

UNDER

THE INQUIRIES ACT 2013

IN THE MATTER OF

A GOVERNMENT INQUIRY INTO
OPERATION BURNHAM AND
RELATED MATTERS

MEMORANDUM OF COUNSEL FOR THE CROWN

16 July 2019

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MAY IT PLEASE THE INQUIRY:

1. As indicated in the memoranda of counsel for the Crown, dated 20 June 2019, regarding the most recent release of partner-controlled material to the Inquiry, there was one document held by the New Zealand Defence Force (**NZDF**) that could not be provided at that date to the Inquiry as it was subject to the consent of another originator, namely part of the North Atlantic Treaty Organisation's (**NATO**) strategic military command headquarters known as Supreme Headquarters Allied Powers Europe (**SHAPE**).
2. The Ministry of Foreign Affairs and Trade (**MFAT**) has been liaising with SHAPE to request consent for the Inquiry to access this document, and consent has now been obtained.
3. As with the tranches of material referred to in our memoranda of 5 December 2018, in respect of the material from the United States Government, and 21 March 2019, in respect of the material from NATO, and of 20 June 2019 in respect of the further material from NATO and the US Government, the document listed in Appendix 1 has been provided to the New Zealand Government by SHAPE on the basis of confidence. The consent from SHAPE to provide the Inquiry access to the document is based on an understanding that the material will be handled in accordance with the Government's Protective Security Requirements, and in-line with the process outlined in Ruling number 1.

4. Also as indicated in our memorandum of counsel of 20 June 2019, annexed to this memorandum are the exchanges of correspondence setting out the terms of the consent from NATO and the US Government relating to the tranches of material provided to the Inquiry on 20 June 2019, and the one document provided today. As previously raised in the memorandum of counsel for the Crown dated 21 March 2019, given the convention that diplomatic correspondence is conducted in private (described in the submissions of MFAT on minute 3), and the corresponding likelihood that disclosure of the letters themselves will prejudice New Zealand's relations with NATO and the US Government, the Crown seeks an order under s 15(1)(a) of the Inquiries Act prohibiting publication of these letters.

16 July 2019



Aaron Martin / Ian Auld
Counsel for the Crown