZ Statement (S50).docx	24/08/2010 5:49 p....	Microsoft Word D...	1,418 KB
 HLZ Statement (S52).docx	24/08/2010 5:49 p....	Microsoft Word D...	1,416 KB
 Obj BURNHAM BDA.docx	24/08/2010 10:07 ...	Microsoft Word D...	22 KB
 20100823-6(a), 6(b) -DEBRIEF-OBJ BURNHAM6(a), 6(b).doc	31/08/2010 10:25 ...	Microsoft Word 9...	4,284 KB
 2010-08-22 Baghlan Operation - OPJ BURNHAM.ppt	21/03/2011 3:39 p....	Microsoft PowerP...	2,550 KB
 2010-08-22 6(a), 6(b) OBJ BURNHAM Storyboard.ppt	8/07/2011 3:27 p.m.	Microsoft PowerP...	2,341 KB
 2010-08-22 OPJ BURNHAM Storyboards.ppt	21/03/2011 3:38 p....	Microsoft PowerP...	2,550 KB
 2010-08-23 Int Update Obj BURNHAM Op.doc	24/08/2010 7:59 a....	Microsoft Word 9...	32 KB
 2010-08-26 Int Summary Report on OBJ Burnham 22 Aug 10.doc	27/07/2011 11:24 a...	Microsoft Word 9...	52 KB
 2010-08-30 OBJ Burnham Post-Op Report.doc	21/07/2011 3:08 p....	Microsoft Word 9...	26 KB
 2010-08-24 CDF Ops Brief.ppt	23/08/2010 12:12 ...	Microsoft PowerP...	19,306 KB
 2010-08-31 CDF Ops Brief.ppt	30/08/2010 1:48 p....	Microsoft PowerP...	16,819 KB
 OBJ Burnham Post Op report.doc	31/08/2010 11:15 ...	Microsoft Word 9...	21 KB
 Update Obj Burnham Op 21 Aug 10 Update 2.doc	25/08/2010 2:45 a....	Microsoft Word 9...	39 KB
 Update Obj Burnham Op 21 Aug 10 Update 3.doc	26/08/2010 2:03 a....	Microsoft Word 9...	42 KB
 Update Obj Burnham Op 21 Aug 10.doc	24/08/2010 5:24 a....	Microsoft Word 9...	37 KB
 Update Obj Burnham Op 21 Aug 10 Update 1.doc	24/08/2010 9:53 p....	Microsoft Word 9...	38 KB
 Post operation IO Message.docx	24/08/2010 3:54 a....	Microsoft Word D...	23 KB
 100914 1430 s. 9(2)(a) doc	16/09/2010 1:43 a...	Microsoft Word 9...	45 KB

Second release of information after Ombudsman direction

On 9 April 2018, Chief Ombudsman Peter Boshier released his Final Opinion on five complaints concerning the withholding of information by the New Zealand Defence Force related to Operation Burnham in Afghanistan in 2010.

Mr Boshier found that the NZDF was justified in withholding most of the requested information under sections 6(a) and 6(b) of the Official Information Act.

However, he made further recommendations including the release of four briefing papers with some redactions — this material was released in accordance with the Ombudsman's ruling.

The material released essentially responds to requests related to:

1. Information related to the identification of the insurgents killed during the operation;
2. Advice provided by the NZDF to Cabinet and the Prime Minister regarding the 2010 operation; and
3. Correspondence between the NZDF and the offices of the Prime Minister and the Minister of Defence regarding the allegations raised in Hit and Run.

Part A - Identification of the insurgents

The identification of insurgents is based on intelligence gathered in connection to Operation Burnham.

Q: Of the 9 insurgents that the NZDF claims were killed during the 22 August 2010 SAS raid in Baghlan Province Afghanistan, how many does it know the identity of?

A: Nine.

Q: Was the school teacher Islamuddin, who was killed during the 22 August 2010 SAS raid in Baghlan Province, Afghanistan, one of the nine insurgents whom NZDF claims were killed?

A: No-one with the name Islamuddin was among those identified by the NZDF as killed during the 22 August 2010 operation.

Q: Were Mohammad Iqbal and his son Abdul Qayoom, who were killed during the 22 August 2010 SAS raid in Baghlan Province, Afghanistan, two of the nine presumed insurgents whom NZDF claims were killed?

A: Insurgents known by the names Mohammad Iqbal and Abdul Qayoom were among those identified as killed during the 22 August 2010 operation.

Parts B + C - Advice to Government

It should be noted that the information released today is in addition to the considerable briefing notes and correspondence that the NZDF has already released related to Operation Burnham. It should be read in conjunction with this material.

The NZDF has previously responded to information requests seeking clarity on how the NZDF came to describe the suggestion of civilian casualties as “unfounded”. For example, here is the material prepared in November 2017, and sent to a requestor, explaining the provenance of the term:

The NZDF is conscious of its responsibilities regarding allegations of use of force against civilians not participating in hostilities by its personnel. Under the Armed Forces Discipline Act (AFDA), allegations of this nature (against NZDF personnel) must be investigated where they are "well founded ". As there was no evidence produced at the time of any specific civilian casualties, and those that may have occurred were not as a result of any actions undertaken by NZDF personnel, any such allegations were not "well founded" in terms of the AFDA. This is the reason the term "unfounded" was the particular term used in NZDF's press releases.

The news release by ISAF on 29 August 2010 stated civilian casualties may have resulted from several rounds fired by coalition helicopters falling short and missing their intended target.

*The NZDF press release of 20 April 2011 that first stated, "The investigation concluded that the allegations of civilian casualties were unfounded", was **based on a second-hand account of the ISAF report in so far as it related to NZDF personnel. We believe this summary of the ISAF report was prepared in-theatre and passed back to HQNZDF.** This summary did not include the acknowledgment by ISAF that coalition helicopter gunship rounds fell short and may have caused casualties. NZDF acknowledges that the "unfounded" remark related to NZDF personnel and therefore only reflected a partial picture of the operation. (Emphasis added)*

Later, in 2014, the NZDF again responded with "unfounded" to a similar but materially different accusation about this same operation. That is, in 2014, media were not merely contending that civilians may have been killed, but that the NZDF had killed them. This was not the case, and the NZDF had no information (then or now) that supported the contention that its personnel had killed any civilians on this operation, and therefore believed "unfounded" was an appropriate response.

In 2017, after the release of Hit and Run, the NZDF quickly prepared a response that persisted with the same message regarding this issue. With the benefit of hindsight, this was a moment when the NZDF could have removed some of the confusion around its position.

In his public press conference the Chief of Defence Force removed any ambiguity, acknowledging the malfunction of the Coalition helicopter gunsights causing rounds to fall short, and the possibility that civilian casualties could have been a consequence of this.

This context is especially relevant to some of the material provided by NZDF today. Firstly, the 10 December 2010, note to inform the Prime Minister, (NZSAS Operations in Baghlan Province August and September 2010). This note states that “the allegations into civilian casualties and destroyed houses were investigated by an ISAF joint assessment team and they concluded that the allegations were baseless and cleared the actions of the Response Task Force and coalition air of all allegations”. In the body of that note it goes further, noting the NZSAS Task Force Commander, who it says had been allowed to read the ISAF assessment report but not take a copy away with them, commented that the assessment concludes that

“having reviewed the evidence there is no way that civilian casualties could have occurred”.

Additionally, the 13 December 2010 note to inform the Prime Minister, (CRU and NZSAS Operations in Baghlan Province August and September 2010). This note states: “As a result of their investigation the assessment team concluded that ‘having reviewed the evidence there is no way that civilian casualties could have occurred’ and the actions of the ground force and coalition are were cleared of all accusations.”

Both statements seem to be the consequence of the account of the ISAF report, which was summarised in-theatre and sent back to the Headquarters, where it appears considerable weight was attached by the NZDF to its accuracy, and indeed, where specific phraseology written by the person in-theatre is mistakenly taken to be a verbatim quote back in New Zealand of the ISAF assessment. Understanding the sequence of these events, and how this came to transpire, will likely be an issue the forthcoming Government Inquiry will consider.

Another document in today’s release pack, dated 22 March, 2017 (Dot Point Brief for VCDF), sets out NZDF’s current understanding of these issues, noting that the initial assessment team in fact found “in summary that it was possible that civilian casualties occurred because two buildings were used by insurgents as cover and that women and children were in those buildings. [That is] the insurgents put non-combatants at risk by using the compounds as a base for their operations. Insurgents with machine guns and probable RPGs were clearly visible. [These] buildings were not a target, however a gun sight malfunction in one of the helicopters may have lead to rounds falling short. One building court [sic] fire after ammo cache was destroyed and one other fire occurred as insurgents fled and left a stove unattended.” This same document notes that in August 2010, a “Post operation Battle Damage Assessment did not find any non-combatant casualties”.


The document headed ‘Annex E: Civilian Casualty Procedures: Afghanistan August 2010’, from 23 March 2017, provides more detail on the ISAF initial assessment team (IAT), naming the Brigadier General who lead the assessment. It should be noted that the final bullet point notes that NZDF was provided an executive summary of the investigation. For clarity, the NZDF subsequently learned that the executive summary was the only report document prepared, and that no fuller report exists, to the best of NZDF’s knowledge.

This additional context is provided by the NZDF to make readers aware of information relevant to understanding the documents in the ‘Operation Burnham Advice to Government’ information pack.

From: COLEMAN PETER, MR
 To: s. 9(2)(a) COL; SMITH ROSS, CDRE; s. 9(2)(a)
 CC: s. 9(2)(a)
 Subject: RE: "Baseless"

Sent: Mon, 09 Apr 2018 02:28:25 GMT
 LTCOL

Attachments may contain viruses that are harmful to your computer. Attachments may not display correctly.

 20101213 Release ref Baghlan Operations.doc (35Kb)

Thanks.

Hey - attached is a file I received in December 2010 outlining the events of Op Burnham... I had been writing the media statements about the injured NZSAS person from Op Burnham that NZDF had put out about the medivac back to NZ...

I assume (I have no real recollection) I was passed this note in Dec 2010 when the first suggestions that NZDF involvement in Op Burnham may have been thought to be coming up in media... I have always assumed I wrote the dreaded word somewhere saying "unfounded" based off this doc... even if "unfounded" wasn't used at this time (Dec 2010) but was later used by other comms folk [it just feels like my word - "unfounded"]... I can also vaguely recall some time later (might have happened in 2013(?)) being angry that ISAF had a report suggesting civ casualty possible, and I'd drafted the "unfounded" based on info I'd been passed...

In any event, this doc has been passed to me at that time "unrestricted", and contains at para 4 the emphatic and in speech marks, comment that no civ casualties could have occurred, etc... this doc however post-dates ISAF release saying they were looking at that very suggestion etc...

...As a result of their investigation the assessment team concluded that "having reviewed the evidence there is no way that civilian casualties could have occurred" and the actions of the ground force and coalition air were cleared of all accusations.

So if in your discussions etc, you can help me understand the provenance of this doc, that would be very useful... With regard the injured NZSAS per from Op Burnham, Pete Kelly had been passing me info on that matter... so this note possibly came from him..

PC

Peter Coleman

Chief Advisor – Office of the Chief of Defence Force

NEW ZEALAND DEFENCE FORCE

ss 9(2)(a) & 9(2)(k)

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NEW ZEALAND**

NZDF Stands by Accounts of Operation Burnham

11 April 2018

The New Zealand Defence Force stands by the accounts of Operation Burnham it has provided to the Government and public.

The Government has announced today it will conduct an inquiry into the 2010 operation in Afghanistan in which the NZSAS were involved, specifically Operation Burnham and related events.

The operation was the subject of the book *Hit and Run*.

Chief of Defence Force Lieutenant General Tim Keating says the book contains errors.

Operation Burnham was an ISAF operation involving the NZSAS and Afghan Crisis Response Unit (CRU). The operation was well planned out and was mandated by the New Zealand Government. It was lawfully carried out, with clear rules of engagement, Lieutenant General Keating says.

“At all times throughout this operation our NZSAS acted professionally and conducted themselves to the high standards expected of our special forces,” he says.

Lieutenant General Keating says the NZDF will be cooperating fully with the inquiry and he looks forward to the inquiry confirming the facts. He welcomes the calibre of the people appointed to undertake it, former Supreme Court Judge Sir Terence Arnold and Sir Geoffrey Palmer.

Special Inquiry Office (SIO) — internal information pack (August 2018)

External key messages

- On 11 April, 2018 the Attorney-General announced a Government Inquiry would be held into Operation Burnham and related matters.
- In May 2018 the SIO was established to participate in, and support the Government inquiry into Operation Burnham and related matters.
- The NZDF takes the Government Inquiry seriously and is fully participating and cooperating with the Inquiry.
- The NZDF's participation and assistance is a substantial undertaking, and we will ensure the Inquiry has everything it needs to complete its work, which is expected to take some time. To secure and provide all the relevant material to the Inquiry alone, most of which is classified, is a large task.
- The SIO will consist of up to 11 personnel working in legal, research, and administration areas — these staff will be supported by other personnel as required.
- In the interest of bringing greater transparency to the important role we undertake as a *Force for New Zealand*, we will release on the NZDF website, all Operation Burnham OIA responses. We will also support the Inquiry's approach to finding ways to keep the New Zealand public informed.
- For any Defence Force it is always a challenge to strike a balance between being more transparent with what we do on behalf of the Government and under its direction, and protecting our men and women serving in operationally sensitive environments.

Internal key messages

- In April this year the Attorney-General announced that a Government Inquiry would be held into Operation Burnham and related matters. This follows the release of a book last year called *Hit and Run*, which contained allegations of war crimes allegedly carried out by NZSAS personnel in Afghanistan in 2010.
- The book *Hit and Run* contains serious allegations and may have had a personal impact on you and your family. The Inquiry process may cause further uncertainty and I strongly encourage you and your family to seek help from our support networks should you want to.
- In May 2018 the SIO was established to participate in, and support the Government Inquiry into Operation Burnham and related matters. One of the key tasks for the SIO is to ensure that NZDF personnel, past and present, who may be required to participate in the Inquiry are appropriately supported.
- It is still very early days for the Inquiry as they set up and deal with preliminary issues, and as such the NZDF does not yet fully understand what may be required

and the Inquiry's procedure. It is likely to be some months until the SIO is in a position to provide information of substance, and this will largely be up to the Inquiry to determine.

- The Inquiry has yet to indicate what approach it will take, including whether it will be inquisitorial or adversarial. However, whatever process it decides please know that you will be supported if you are required to participate.
- You may have questions about how the Inquiry will affect you and what support is available should you be required to participate. The SIO will be working through this as the Inquiry sets up and determines its procedures, and is committed to keeping you directly informed if you are affected. The SIO will either contact you directly or through your chain of command.
- In June the SIO submitted its first pack of documentary evidence to the Inquiry — this pack included hundreds of pages of publicly available information on Operation Burnham and related matters.
- The SIO are now in the process of researching and organising further documentation that falls under the Inquiry's scope. Further submissions are in the process of being made and it may take some time to work through the preliminary issues of access to classified material and Inquiry procedure.

Judicial Review

- The judicial review proceedings have been drawn to a close given the grounds of review and the fact that a Government Inquiry has now been initiated.

International Criminal Court

- The Office of the Prosecutor of the International Criminal Court has applied to the pre-trial chamber of the Court to investigate allegations arising from Afghanistan. The Prosecutor, if the application is successful, will primarily investigate allegations against the Taliban, Afghan National Security Forces, the United States, and the CIA in particular. The Prosecutor has also indicated that she may investigate allegations by other contributing nations.

Managing OIA requests

Between 12 April to 1 June 2018, the NZDF received over a dozen OIA requests from Mr Nicky Hager relating to Operation Burnham and related matters. In total there were 109 questions from these requests including many sub-questions, nearly all of which contained matters that are covered in the Scope of the Inquiry.

The Attorney-General has tasked the Inquiry through the Terms of Reference to inquire into and report on NZDF actions in respect of Operation Burnham, Operation Nova, and the individual Qari Miraj.

In the Chief Ombudsman's Opinion on OIA Requests about Operation Burnham dated 9 April 2018, it was stated, in the case of one of the requests in issue, that

there was justification for the NZDF to refuse to release information “on the basis that these allegations were being investigated and release of any information would likely prejudice the maintenance of the law (section 6(c) refers).”

On the same basis, the NZDF considers that, while the Government Inquiry is being conducted, the release of information through the OIA is likely to prejudice its conduct. Accordingly, the NZDF is currently refusing requests on Operation Burnham and Related Matters under section 6(c) of the OIA.

In addition, requests that are directly related to the NZDF’s submissions and evidence in the Government Inquiry likely fall outside of the OIA’s scope for the time being (paragraph (h) of the definition of “official information” in section 2 of the OIA).

Q & A

Reactive media statement for all NZDF related Inquiry queries:

“The Inquiry has launched, and the NZDF is supporting it. The NZDF stands by its view that NZDF and coalition personnel acted appropriately – within the Rules of Engagement and the Law of Armed Conflict. In due respect for the Inquiry’s work, including as they are still establishing their procedures, we have no further comment to make on this matter.”

Answers to specific questions (if required):

Q. Has the CDF conceded that the Operation took place in the same location stated in the book, *Hit and Run*?

A. No. As outlined by the former CDF at a press conference in March 2017, Operation Burnham was conducted in a village known as Tirgiran Village. This Village is some two kilometres south of Khak Khuday Dad Village and Naik Village. As far as NZDF knows, the authors have not resiled from their view in the book *Hit and Run* that it took place in those two villages – places NZDF never operated in.

Q. Why is an Inquiry being held when the NZDF has already explained the facts?

A. That is a matter for the Government. As the CDF has said, the Defence Force takes the Inquiry seriously, and we will properly participate in and work with the Inquiry.

Q. Does NZDF stick by its story about *Hit and Run*?

A. The NZDF carried out Operation Burnham as outlined by CDF last year. It’s not a matter of sticking by its story or not – we know what occurred.

Q. Was there a cover up of the operation?

A. No. The operation was conducted; subsequent to that, there was an ISAF investigation. Then a book was written. The former CDF, LTGEN Keating, also reviewed the totality of the material as well as information in the book, and concluded that the threshold to initiate an internal Defence Force inquiry had not been reached.

At each stage we have sought to be as transparent as possible, within the bounds of maintaining operational security, and respecting international obligations to partners.

Q. How much is the Inquiry expected to cost the taxpayer?

A. The approved 'incremental cost budget' for the SIO for the fiscal year 2018/19 is \$2.0M. Please note that this figure is the additional cost to the NZDF for participating in and supporting the Inquiry. The military personnel salaries (including those of the three 'surge' support research personnel) for the SIO are not included in this cost as these staff have been seconded from their respective Services where their positions have already been budgeted for.

The incremental cost budget includes costs such as civilian salaries, legal fees for Mr Paul Radich QC and Crown Law, travel (if required), and other operating expenses.

Q. How long is it expected to take?

A. This is a matter for the Inquiry and the Government.

Q. Is NZDF still confident about the conduct of Operation Burnham?

A. Yes — the NZDF and coalition personnel acted appropriately – within the Rules of Engagement and the Law of Armed Conflict, and nothing has changed that view.

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UNDER

THE INQUIRIES ACT 2013

IN THE MATTER

A GOVERNMENT INQUIRY INTO OPERATION BURNHAM
AND RELATED MATTERS

**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

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1. In paragraphs [11] and [94] of Minute 4 of 14 September 2018, the Inquiry said that it considered that it would be helpful to the Inquiry and to the general public if the New Zealand Defence Force (**NZDF**) was to prepare an unreferenced narrative account of the events at issue that could be made publicly available (“the NZDF narrative account”). The NZDF narrative account is filed with the Inquiry with this memorandum.
2. The NZDF narrative account is based on information held by, and research conducted by, the NZDF on the events in issue. Where it was necessary to do so, NZDF personnel with relevant knowledge of the events in issue were consulted in order to provide an account, of objectives that occurred several years ago, that is as accurate as possible.
3. The document provides a detailed factual account suitable for public release of three objectives that occurred during the NZSAS deployment in Afghanistan in 2010 – the objectives that are in issue before the Inquiry – and is accompanied by a map of the area in which the objectives took place. It includes a high-level description of the of military and strategic context for the operations that took place. It does not seek to provide views or to make submissions on the issues before the inquiry.
4. In order to give effect to the Inquiry’s request, the NZDF is making an unprecedented amount of information publicly available on the three classified objectives in issue. The NZDF asks that the information that is being made available is not seen to reflect the level of public information that would otherwise be considered necessary or appropriate for it to provide in relation to future NZDF operations.



Paul Radich QC
Counsel for the New Zealand Defence Force
7 November 2018

NZDF unreferenced account of events at issue

Inquiry's request for an unreferenced account of events at issue

In the Inquiry's Minute No 4, the NZDF was asked to prepare an unreferenced account of the events at issue in Operation Burnham and related matters which could be made publicly available.

The account contained in this document has been prepared by the NZDF on the basis of documents, video footage, photographs, and records and interviews from a prior investigation. The material is from the NZDF and other sources. The NZDF has not interviewed any NZDF personnel to produce or contribute to this account; that is a task for the Inquiry once it has identified the people from whom it wishes to hear. However, NZDF personnel with relevant knowledge of the events in issue were consulted in order to provide an accurate account as possible of operations that occurred several years ago.

There are inherent limitations in reconstructing three events in armed conflict, occurring at night in dangerous environments, on the basis of the material mentioned above. However, the thorough process that has been used enables the NZDF to confirm the fundamental elements of information it has released publicly on other occasions, including that NZDF personnel did not kill or harm any civilians during these operations. The account preparation process also updates information provided previously and resolves minor discrepancies discovered in earlier accounts.

This account reflects the NZDF's current understanding of what occurred during the operations in question, based on information it holds and confirmation by its relevant personnel. It is possible that the Crown may update aspects of this account at a later stage, following review of information held by other agencies, or based on information provided by their personnel.

Key information and material used or drawn from in preparing this account, including video footage, is of a classified nature, and is owned and controlled by New Zealand's international partners. This precludes the NZDF from disclosing this information at an unclassified level for the New Zealand public. However, the Inquiry is being provided with relevant classified material and will be able to review, consider and test that information closely.

The deployment of New Zealand troops in Afghanistan – a brief background

On 7 October 2001, American and British forces entered Afghanistan in response to the September 11 attacks in the United States. Other coalition partners, including New Zealand, supported the efforts from mid-October 2001.

By mid-December 2001, when coalition forces had removed the Taliban from power, United Nations Security Council Resolution 1386 established ISAF to oversee the US-led military operations and to support and train the newly created Afghan National Security Forces (ANSF) so that, in time, ANSF would be able to provide independently for the national security of Afghanistan.

In 2003, the North Atlantic Treaty Organization (NATO) took over the lead of ISAF from the United States military. The New Zealand Government approved the contribution of a military contingent of 120 personnel to serve as a Provincial Reconstruction Team (NZ PRT) in the Bamiyan Province in Afghanistan.

Between 2001 and 2005 there were four separate deployments of New Zealand Special Air Service (NZSAS) personnel to Afghanistan in a wide variety of roles.

In 2007, the international community was becoming increasingly concerned with the deteriorating security situation in Afghanistan. In response to international partners' requests to the New Zealand Government, the New Zealand Cabinet decided in 2009 to again deploy the NZSAS. The deployment, known as Operation Wātea (which means 'freedom'), began in 2009 and, following several Cabinet-approved extensions, ended in March 2012. In accordance with the Cabinet decision and the Defence Act 1990, the Chief of the Defence Force (CDF) Lieutenant General Jerry Mataparae had full command of the deployment and held the authority to approve specific operations within the mandate.

The situation in Afghanistan at the time was considered by New Zealand to be one of a non-international armed conflict. Accordingly, the legal framework governing the conduct of members of the New Zealand Armed Forces was regulated by international humanitarian law, also called the 'law of armed conflict'. All members of the Armed Forces are required to undergo training in the law of armed conflict. It is a baseline training requirement.

In accordance with Cabinet decisions, the NZDF prepared the Rules of Engagement (ROE) for the operation. The ROE used by the NZSAS in Afghanistan were drafted by the NZDF's Defence Legal Services, endorsed by the Minister of Defence, and approved by the Prime Minister. The CDF then authorised the ROE as an order to NZDF personnel. The ROE reflected the Law of Armed Conflict and included the authority to attack insurgent groups identified in the ROE as direct participants in hostilities. The NZDF ROE were amended to be consistent with the ROE developed by ISAF and other special forces operating in Afghanistan.

The deployed New Zealand troops entered into an increasingly violent environment in Afghanistan as the Taliban fought to regain power. The NZSAS was based in Kabul and operated in a partnered relationship with the Afghanistan National Police Crisis Response Unit (CRU). The CRU was responsible for counter-insurgency operations and the NZSAS provided professional development and mentoring to the CRU.

The NZSAS contingent in Afghanistan, amongst other responsibilities, carried out approximately 56 operations in the eleven months from October 2009 to the beginning of August 2010. These operations had the purpose of assisting the Afghan Government and CRU to disrupt or apprehend known Taliban or other insurgent leaders. Of the many operations planned around particular persons ('objectives'), more than half of the operations resulted in the detention of 75 persons by Afghan partners. In many of those operations, illegal weapons and/or munitions were found, and confiscated and/or destroyed. In the vast majority of the operations that were conducted during the course of the Operation Wātea deployment, the NZSAS did not fire a single shot to achieve their objectives.

The particular operations that are the subject of this Inquiry – to apprehend or disrupt persons described as Objectives Burnham, Nova and Yamaha – were three of many operations that the NZSAS, as part of the ISAF forces, conducted during the entirety of Operation Wātea.

ISAF operations of this type, including those covered in this account, were led, formally, by the CRU with ISAF forces in support. ISAF forces (which included NZSAS forces) would provide the personnel, intelligence gathering and planning. The Afghan Government approved the operations and the Afghan Ministry of Interior (MOI), which had responsibility for justice matters, issued arrest warrants for identified individuals to the CRU. The operations were carried out with CRU personnel together with a MOI prosecutor who would accompany the CRU to execute the arrest warrants.

Over the course of the Operation Wātea deployment, NZSAS mentoring improved the capability of the CRU. The NZSAS played a material role in developing arrest warrant systems for the CRU and MOI, which were then utilised more broadly by ISAF. Over time, the CRU took on more responsibility within the partnered operations with the NZSAS. By the end of the NZSAS deployment, the CRU was able to conduct some of its operations without NZSAS assistance. The CRU required assistance to conduct or lead complex operations to ensure minimal risk to CRU personnel and Afghan civilians.

The NZDF personnel deployed as part of ISAF were under the operational control of the Commander of ISAF and subject to ISAF directives and standard operating procedures. However, they remained under the full command of the New Zealand CDF, and were therefore bound by legal requirements determined by the New Zealand Government, including adherence to New Zealand's ROE and detention policies. The CDF deployed a NZDF Legal Adviser (LEGAD) to Operation Wātea, to work closely with the NZSAS and to ensure that the operations complied with international law, the mandate, and the ROE. The LEGAD was involved in the training, planning and the execution of NZSAS operations.

Detention by Afghan Government, ISAF and NZSAS

The NZSAS had a standard operating procedure (SOP) for detention, based on the equivalent ISAF SOP. It identified the rights of the detainees, the obligations on the NZSAS in dealing with the detainees and the processes for detainee handover to the Afghan Government or another ISAF member. In 2009, the New Zealand Defence Force concluded an Arrangement for the Transfer of Detainees with the Afghan Ministry of Foreign Affairs. The purpose of this arrangement was to establish principles and procedures concerning the transfer of persons in Afghanistan from the NZDF to the Afghan authorities and to affirm the obligation of both parties to observe applicable international law pertaining to the treatment and transfer of such persons.

The NZSAS standard procedure for its operations was not to take detainees unless strictly required by operational circumstances. In partnered operations, the CRU and MOI prosecutor executed the Afghan arrest warrant and were responsible for detention of any insurgents. This practice reflected both the authority of the Afghan Government and the role and mandate of ISAF in Afghanistan.

As noted above, the NZDF and other partners in Afghanistan recognised the importance of having clear rules governing questions of detention and ISAF Headquarters engaged significantly with the Afghan Government and the International Committee of the Red Cross (ICRC) on them, as did many ISAF members such as New Zealand. New Zealand's understanding of applicable international law was reviewed again in 2009 following the release of the UK High Court case of *Evans v Secretary of State for Defence*. That case related to the transfer of detainees by British forces to Afghan Government detention facilities.¹

Intelligence, planning and arrest warrants

Individuals or an identified group would become of interest to ISAF if they were linked to insurgency activity against the Afghan Government. Their status as a person of interest was confirmed through significant intelligence gathering and analysis. If there was sufficient information to confirm illegal activity or imminent violent activity, ISAF Headquarters would approve the designation of that person or group as an objective for a deliberate operation. ISAF would typically monitor a significant number of potential objectives at any one time.

Intelligence was updated regularly and ISAF used it to confirm, postpone, or conduct operations against objectives – across each regional command, province, and country-wide. Operations that involved deliberate planning (over the course of several days or weeks) were more common than short notice or immediate response operations. However, there were contingency plans in place for short notice or immediate response operations.

¹ *R (OAO Evans) v Secretary of State for Defence* [2010] EWHC 1445 (Admin).

Once an individual or group objective had met the threshold for government response and an arrest warrant had been issued, a deliberate operation planning process would commence. This could take days or weeks (depending on the time available), and would include liaising with partner forces to allow joint planning, providing GPS and mapping support, undertaking intelligence planning to identify the timeframe for the most successful outcome, and requesting from the Commander ISAF Special Operations Force deployment of assets and partner forces. Every operation was approved by the MOI. The system for arrest warrants progressed during the course of Operation Wātea, as CRU procedures were supported by the NZSAS.

This would result in the creation of a 'Concept of Operations' for approval by the Commander ISAF Special Operations, the creation of orders, the conduct of rehearsals and the briefing of the Afghan government investigator and prosecutor. Short notice or time-sensitive operations would involve an abridged version of these steps.

The objectives (individuals) with whom this account of events is concerned – known as Burnham, Nova and Yamaha – met the threshold for government response and became the subject of deliberate operations in the following way.

On 3 August 2010, a NZ PRT patrol was ambushed in the northeastern region of Bamyān province by an insurgent group.

The NZDF identified the insurgents responsible. The three insurgent commanders identified were associates of an active and armed Taliban group with a track record of targeting Afghan and ISAF security forces. In addition to their attack on the NZ PRT, they had previously attacked and killed elements of the Afghan security forces and German and Hungarian PRTs.

The NZ PRT Commander concluded that the successful attack would have the effect of emboldening the insurgent commanders and encouraging further attacks, causing vulnerability in the Shakera Valley area. In addition, the NZ PRT was of the view that the attacks would erode the Bamyān locals' trust in the NZ PRT's and Afghan security forces' ability to protect them from the Taliban. It was considered, also, that the insurgent commanders benefitted from being based in Baghlan province, in the border region of Hungary's PRT area of operations. The area was Taliban controlled, and had not seen the presence of coalition or Afghan security forces for approximately eight years.

The NZDF raised an application through the ISAF system for the three identified insurgent commanders to be considered as objectives for an operation to disrupt their insurgent forces and networks operating in the cross-provincial area between Bamyān and Baghlan. The intent of the operation was to arrest, detain, or, if necessary, neutralise the insurgent commanders so as to: reduce the insurgent group's capacity to target ISAF, Afghan security forces, and NGOs; remove illegal weapons from the community; and to enforce Afghan law against insurgent activity. The ISAF Commander approved the

designation of these insurgents as objectives and, based on the evidence provided, the Afghan MOI issued written arrest warrants.

NZSAS assessed that two of the insurgent commanders and their forces were presently located in the village of Tirgiran,² Tirgiran Valley in the Tala Wa Barfak district of the Baghlan province, near the Bamyan border.

The operational plan to go into the Tirgiran Valley to capture, arrest or, if necessary, neutralise (in accordance with the ROE) the objectives, and to remove weapons, was approved by the ISAF Commander, and the Afghan MOI. As with all ISAF operations of this nature, there was a rigorous approval process that went up the ISAF chain of command. The village of Tirgiran is unable to be accessed by road and was considered to be a dangerous environment. It was a Taliban-controlled territory with insurgent commanders and forces who were expected to be well-armed and to pose a security threat to friendly forces.

Because the operation was outside the NZSAS approved area of operations, and as directed by the Government in the 2009 Wātea deployment Cabinet Paper, the prior approval of the NZ CDF was required. That approval was sought and received for both operations before the Inquiry that were conducted in Baghlan province.

21/22 August 2010 - Objective Burnham

“Operation” Burnham was a focused operation targeting specific individuals. It was not a law enforcement operation or mentoring exercise for the CRU, but a national task approved by the CDF. The operation included Afghan assets (personnel from the Afghan CRU and interpreters) and was supported by ISAF forces. The ISAF forces comprised NZSAS personnel and coalition air assets, operated by coalition personnel, to transport the personnel involved and to provide surveillance and fire support. The operation would not have been possible without this level of support. The NZSAS were equipped for the operation with appropriate equipment, including night vision goggles which provided enhanced but still impaired vision.

Arrival in Tirgiran Valley

On the night of 21/22 August 2010, an intelligence, security, and reconnaissance (ISR) remotely piloted aircraft (RPA) was the first aircraft to reach the Tirgiran Valley, closely followed by two Apache helicopters, which arrived at approximately 2359 hours.

² 35.09'47.98"N, 068°09'16.29"E

The Apaches' role was to undertake visual inspection of the proposed helicopter landing zones (HLZ),³ to provide cover for the imminent arrival of the ground force transport helicopters, and to support the ground force elements for the duration of the mission.

The ISR RPA was stationed above the area of the operation, relaying near-real time footage back to CRU (and the NZSAS) Headquarters in Kabul where Command personnel and the LEGAD were viewing the ISR footage. In the event that they formed the view, from viewing the footage, that actions contravened legal principles, they had the means to contact the Ground Force Commander (the GFC). The ISR RPA's near-continuous recorded coverage (approximately 8 hours) was also able to be used to provide post-operation battle damage assessment.

The ISAF ground force, comprising NZSAS and Afghan CRU personnel, travelled to the Tirgiran Valley in four transport helicopters. The GFC, the Joint Tactical Air Controller (JTAC), and other specialist team members travelled in command helicopter(s) with the ground assault teams, HLZ security, and technical personnel transported in two Chinook helicopters. The GFC was a NZSAS Major, responsible for the conduct of the operation and, in particular, for providing clearance for any engagements. Communication between air and ground forces was coordinated by the JTAC, a NZSAS operator co-located with the Commander, who also had communication with the other elements of the ground force.

The first Chinook landed at the HLZ at approximately 0030 hours, as planned. The CRU and NZSAS ground forces disembarked and moved south-east towards the first objective, building A1, the residence of one of the two insurgent commanders to be arrested and the subject referred to as 'Objective Burnham'.⁴

As the first Chinook landed and ground forces were disembarking to make their way towards buildings A1 and A2, a number of insurgents, military-aged males armed with weapons including rocket propelled grenades (RPG) were observed, exiting a building near the HLZ and moving southward to the high ground of the ridgeline above the village.⁵ Some of the insurgents had hurriedly left the building but then returned and left again, carrying weapons and ammunition that appeared to have been stored in the building. They ran to rejoin the insurgents moving to the high ground. A woman and two children from this building could be seen leaving the building and then returning to it.

The second Chinook was advised to hold off on its scheduled landing, pending safety clearance, due to the risk associated with insurgents carrying RPGs.

At approximately 0035 hours, the GFC (who was still in air transit at the time) was advised that positively identified armed insurgents were extracting weapons from a previously unidentified cache location.

³ Marked **HLZ** on the Map.

⁴ Marked **A1** and **A2** on the Map.

⁵ Marked **INS 1** on the Map.

Shortly after at approximately 00048, the GFC, having been informed of the increasing risk situation, assessed that the armed insurgents were moving above the village to a position that would enable them to fire on the task force from the high ground and would present a threat to the helicopters and to coalition forces already on the ground.

By radio relay through the JTAC, the GFC gave clearance to the Apache helicopters to engage the insurgents when they were certain that the conditions continued to meet the terms of the ROE. These conditions of the clearance included that there was to be clear visual confirmation that there was not likely to be civilian or collateral damage occurring if the targeted insurgents were engaged. The Apache crew were authorised to engage but did not do so immediately because of the proximity of friendly ground forces – the NZSAS and CRU – to the insurgents.

One command helicopter landed the GFC, the JTAC and the observation team that included a sniper pair on the ridgeline to the western side of building A3, at approximately 0045 hours.⁶ A few minutes later, at approximately 0048 hours, the second Chinook landed at the northern HLZ. Security teams stayed to guard and secure the HLZs and the planned exit routes for the ground forces to use at the completion of the operation.

At approximately 0054 hours, once the insurgents were positively identified as direct participants in hostilities – and once checks were made to ensure that there were no civilians visible nearby and that there was sufficient distance from friendly forces – shots were fired by aircraft at the insurgents making their way up to the ridgeline. A number of insurgents were assessed to have been killed in this engagement.

A single insurgent was seen breaking away from the group that had been moving towards the ridgeline, and appeared to be returning back to the building from which the armed insurgents had been seen leaving. One of the Apaches fired on this insurgent. During this engagement, several rounds fell short due to a gun sight malfunction and this resulted in a building near the HLZ being inadvertently hit by gunfire.

The ground forces, including the JTAC and GFC, were not made aware of one of the Apache's malfunctioning equipment during the course of the operation. The possibility of civilian casualties and other collateral damage, as a result of the rounds falling short, only became apparent during ISAF's post-operations review (a week or so after the operation). Video footage from the operations was released to the NZDF following a formal request, some time after the operation had concluded.

⁶ Marked **Observation Position** on the Map.

A1 and A2 – the residence of the first insurgent objective

Between approximately 0035 and 0048, as ground forces moved towards building A1, they passed a tree line behind which a number of armed insurgents positively identified by the Apache helicopters were located. The NZSAS member closest to the tree line appeared to have sighted at least one of these individuals, but was not in a position through his night vision goggles to positively identify the person as an insurgent. The ground forces continued on to their first objective, which was building A1.

At approximately 0052 hours, the ground forces reached building A1, the residence of the first insurgent commander (Objective Burnham). The Afghan interpreters assigned to the operation conducted a 'call out' through a loudhailer, the purpose of which was to announce the ground force's presence and intentions to enter to any residents in the building. There was no response.

In order to avoid using the doorway for entry after alerting occupants by the 'call out', and given a lack of knowledge of the environment, the western wall of building A1 was breached by directional explosive charge. Approximately a minute after the entry point was made, the breached wall and part of the roof collapsed onto a NZSAS member. He was seriously injured and was medically evacuated at approximately 0237 hours.

A second entry point was made, again by controlled explosive charge, and the residence was searched. The ground force found signs of ongoing occupancy but did not find anyone present. However, they did find an RPG launcher, rocket grenades, and other weapons and ammunition.

The nearby building A2 was then entered and searched and was found to be unoccupied. It appeared to be a utility building or animal shelter. No weapons or munitions were found. There was no need to use special measures of any kind to make an entry point, as the building had multiple door and window openings.

At approximately 0125 hours, the ISR RPA observed an armed insurgent moving along the ridgeline south of the village towards the observation position where the Commander and his team were stationed. The ground forces were informed that the insurgent was heading up the ridgeline. The insurgent was identified as presenting a threat by the GFC, who authorised a NZSAS sniper to engage the insurgent. On receiving authorisation to fire by the GFC, two shots were fired; the first killing the insurgent while the second hit a rock.

A3 – the residence of the second insurgent commander

At approximately 0145 hours, the ground forces reached building A3. After the Afghan interpreter conducted a 'call out', the ground forces at approximately 0159 hours used explosive entry methods to

breach building A3, the residence of the second insurgent, objective Nova, for whom an arrest warrant had been issued.

A 'flashbang' (a less than lethal 'grenade-like' explosive that creates a high amount of noise, a sudden and strong light flash, and 'air pressure' change (through the sound waves) designed to disorient any persons in the close vicinity of the explosion, and which can 'bounce' around the building interior) was used immediately in A3.

It appeared from warm food and drinks left behind, and a still burning cooking fire, that the inhabitants may have recently and hurriedly exited the building. The ground force did not find anyone present. A search of building A3 found more weapons and munitions. On leaving A3, these items were taken to the A1 building location where they were added to the items seized from A1 awaiting destruction.

Aside from the damage caused by the controlled explosive method of entry, building A3 was left in the same state as that in which it was found. Building A3 was subsequently damaged by fire. No external signs of fire were visible to ground forces up to and including at the time of departure from the village. The ISR RPA did not detect any fire until after the departure of ground forces. The cause of the fire is unknown but it is possible that it was caused by the unattended cooking fire that was observed in the vacated building.

Concurrent activity

At approximately 0123 hours, while the ground forces were at A1 and A2, support aircraft observed and positively identified more armed insurgents moving to the south and engaged them.

At approximately 0155 there were a series of groups of insurgents seen to the south of A3. They were continuously observed but were not engaged, and eventually came together.

At approximately 0238 while the operation continued, air support identified four insurgents leaving the group to the south and moving with purpose towards the high ground overlooking the valley. These insurgents were engaged and neutralised. During this period, ground troops completed the search of A3 and consolidated on A1 to destroy the seized munitions.

Controlled detonation of weapons and ammunition

The stockpile of weapons and ammunition recovered by the ground forces from buildings A1 and A3 included:

- a rocket propelled grenade launcher with seven grenades;
- a bipod (a two-legged rifle rest);

- five RPG rocket motors;
- a full 7.62mm magazine;
- a drum magazine;
- five tins of loose 7.62mm ammunition;
- one tin of 14.55mm armour piercing incendiary ammunition;
- two non-disintegrating belts of 7.62mm ammunition;
- a quantity of 9mm ammunition;
- a leather pistol holder; and
- an AK-47 rifle.

The ground forces did not enter or search the building, nearer to the HLZ, from which the Apache helicopters had positively identified insurgents exiting and returning to while carrying their weapons.

At approximately 0319 hours the NZSAS Explosive Ordinance Disposal (EOD) Technician placed the munitions taken from buildings A1 and A3 at a distance of approximately 25 metres from building A1 and conducted a controlled detonation to destroy the seized insurgent munitions.⁷

At the time that the ground forces were in location, no damage was seen or reported to building A1 other than that caused by the explosive breaching of the end wall. Approximately 15 minutes after the departure of all ISAF forces, the ISR RPA imagery showed hot spots in three locations. One was the EOD detonated munitions still burning. A second hot spot on the ground nearby is likely to have been a fire started by a RPG motor 'exploding and spiraling' onto the ground near the original detonation point. A third hot spot was on the roof of A1.

The ISR RPA footage indicates that, while the troops were still in the valley, there were no hot spots visible on the roof of the building. The building did not visibly alight until after the ground troops had been extracted.

Positive identification of civilians by NZSAS

The only positive identification of civilians by the NZSAS during the operation occurred near the northern HLZ. Shortly after the second Chinook helicopter landed, the ground forces security team at the HLZ became aware of approaching unidentified persons. This appears to have been an elderly man and two women, who were identified and a CRU member advised them on their safety. The elderly man approached further times. One CRU member, before positively identifying, fired a single shot in the man's direction, after which an NZSAS member again positively identified him as the same elderly man. There were no other reported sightings of civilians by the ground forces during the operation. This was

⁷ Marked X on the Map.

not unexpected. The 'call outs' (using loud hailers) were intended to protect civilians by informing them that this was a legitimate Afghan Government security activity, and that they should stay in their homes.

Extraction of ground force

The ground force was extracted by the helicopters from the northern HLZ at approximately 0346 hours. After the troops from northern HLZ had been extracted, air support identified more insurgents and requested permission to engage. Approval was not given by the GFC as he considered they did not pose a threat to the remaining ground forces at the time.

All of the ground force personnel were taken to the NZ PRT Headquarters in Bamyan. From there, the CRU were airlifted to the Bagram Air Force Base, and the NZSAS were airlifted back to Camp Warehouse in Kabul.

The GFC decided that, based on observations during the operation, the conditions in the village and the fact that the majority of engagements were conducted by air assets away from ground troops, it was not feasible to undertake the usual collection of the deceased, or of biometric data from the deceased, to enable their subsequent identification.

The NZDF and other ISAF personnel involved in the operation took deliberate steps to ensure that the operation was conducted in accordance with the Law of Armed Conflict⁸ and the ROE, including ensuring of positive identification of individuals as direct participants in hostilities, and taking all feasible precautions to minimise potential civilian casualties. The ISR RPA visual coverage was viewed throughout by the LEGAD based in Camp Warehouse, who could advise immediately on any legal or ROE issues that may have been observed. The LEGAD deployed on that mission did not observe any activity during on in relation to Operation Burnham which gave them any cause for concern around compliance with the law of armed conflict or the rules of engagement.

3 October 2010 - Objective Nova

The NZSAS carried out a further operation on the residence of Objective Nova. The proposed operation to return to Tirgiran village, based on the extant arrest warrant, was approved by the Commander, ISAF Headquarters and the Afghan MOI. This operation was also approved by the NZ CDF, as the operation was being conducted outside the NZSAS approved area of operations, as directed by the Government in the Wātea deployment Cabinet Paper.

Objective Nova was to be conducted by a Task Force comprising NZSAS personnel and Afghan CRU personnel, with the support of ISAF reconnaissance assets and aircraft.

⁸ Law of Armed Conflict (LOAC) is also referred to as International Humanitarian Law (IHL)

On 3 October 2010, at approximately 0200 hours, the ground force, transported by a Chinook helicopter, landed at an HLZ between buildings A1 and A3.

An Afghan prosecutor conducted a 'call out' to the village, before troops proceeded to search buildings A3, A1, and A2, which were the primary buildings of interest, as well as the surrounding areas. No insurgents were found. Aside from a door damaged in the A3 compound, there was no other damage to any building that was entered.

At approximately 0300 hours, the ground force was extracted. No rounds were fired and no one was killed or wounded. No arrests were made and no persons were detained. No damage to property occurred other than minor damage from entry into building A3. The operation was reviewed remotely, in real time, by the LEGAD.

16 January 2011 - Objective Yamaha

Qari Miraj, or objective Yamaha, was an insurgent commander that NZDF assessed to be responsible for a number of deaths and other violent acts (including the 3 August attack on the NZ PRT).

While Miraj was in Kabul, the Afghan National Directorate of Security (NDS), an Afghan prosecutor and the NZSAS conducted an operation. The time-constrained operation was planned and approved in accordance with ISAF standard procedures.

On 16 January 2011, at 0300 hours, a Task Group comprised of NZSAS, the NDS and the prosecutor were deployed by landcruisers and vans to a suburb in northern Kabul. The ground forces entered an Afghan compound, but did not find him there. Miraj was then assessed to be in a nearby mosque. The NZSAS provided a security cordon, but in accordance with ISAF standard procedures the mosque was entered only by the Afghan security forces following a 'call out' procedure.

Five men, including Miraj, were apprehended and arrested in the mosque by the Afghan security forces and prosecutor, and were removed from the mosque without resistance. Due to the operational security risks of processing those arrested on an open street, it was done at the detention facility. (The detainees would have been processed safely in the compound had they been apprehended in that location).

The NZSAS assisted the NDS and ANP by transporting Miraj and his associates to one of the NDS detention facilities in Kabul. At the detention facility, Miraj and his associates were processed by NZSAS personnel. Photographs were taken in a well-lit room, and they were observed and questioned by a female NZDF medical officer. No injuries were seen or noted on Miraj and he was calm throughout the process. Miraj was then admitted to the detention facility and then released later on. In 2017, he was killed in an ISAF operation.

Post the Objective Burnham operation and allegations of civilian casualties

During the Objective Burnham operation, the NZSAS ground forces did not cause, or observe, any civilian casualties.

When reports of civilian casualties were subsequently received after the operation, ISAF, in conjunction with the Afghan Government, ordered a joint investigation and report into the allegations. While the Taliban was known to disseminate false claims of civilian casualties, such allegations were always taken seriously and a full investigation pursued. The ISAF was required to assess all allegations of possible civilian casualties and was required to notify such instances to the UN Assistance Mission in Afghanistan and the International Committee of the Red Cross (ICRC).

Following receipt of information suggesting civilian casualties in operation Burnham, ISAF Headquarters provided a senior and experienced non-New Zealand military officer to conduct an investigation. The NZDF cooperated fully. The ISAF investigation team included an ISAF legal officer as well as Afghan Government representatives from the Ministry of Interior and Ministry of Defence. That report made recommendations as to any further action to be taken by ISAF and or the troop contributing nations.

The NZDF was briefed orally on the investigator's initial findings, and was subsequently provided a copy of the written report. The investigation team concluded that civilian casualties may have been possible due to a gunsight malfunction on one coalition aircraft. The investigation team also concluded that members of the NZSAS appear to have complied with the ISAF commander's tactical directive, the ROE, and accordingly the law of armed conflict. The investigation concluded no further action be taken.

It took some time for the allegations to emerge and to be investigated thoroughly, and for the joint ISAF-Afghan investigative team to report. Throughout this period, the NZDF provided, to the fullest extent possible, and based on available information, ongoing updates to CDF and to the Minister of Defence.

NZDF responses to the *Hit and Run* book

After the publication of *Hit and Run*, the NZDF engaged further with international partners and managed to obtain additional information. This information has confirmed the conclusions that the NZDF reached at an earlier stage; that no civilian casualties were caused by the NZSAS.

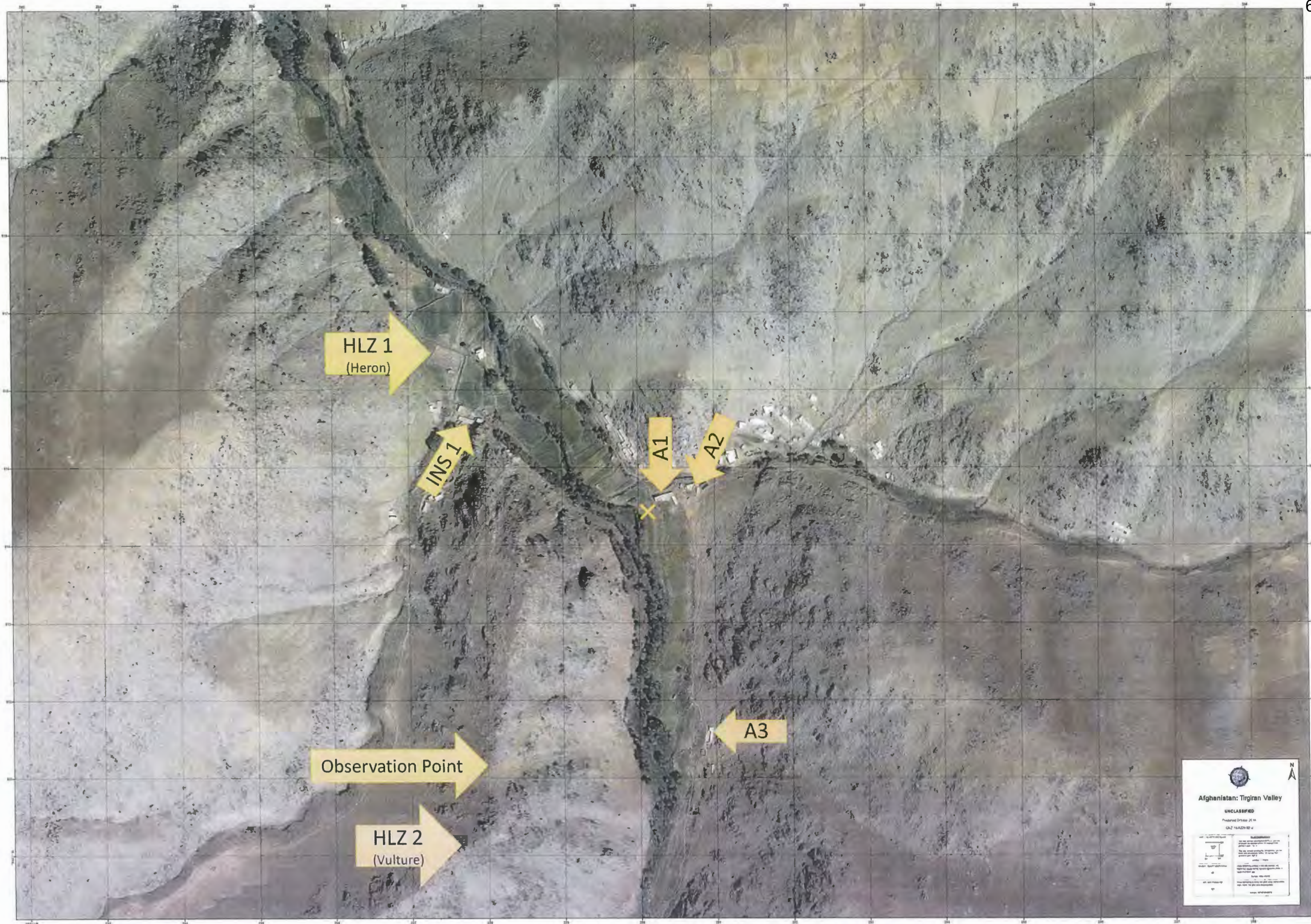
Nicky Hager and Jon Stephenson did not seek any comment, clarification or response from the NZDF before publishing *Hit and Run*, notwithstanding the serious allegations made against the NZDF. The CDF provided an initial (unclassified) response to the allegations contained in *Hit and Run* within a matter of days following the book release. Additionally, the NZDF commenced a preliminary investigation into Operation Burnham, which included engaging with international partners. This

investigation obtained additional information that was not available to the NZDF in 2010. This information confirmed the earlier conclusions that the NZDF reached; that no civilian casualties were caused by the NZSAS.

The Commanding Officer of NZSAS also ordered a formal investigation into the allegations of ill-treatment of Qari Miraj by the NZSAS, as contained in *Hit and Run*. An investigation was conducted by a senior and experienced member of the NZDF Military Police, who concluded that the allegations of ill-treatment by the NZSAS were not supported by evidence. The NZDF Military Police's investigation records and report have been provided to the Inquiry.

7 November 2018

[Ends]



Afghanistan: Tigris Valley

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<p>Scale</p> <p>1:50,000</p> <p>1 inch = 1.25 miles</p> <p>1 centimeter = 0.4 miles</p>	<p>Legend</p> <p>Symbol: Mountain</p> <p>Symbol: River</p> <p>Symbol: Road</p> <p>Symbol: Building</p> <p>Symbol: Boundary</p>
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PRESENTATION TO INQUIRY INTO OP BURNHAM AND RELATED MATTERS

4 APRIL 2019

Good afternoon Sir Terence and Sir Geoffrey, counsel assisting, core participants and attendees.

My name is Colonel Grant Motley. I am a Regular Force Army Officer with 30 years' service. I have served in Afghanistan on two occasions in 2006/07 and 2011/12. I was not involved in Operation Burnham and I have not previously served with the NZ Special Air Service either in New Zealand or on operations overseas. However, I have worked alongside the SAS and the Special Operations Component Command in the past and in my current appointment as the Deputy Chief of Defence Intelligence in HQ NZDF.

BY WAY OF INTRODUCTION, in the Inquiry Minute No 8, dated 11 February 2019, a presentation was requested of the NZDF on the location and events that occurred on 21/22 August 2010 in the Tirgiran Valley, Afghanistan. This operation was planned to arrest an insurgent known as Objective Burnham. This operation has now become known as 'Operation Burnham'.

This presentation will explain the technology that the NZDF used to establish locations, describe the location and relevant structures where the operation occurred, and provide a chronology of the activities that took place in Tirgiran.

The presentation will not provide or refer to information or material that is available only from classified sources. Unclassified information alone will be able to satisfactorily show and explain the location of Operation Burnham. Nevertheless, the NZDF invites the Inquiry Members to refer to classified material provided to you previously, which provides greater detail.

This presentation will use terminology and refer to systems used in military operations. Navigation precision is important in military operations such as this so I will spend a few minutes providing an explanation of those systems and terminology. I will explain the use of the Global Positioning System, GPS, to pinpoint a location and latitude and longitude and the Military Grid Reference System to describe and identify that location. I will discuss the time that was used in the operation, and how metadata and the use of Intelligence, Surveillance, and Reconnaissance Remotely Piloted Aircraft, abbreviated to ISR RPA, confirms the precise location of Operation Burnham.

The Global Positioning System (or GPS) is the primary navigation tool used to confirm locations and other geographic references in the air and on the ground. GPS is used by supporting aircraft to navigate and determine location relative to the aircraft.

Most GPS units display their position on the Earth's surface in latitude and longitude. Latitude and longitude are abstract lines referenced to a defined mathematical model of the Earth. It is common for geospatial data to be referenced to the World Geodetic System 1984 (or WGS 84). This system is defined and maintained by the United States National Geospatial-Intelligence Agency. GPS uses the WGS 84 as its reference co-ordinate system.

The Universal Transverse Mercator projection, abbreviated to UTM, transforms the three-dimensional Earth into a two-dimensional system that allows cartographers and map users to measure distances, angles and areas accurately. The UTM system divides the Earth into sixty zones, each being a six-degree band of longitude. These longitudinal zones can then be broken into designated blocks moving north and south of the Equator.

NZDF personnel also use the Military Grid Reference System or MGRS to describe location. This is the geo-coordinate standard used by militaries for locating points on the Earth. MGRS is derived from the UTM projection.

Using the UTM zones, MGRS identifies blocks with a designated letter moving north and south of the Equator. These blocks are then divided into 100 kilometre by 100 kilometre square blocks that are given letter designations. Within these blocks, the MGRS breaks down further into square grids at set distances, measured in metres. When operating in a specific MGRS block, coordinates of positions can be translated into simple alpha numeric values for the specific localised grid.

In addition to having a common understanding of the location, time is important in military operations. These operations have a large number of participating elements, some of which may be local to events and others not. The primary time standard for military use is the Co-ordinated Universal Time (abbreviated to UTC) time standard. Time zones are based on this standard. In this presentation, local Afghanistan time is used. Local time in Afghanistan is four and a half hours ahead of UTC.

Metadata is information that can be recorded by systems, such as Geographic Information Systems and is either held for reference or can be displayed in real time on the system recording the data. It is common for digital cameras to capture metadata about an image which is usually the time and

date an image was taken, the serial number of the camera, and the geo-position of the camera, if the camera is geo-enabled.

Cameras or video recording devices on military aircraft are able to capture and display additional metadata which may include aircraft location, the location of the imaged object, the date and time, the bearing and distance of the image from the device, and technical operating data.

Metadata was taken from sources not able to be used during this presentation, to confirm times and locations of structures and events related to Operation Burnham.

The NZDF has provided to the Inquiry classified video taken from cameras on board an **ISR RPA**, to confirm the precise location of Operation Burnham. The video from the ISR RPA provided useful metadata including position, direction, altitude, time, bearing and distance, referenced to accurate on-board GPS. This was used to confirm actual locations and timing that occurred during Operation Burnham.

I WILL NOW ADDRESS THE QUESTIONS OF LOCATION AND NAMING DIRECTED BY THE INQUIRY.

The Inquiry has requested that this presentation address five places that have been named in public or written submissions to the Inquiry. The Inquiry requested the NZDF provide a visual depiction of where each named location is on a map; the coordinates or grid reference for each named location; the location of any relevant structures; and a chronology of activity at that location.

To begin, I will first show a map of the NZDF presence in Afghanistan, before turning to the specific locations given by the Inquiry.

The New Zealand Provincial Reconstruction Team (the PRT), and the New Zealand Special Air Service (the SAS) worked with the police and security forces of Afghanistan, the international community, and our partners in the International Security Assistance Force (abbreviated to ISAF) to carry out United Nations Security Council objectives to restore peace and security to Afghanistan.

- The SAS, together with the Crisis Response Unit (CRU), their Afghanistan partner force, were based in Kabul, the capital of Afghanistan.
- The PRT were based in Bamian, in Bamyān province.

- The eastern side of Bamyan province borders Baghlan province where the Tirgiran Valley is located.

THE FIRST PLACE THE INQUIRY REQUESTED WE DEPICT IS TIRGIRAN. The location shown as MGRS reference 42S VD 23061 91545 on the Google Earth image supplied by the Inquiry is the centre of the area where Operation Burnham took place. Its latitude and longitude is 35.16389 degrees north, and 68.15517 degrees east. This is the location the NZDF know as Tirgiran.

Excluding the routes and flight paths of supporting aircraft and any refuelling locations en-route, all of the events of Operation Burnham conducted by the SAS occurred within 600 metres of this position.

The ground forces used a MGRS position to precisely locate the operation, and used GPS to accurately navigate to the location while airborne and on the ground. The NZDF has complete certainty as to the exact place where Operation Burnham occurred. During the information-gathering, planning and execution of the operation, NZDF and partner forces referred to the location primarily by its MGRS grid designation, rather than a place name.

The NZDF is careful not to rely on local descriptors or names to pinpoint locations. This is because there is significant variation in the names used by the Afghanistan Government and by the various tribes and ethnic groups. Additionally, adversaries often provide misleading information regarding local names, locations, or events said to have occurred in some place. False or misleading location data can be used to hide insurgent activity or intentions from the police and security forces, or obstruct security operations.

The Operation Burnham MGRS position refers to a certain point on the ground within an inhabited area. This area is referred to as Tirgiran (1) by at least four different official maps. Some of the maps describe the cluster of housing as 'Tirgiran' while other maps describe the same group of housing as Tirgiran (1) to the south and Tirgiran (2) some two kilometres to the north. On that basis, NZDF understood the area in which Operation Burnham was conducted to be called Tirgiran.

Tirgiran village is located along the banks of the Tirgiran River, in the Tirgiran Valley. Tirgiran is a region in southern Tala-wa Barfak district, part of Baghlan Province in northern Afghanistan. The Tirgiran River runs from south to north, with small settlements near the river, and the flatter land is

used for farming. In the Tirgiran Valley, buildings are scattered along the flat land either side of the river. There are no clearly delineated boundaries to indicate where a housing area or community 'starts' and 'stops'.

The Tirgiran Valley area is mountainous and difficult to access. There are no roads or vehicle-capable access tracks. People travel along formed pathways or tracks, mostly by walking or by using animals as transport.

The remoteness of, and difficult access to, this area has limited the ability of Afghan government or provincial officials to visit this area.

The quickest and most secure way for police or military security personnel to approach and access this area is by using air transport. The only way coalition forces could accurately navigate in this area was by using MGRS or geographic coordinates and GPS navigation equipment, which is recorded on many electronic systems. This is how the NZDF knows where Operation Burnham took place.

I WILL NOW HIGHLIGHT THE STRUCTURES RELEVANT TO EVENTS IN TIRGIRAN. The slide images appear on a satellite photograph supplied by the Inquiry. NZDF markings give a visual depiction of where each named location is.

The first of the relevant structures in Tirgiran, and its geolocation is: **the Helicopter Landing Zone, abbreviated to HLZ, for the landing of the assault teams.**

The HLZ for the assault teams was centred on the pinpoint located at MGRS 42S VD 2274 9169. This HLZ location was a relatively flat field, clear of obstacles and had sufficient space for a helicopter to land and for personnel to disembark or embark with a degree of safety and security.

A building that we describe as the 'cache house' is where insurgent activity was observed by aircraft following the arrival of the NZDF SAS and Afghan CRU personnel in Tirgiran. This is located at MGRS 42S VD 2277 9156.

The cache house was composed of two nearly-connected rectangular-shaped buildings on the western edge of Tirgiran, approximately 100 metres south from the HLZ and 300 metres west of buildings Alpha 1 and Alpha 2.

The intended HLZ for the transport helicopter carrying the SAS's Ground Force Commander (GFC) and Joint Tactical Air Controller (the JTAC), and other specialist team members was found to be unsuitable on close approach, because of the uneven and rocky terrain. A site approximately 300 further metres to the south of the planned HLZ, in the vicinity of MGRS 42S VD 2280 9106, and to the west of Alpha 3, was ultimately used.

The HLZ area was uninhabited, had no structures and minimal vegetation.

Alpha 1 and Alpha 2 were located at MGRS 42S VD 23031 91473 and MGRS 42S VD 23063 91484. Alpha 1 was the residence of Objective Burnham. An Afghan arrest warrant had been issued for Objective Burnham. Alpha 2 was about 20 metres to the east of Alpha 1. It was not known beforehand what the function of this building was.

The location where captured weapons and ammunition were disposed of by the Explosive Ordnance Disposal team at the end of the operation was approximately 25 metres to the west of A1.

The HLZ for the casualty evacuation, abbreviated to CASEVAC, was used to evacuate the injured SAS member and was in the close vicinity of MGRS 42S VD 2304 9139.

The CASEVAC HLZ was to the south of Alpha 1 in an area of open clear land; an area large enough for a helicopter to land to enable the wounded person to be uplifted and evacuated for medical care.

Alpha 3 was the residence of Objective Nova and was located approximately 300 metres to the south of Alpha 1 at MGRS 42S VD 23090 91154. An Afghan arrest warrant had been issued for Objective Nova.

Alpha 3 is above the river bank and consisted of a compound with a rectangular building and smaller wings at each end.

HAVING IDENTIFIED THE LOCATIONS OF EVENTS I WILL NOW PRESENT CHRONOLOGICALLY THE ACTIVITY THAT OCCURRED IN TIRGIRAN.

On the night of 21/22 August 2010, the ground forces travelled to the Tirgiran Valley in transport helicopters. The first Chinook landed at the HLZ at 0030, or at half past midnight. The CRU and SAS ground forces disembarked and moved south-east towards A1.

The first Chinook landed and ground forces disembarked to make their way towards A1 and A2. At the same time two Apache helicopters, tasked with supporting the ground forces, observed a number of insurgents, military-aged males armed with weapons including rocket propelled grenades, exiting the 'cache house' and moving southward to the ridgeline above the village.

Between approximately 0035 and 0048, the ground forces moved towards building A1. They passed a tree line behind which a number of armed insurgents positively identified by the Apache helicopter crew were located. The SAS member closest to the tree line appeared to have sighted at least one of these individuals, but was not in a position through his night vision goggles to positively identify the person as an insurgent.

At approximately 0045 hours, a command helicopter landed the GFC, the JTAC, and the observation team that included a sniper pair, on the ridgeline to the west of building A3.

A few minutes later, at approximately 0048 hours, the second Chinook landed at the HLZ.

The second Chinook had the security teams which were to guard and secure the HLZ and the planned exit routes for the ground forces to use at the completion of the operation.

The GFC, having been informed by the Apache helicopter crew of the insurgents' activities, assessed that the insurgents were moving above the village to a position that would enable them to fire on the ground force from the high ground and would present a threat to the helicopters and to coalition forces already on the ground.

The GFC gave clearance to the Apache helicopter crews to engage the insurgents when they were certain that the Rules of Engagement were met, and that there was not likely to be civilian casualties or collateral damage.

At approximately 0054 hours, once the insurgents were positively identified as direct participants in hostilities – and once checks were made to ensure that there were no civilians visible or friendly forces nearby – shots were fired by aircraft at the insurgents making their way up to the ridgeline. A number of insurgents were assessed to have been killed in this engagement.

A single insurgent was seen breaking away from the group that had been moving towards the ridgeline, and appeared to be returning back to the building from which the armed insurgents had been seen leaving. One of the Apaches fired on this insurgent. During this engagement, several rounds fell short due to a gun sight malfunction and this resulted in the cache house being inadvertently hit by gunfire.

At approximately 0052 hours, the ground forces reached building A1, the residence of the first insurgent commander (Objective Burnham).

The Afghan interpreters conducted a 'call out' through a loudhailer, the purpose of which was to announce the ground force's presence and intentions to enter the building to any residents inside. There was no response.

The western wall of building A1 was breached by directional explosive charge so the ground force could enter the building safely.

The breached wall and part of the roof collapsed onto a SAS member. He was seriously injured and was medically evacuated at approximately 0237 hours.

A second entry point was made three minutes later, again by controlled explosive charge, and the residence was searched. The ground force did not find anyone present but did find an RPG launcher, rocket grenades, and other weapons and ammunition.

The nearby building A2 was then entered and searched and was found to be unoccupied.

At approximately 0115 hours, for approximately 10 minutes, the ISR RPA observed an insurgent moving along the ridgeline south of the village towards the observation position where the Commander and his team were stationed.

The GFC was informed. He assessed that the insurgent presented a threat and authorised a SAS sniper to engage the insurgent. The sniper fired two shots; the first hit and presumably killed the insurgent and the second hit a rock. The SAS searched for the insurgent who was shot but did not find him. The terrain was rocky and steep and time was limited to search.

While the ground forces were at A1 and A2, at 0123 the Apache helicopter crew observed and positively identified armed insurgents south of A3 and engaged them.

At approximately 0145 hours, the ground forces reached building A3.

After the Afghan interpreter conducted a 'call out', to which there was no response, the ground forces used explosive entry methods to breach building A3, the residence of Objective Nova.

The ground forces did not find anyone present. There was a still-burning cooking fire, and warm food and drinks had been left behind. It appeared that the inhabitants had recently and hurriedly exited A3. A search of A3 located more weapons and munitions, which were taken to A1.

At approximately 0155, while the ground forces were at A3, groups of insurgents were observed by support aircraft south of A3, but not engaged.

At approximately 0255, after the ground forces had left A3 and had returned to A1 to destroy the seized munitions, air support identified four insurgents leaving the group to the south and moving towards high ground. These insurgents were engaged by support aircraft.

At approximately 0319 hours the SAS EOD Technician placed the munitions taken from buildings A1 and A3 at a distance of approximately 25 metres from building A1 and conducted a controlled detonation to destroy the seized munitions.

The ground forces were extracted by the helicopters from the HLZ at approximately 0346 hours.

A1 and A3 were damaged by fire. The fire at A1 was most likely to have been caused by one of the detonated munitions and the fire at A3 was most likely caused by the unattended cooking fire. The ground forces did not know about the fires; it was not until after their departure that the ISR RPA detected 'hot spots' at A1 and A3.

THE SECOND AND THIRD NAMED PLACES BY THE INQUIRY WERE NAIK AND KHAK KHUDAY DAD.

The authors of *Hit and Run* allege that Operation Burnham took place in two villages in the Tirgiran Valley called Naik and Khak Khuday Dad.

The NZDF accepts that villagers living in Tirgiran, where the operation was conducted, may refer to their villages as Naik and Khak Khuday Dad.

The annotated satellite images provided by the authors at pages 64 to 67 of the book are wrong.

A geospatial analysis undertaken by the NZDF centres the villages depicted on pages 64 to 67 of *Hit & Run* approximately two kilometres north of where Operation Burnham took place. The NZDF has restated that it never conducted operations at these locations.

On 19 March 2019, Mr Hager asked the Inquiry to disregard the satellite images at pages 64 to 67, the image on page 35, and the references in the book that are based on those images. The erroneous annotated images still appear on the authors' *Hit and Run* website.

Mr Hager accepts the NZDF's account of the location of the operation, including the structures, namely, the HLZ, buildings A1, A2 and A3, and the observation point used by the GFC.

Looking at the map, Mr Hager says that the villagers use the name Naik for the area to the east of the river (including A1, A2, and A3), and that the villagers use the name Khak Khuday Dad for the cluster of houses on the west of the river, adjacent to the HLZ.

The maps from *Hit and Run* illustrate not just a different location, but also a different story and geography for the events on 21/22 August. Based on the data that NZDF has reviewed, it is impossible that events were as Mr Hager and Mr Stephenson alleged on pages 64-67 in their book.

The FOURTH LOCATION OF THE INQUIRY IS KHAKANDY. The NZDF has no knowledge of a location referred to as Khakandy. The only reference to this place name is in media released correspondence of McLeod and Associates to the Prime Minister on behalf of their Afghan clients, who state that Khakandy is a village about two kilometres north of where Operation Burnham took place. This location was wrongly referred to as Khak Khuday Dad in *Hit & Run*.

The NZDF never conducted operations at this location.

THE LAST LOCATION OF THE INQUIRY IS BEIDAK. The NZDF has no knowledge of a location referred to as Beidak. The only reference to this place name is in media released correspondence of McLeod and Associates to the Prime Minister on behalf of their Afghan clients, who state that Beidak is a village about two kilometres northwest of where Operation Burnham took place. This position is the same location as that wrongly stated as being Naik by the authors of *Hit & Run*.

The NZDF never conducted operations at this location.

IN CONCLUSION, Operation Burnham took place on 21/22 August 2010. Excluding the routes and flight paths of supporting aircraft, all of the ground-based operations conducted by the SAS occurred within 600 metres of MGRS reference 42S VD 23061 91545. The engagements from the air happened within 1200 metres of this location. This location was established and confirmed through GPS, map and satellite images, and still photographs with metadata showing the location and time.

UNDER

THE INQUIRIES ACT 2013

IN THE MATTER

A GOVERNMENT INQUIRY INTO OPERATION
BURNHAM AND RELATED MATTERS

**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

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1. At a public hearing of the Government Inquiry into Operation Burnham and Related Matters on 4 April 2019, Colonel Grant Motley gave a presentation on behalf of the NZDF identifying locations relevant to Operation Burnham, as directed by Inquiry Minute No. 11.

2. In that presentation, Colonel Motley stated (at pp 8-9 of the written presentation) that

“At approximately 0015 hours, for approximately 10 minutes, the ISR RPA observed an insurgent moving along the ridgeline south of the village towards the observation position where the Commander and his team were stationed. The GFC was informed. He assessed that the insurgent presented a threat and authorised a SAS sniper to engage the insurgent. The sniper fired two shots; the first hit and presumably killed the insurgent and the second hit a rock. The SAS searched for the insurgent who was shot but did not find him. The terrain was rocky and steep and time was limited to search”.

3. This account was accurate to the best of the NZDF’s knowledge at the time it was made. It was based on a thorough review of the evidence held by the NZDF, including video footage which showed the SAS searching for, but not finding, the insurgent who had been shot. However, in light of their position as witnesses of the Inquiry, the NZDF was unable to discuss the presentation with NZDF personnel relevant to the events of Operation Burnham.
4. Subsequent to the presentation being made publicly available on the Inquiry’s website, a relevant member of the Operation has brought to the NZDF’s attention that the insurgent who had been shot was in fact sighted by the SAS. Given the terrain and limited time, no further action was able to be taken, but the NZDF is now aware that the insurgent’s body was sighted by the NZSAS that evening.
5. The NZDF reiterates its intent to fully support and participate in the Inquiry in a proper manner. As such, notwithstanding that this minor clarification is not material to the presentation identifying locations relevant to Operation Burnham made at the public hearing, having subsequently had it brought to its attention, NZDF wished to also alert the Inquiry to it.



Paul Radich QC
Counsel for New Zealand Defence Force
11 April 2019

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UNDER

THE INQUIRIES ACT 2013

IN THE MATTER

A GOVERNMENT INQUIRY INTO OPERATION
BURNHAM AND RELATED MATTERS

Memorandum for the New Zealand Defence Force

19 July 2019

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MAY IT PLEASE THE INQUIRY:

1. By memorandum of 7 November 2018 and in response to the Inquiry's statements at paragraphs [11] and [94] of Minute 4 of 14 September 2018, the New Zealand Defence Force (NZDF) provided to the Inquiry an unreferenced narrative account of the events at issue that could be made publicly available ("the NZDF narrative account").
2. The circumstances of its preparation were noted in the NZDF narrative account, as was the possibility that aspects of it may be updated at a later stage.¹
3. At the Inquiry's public hearing Module 2, a non-Crown core participant took issue with aspects of the NZDF narrative account, including (i) questioning whether the single insurgent engaged by an NZSAS sniper during Operation Burnham was armed,² and (ii) the nature of the roles of the Ground Force Commander (GFC) and Joint Tactical Air Controller (JTAC) during that Operation.³
4. The NZDF has since conducted a thorough review of all the material it holds that is relevant to the first issue. Not all of that material had been identified or reviewed when the narrative account was prepared. The material in question has been provided to the Inquiry and the Inquiry has access to witness evidence which the NZDF does not have. Nonetheless, the NZDF wishes to advise the Inquiry that, on the basis of the material the NZDF holds and has now reviewed, it is not possible to determine *conclusively* whether or not the insurgent observed by the ISR RPA was armed at the moment he was engaged.

¹ The NZDF narrative account noted that it had been prepared on the basis of documents, video footage, photographs, and records and interviews from a prior investigation, and that while NZDF personnel with relevant knowledge of the events in issue were consulted in order to provide an accurate account as possible of operations that occurred some nine years ago, the NZDF did not interview any NZDF personnel to produce or contribute to the account; as that is a task for the Inquiry.

² NZDF narrative account at page 9: "At approximately 0125 hours, the ISR RPA observed an armed insurgent moving along the ridgeline south of the village towards the observation position where the Commander and his team were stationed. The ground forces were informed that the insurgent was heading up the ridgeline. The insurgent was identified as presenting a threat by the GFC, who authorised a NZSAS sniper to engage the insurgent. On receiving authorisation to fire by the GFC, two shots were fired; the first killing the insurgent while the second hit a rock."

³ NZDF narrative account at page 9: "The GFC was a NZSAS Major, responsible for the conduct of the operation and, in particular, for providing clearance for any engagements. Communication between air and ground forces was coordinated by the JTAC, a NZSAS operator co-located with the Commander, who also had communication with the other elements of the ground force."

5. While providing this update in the interests of transparency, the NZDF notes that whether or not it is able to be confirmed at a later point in time that an individual was or was not armed at a given moment is neither determinative of whether the individual was in fact armed nor of the lawfulness of the engagement in a situation of armed conflict. Rather, and as is well-established in case law, the lawfulness depends, among other things, on the reasonably-held belief of the person who is in the position of having to assess a threat and determine whether the use of force is necessary in the circumstances. The belief of a threat would be informed by all of the information reasonably available to that person. This would include, for example, intelligence gathered and analysed in pre-operation planning including tactics known to be used in a given area, as well as information being relayed during an operation from various ground and air sources with different vantage points.
6. On the second issue, the NZDF wishes to point out that the comments of the non-Crown core participant at Module 2 appear to demonstrate a misunderstanding of the relationship between different national elements in a joint operation. As the title indicates, a Ground Force Commander (**GFC**) commands ground forces, and not others who may be providing air support. The role of the Joint Tactical Air Controller (**JTAC**) is necessary to control the movement of assets in a given area of airspace at a given time for safety and in an effort to obtain the best available operational effect.
7. In a joint operation involving coalition forces, each national element acts in accordance with its own Rules of Engagement (**ROE**) and under its own national chain of command. Coalition forces in a joint operation may have substantially similar ROE and those national ROE would have been developed in knowledge of, and for consistency with, ISAF ROE. However, each force is responsible for making its own determinations about its use of force and, in Operation Burnham, no member of a coalition force was in a position to give orders to a member of another national force.

8. Communications between coalition forces during Operation Burnham enabled the various elements to work alongside one another effectively and safely:
 - a. For instance, clearance from the GFC to another national force for an engagement from the air, means that, from the perspective of those on the ground, an engagement would be appropriate and there is no impediment at that time to the engagement. It is not (and could not be) an order for that other national force to conduct the engagement.
 - b. Similarly, as the JTAC coordinates communications between air and ground forces, an authorisation from the JTAC for a particular air asset to act would not be an order for that other national force to conduct the engagement. Rather, it is the relaying of a clearance from the GFC on the basis set out in the preceding subparagraph.
9. As was said in the NZDF memorandum accompanying the narrative account, it was provided to be helpful to the Inquiry and the general public and was not intended to provide views or to make submissions on the issues before the Inquiry. The same is so of this update. In addition to all of the evidence before the Inquiry, issues of applicable law, including the principles of international humanitarian law, will be addressed at the Inquiry's public hearing Module 3 on 29 and 30 July.



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19 July 2019