

**NZDF's Response to the Issues Raised  
about the 2004 NZSAS  
Long-range Reconnaissance Patrol**

**Q. What was the context of the mission of the NZSAS long-range reconnaissance patrol in June 2004?**

A: In late 2003 there was a resurgence of activity by the Taliban and Al Qaeda in Afghanistan. Presidential elections – the Loya Jirga -- were going to be held in Afghanistan in October of 2004, and there were concerns about insurgent activity impacting free elections. The New Zealand Government deployed the NZSAS to engage in long range reconnaissance in Afghanistan, a task in which they are specialists. This broad operation, based out of Kandahar, was known as OP CONCORD II.

The legal framework in Afghanistan in 2004 was one of non-international armed conflict. Accordingly, international humanitarian law obligations arising out of the Geneva Conventions and in particular, Geneva Convention Additional Protocol II (AP II) and other relevant customary international law were applicable to the conduct of NZSAS personnel. Personnel deployed on OP CONCORD II were also subject to Rules of Engagement (ROE) which were orders that were approved by the Prime Minister (then the RT Hon Helen Clark) and issued by the Chief of Defence Force.

**Q. What was the objective of this specific long-range patrol?**

A: The NZSAS long-range patrol (known as OP QUESTED I) was to establish situational awareness ahead of nationwide elections later that year. The patrol aimed to promote the concept of the Loya Jirga, gather an understanding of the mood of the population, and establish whether there were security issues in the region – and where those issues were. The patrol operated to the North-West of Kandahar, in Urzgan and Dai Kundi Province, covering some 1800kms during the month of June 2004 visiting a number of villages.

**Q. The Valley story claims the patrol was equipped with tanks. How was the patrol equipped and armed?**

A: The patrol itself was not equipped with tanks. They had seven open-topped Humvees in total, a soft-skin light truck. Tanks have some obvious distinctive features that make them difficult to mistake for other kinds of military vehicles, like a Humvee. That is, tanks are tracked, not wheeled vehicles like Humvees; tanks have a main gun attached to a turret, the Humvee has neither; and tanks are heavily armoured.

Attached (Image 1 – HUMVEE Taniwha) is an image of a NZSAS Humvee from the June 2004 patrol.

In addition, the NZSAS patrol also had ‘outrider’ patrol motorcycles.

The NZSAS troopers themselves were equipped with small arms, as well as machineguns and automatic grenade launchers. They could call on Coalition air support if this was required.

**Q. Where did the NZSAS operate around 17 June, 2004, is there any disagreement about the location?**

A: No, it is not disputed that the NZSAS patrol visited the village of Khod around 17 June, 2004. It was near this village that the NZSAS patrol was later attacked while laying up overnight. As per below, the day following an insurgent ambush, part of the NZSAS patrol visited the nearby hamlet of Pay Kotel (approximately 2km south from the main Khod village) before returning to Khod where patrol members engaged with village elders as arranged. The NZDF is not aware if locals themselves describe this hamlet as Pay Kotel, but for the purposes of these explanatory notes the NZDF describes the hamlet as Pay Kotel to help clarify activities at this location, as opposed to those that happened in the main part of the Khod village (i.e. around the village square).

**Q. Was the village of Khod the first visited in the NZSAS long-range patrol?**

A: No, the patrol had been going for several weeks and had visited other villages. These visits had occurred without incident, engaging village leaders as part of the NZSAS patrol's overall intelligence gathering role.

The NZSAS patrol had established an effective village engagement practice, with part of the patrol entering the village interacting with locals through the use of an interpreter, and setting up and meeting with village elders. Meanwhile, the remainder of the patrol would keep the village under observation from a distance.

There had been no incidents with any of the village visits in the period leading up to the visit of Khod on 17/18 June, 2004.

**Q: The claim from two unidentified Afghan men in *The Valley* is that when the patrol entered the village they “kicked, slapped and punched us. They cursed and used abusive words towards the people.” Did this occur?**

A: No. Three NZSAS patrol vehicles entered the village at 1330. Members of the patrol left their vehicles and talked quite amicably through an interpreter with locals in the bazaar – local villagers and shop keepers - and patrol members even went on to buy bread from the market. As village elders were not present, an arrangement was made for the NZSAS patrol to return the following day to speak with the elders.

The NZSAS communicated with villagers through an interpreter. It was noted by NZSAS patrol members that there was the possibility of discrepancy between what was asked by patrol members through the interpreter, and what was actually conveyed to the villagers. It was perceived by patrol members that there was some tension in the village as a consequence of their visit as well as Taleban influence in the area.

**Q. What did the NZSAS patrol do then?**

A: As per the way this patrol operated, four patrol vehicles waited outside the village in over watch positions, to help ensure security for the patrol members in the village.

On leaving the village, the three Humvees that had entered the village joined-up with the four that had remained outside, and all travelled to a night camp they established about 2 kilometres to the west of Khod village.

That night, the patrol was ambushed by insurgents, consistent with the accounts given around the awarding of a Victoria Cross to CPL Apiata. The first contact occurred at approximately 0315 hours on 18 June 2004. The contact lasted approximately 10-15 minutes.

**Q: Was this an example of the “bait and hook” tactic as *The Valley* has suggested?**

A: No. The patrol was to establish situational awareness and to engage with local populations through Key Leader Engagement (KLE).

When they entered the village of Khod they talked to locals, but as local leadership were not there, the patrol arranged an appointment to return the next day to talk with village leaders.

Those vehicles waiting outside the village were not concealed, and when the patrol joined-up to make for their night harbour, there is every possibility that the villagers would have seen how many vehicles in total were in the NZSAS patrol. As the NZDF understands the phrase “bait and hook” being used by *The Valley*, this tactic would require the supporting force to avoid being detected. The NZSAS did not attempt to conceal their force.

**Q: Is “bait and hook” a tactic of the NZSAS or NZ Army?**

A: There is no tactical term “bait and hook”. It is noted that there are legitimate military tactics – e.g. conducting an ambush – where you might deliberately deny an adversary information on the strength of your force, or seek to misrepresent the strength of your force, in order to create an element of advantage in a subsequent engagement. However, this was not a tactic being applied in this instance.

**Q: What happened next?**

A: After establishing a night harbour at their Lying-Up Point, the patrol, consisting of seven vehicles in total, came under surprise attack by insurgents at about 0315, on the morning of 18 June. The insurgents were using Rocket Propelled Grenades (RPGs) and small arms.

The attack was driven off, but not before two NZSAS Troopers of the patrol were seriously wounded and two vehicles were damaged, one beyond repair.

**Q: The Valley journalists are perhaps suggesting that the night-camp should be considered part of the “bait and hook”, i.e. that the NZSAS wanted an attack because they were prepared with more vehicles and people than insurgents would be expecting?**

A: The available evidence does not support this theory:

- 1) This was a long-range surveillance patrol in which the goal was to establish situational awareness and engage the local populous through Key Leader Engagement (KLE). Getting into firefights would have run counter to achieving mission success;
- 2) When the NZSAS patrol vehicles that had been in the village of Khod met up with those vehicles that had waited outside the village, and together they drove to their night harbour, there was no effort made to conceal the overall patrol strength from locals;
- 3) At the night-camp, the NZSAS troopers were not lying ready in-wait for an imminent insurgent attack. When the attack commenced in the small hours of 18 June the majority of NZSAS patrol members were asleep around their vehicles;
- 4) Nor did the patrol have organised close air support; and finally,
- 5) Attached (**Image 2** – Night Harbour) is the disposition of the NZSAS patrol vehicles. This is a standard laying-up/defensive configuration and clearly not the layout that would have been chosen for effective firing positions to engage and overcome an expected advancing adversary.

All of the available information leads to the conclusion that the insurgent attack was a surprise. Separately, intelligence reports suggest that Taliban in the area at that time had the intention of conducting attacks on other Coalition forces operating in the vicinity of Khod, and the coincidental presence of the NZSAS patrol simply provided the insurgents with a target of opportunity.

**Q: After the insurgent attack did the NZSAS know where the insurgents went?**

A: Yes. A Coalition aircraft tracked a vehicle being used by the insurgents to the hamlet of Pay Kotel, approximately 2km south of the main Khod village area, where it stopped before moving off.

Also, at the site of the contact, NZSAS members tracked the insurgents' route back to the location where the insurgents had congregated prior to the attack – a river bed

at the base of the valley. At this point, a collection of Rocket Propelled Grenade (RPG) rounds were found, alongside a collection of local Afghani footwear likely to have belonged to the insurgents.

**Q: If a Coalition aircraft had tracked the insurgents to Pay Kotel, why didn't this aircraft engage them?**

A: Consideration was given to engaging the vehicle the insurgents were using. However, this was discounted due to the unsuitable nature of the air support element which was a bomber aircraft, equipped with heavy ordnance. The patrol commander was unable to ascertain if the insurgent vehicle was in open country or an urban area, and therefore could not assess the possibility of collateral damage.

Therefore, after coalition helicopters evacuated the two wounded patrol members at the NZSAS night harbour, a decision was made by the NZSAS patrol to conduct a cordon and search in Pay Kotel using half of the patrol, with two Coalition AH64 Apache helicopters which had escorted the aero-medical evacuation helicopter.

**Q: What did the NZSAS patrol do at Pay Kotel?**

A: Authorisation was received for the patrol to conduct a cordon and search. The NZSAS troopers entered the hamlet, located the residents, and moved them to a central location.

The males were separated from the women and children, and secured with plasticuffs.

**Q: You say that males had been secured by plasticuffs, why were they restrained?**

A: A number of male civilians were detained for security reasons and for possible connections to the insurgency and the attack on the NZSAS patrol. Those considered to present a possible threat were restrained while the cordon and search was completed.

Personnel deployed on OP CONCORD II were issued guidance on detainees which provided that where it was necessary to detain persons they were to be treated humanely and in accordance with general international human rights standards.

**Q: During the cordon and search, were there any events of significance?**

A: Yes. During this cordon and search, a number of males attempted to flee the area. NZSAS motorcycle outriders from the cordon-based team moved to stop the flight of these people.

Individuals who had fled the hamlet were secured with flexicuffs. Some of those who had fled received minor injuries while they were being apprehended and detained. There is no evidence to suggest any injuries occurred post detention.

They were interviewed with the aid of the interpreter. No significant information was obtained from them.

**Q: How were the women and children treated?**

A: A hands-off approach was taken when managing the women and children in the group, consistent with the operating protocol of the time.

**Q: Were any other males observed trying to flee the hamlet?**

A: Yes, a second NZSAS team tasked with clearing the surrounding fields observed a barefoot figure hiding in a bush about 15 metres from their position.

A verbal warning was given for the individual to come out, no response was forthcoming, so a warning shot was fired. The individual got up and ran from the patrol.

The individual took no notice of repeated warnings to stop. A patrol member then requested warning shots from the helicopter to slow the progress of the fleeing individual, who it appeared would evade the NZSAS motorcycle outriders.

The pilot was clearly instructed to fire warning shots as the patrol wished to question the individual.

Two bursts of 30mm canon fire were delivered into the area a distance in front of the fleeing individual. The initial series of rounds were delivered approximately 50 metres in front of the individual, and then approximately two series of rounds in the same location.

The rounds created a large 'splash zone' that was visible to the patrol about 100 metres away. The individual did not stop running, running straight into the area where a large cloud of dust had been thrown up by the rounds from the helicopter.

As the individual entered the cloud, the helicopter stopped firing. Patrol members waited for the dust to dissipate, and when it did, the individual was observed laying on the ground.

**Q: What condition was the individual in and what assistance was given to this individual?**

A: The NZSAS patrol had to cross a river that separated them from the individual, and when they approached him they noticed a large wound to his inner thigh. The wound was caused by a single small piece of shrapnel.

Patrol members immediately applied a tourniquet and bandaged the wound in accordance with their emergency first aid training before moving him across the river.

A vehicle was dispatched from the hamlet-based team to uplift the casualty and bring him to the NZSAS patrol's medic. The individual was transported on the vehicle's bonnet for ease of speed of transportation.

On arrival at the hamlet proper, enhanced first aid was immediately applied by the patrol medic, but in spite of these efforts the individual died about 15-20 minutes later as a result of blood loss from a wound to the femoral artery.

**Q: What conclusions can be drawn as to the treatment of the deceased?**

A: Once it became apparent that the individual had suffered serious injuries, immediate first aid was provided. The wounded individual was transported on the bonnet of a vehicle because it was deemed the fastest available option in order to receive enhanced medical treatment at Pay Kotel.

These events were managed in accordance with New Zealand's international legal obligations and NZDF best practice.

The NZDF notes that it provides training on the care of casualties and deceased as part of its standard Law of Armed Conflict training that it requires all members of the Armed Forces to undertake.

**Q: Were the NZSAS able to identify the male who was fleeing the helicopter?**

A: There is some circumstantial evidence that the individual was connected to the contact the evening prior, but there was no conclusive information to suggest that the individual had participated.

**Q: What did the NZSAS do with the deceased person?**

A: The deceased person was handed over to the villagers in the hamlet of Pay Kotel. The patrol explained to the villagers in the hamlet how the individual had died and that the death had not been intentional.

The villagers had seen the lengths the NZSAS had taken to provide medical assistance. The first responder had used his own personal medical pack to attempt to stop the bleeding, and the patrol medic had used all the resources at his disposal.



**Q: What happened next?**

A: The other individuals who had attempted to flee were returned, secured and interviewed with the aid of the interpreter.

One individual, a male, was willing to assist with information, and the questioning of all individuals ceased once this man had been identified. Through this male it was ascertained that Pay Kotel was the location where the attacking force had concentrated and prepared prior to the attack on the NZSAS patrol's night harbour.

Information from this questioning identified the names of individuals who were likely involved in the attack, including three key individuals / insurgent leaders who had each brought approximately seven fighters with them. Once all relevant information had been gathered, the patrol left the hamlet.

**Q: Was any property damaged?**

A: Information reviewed has identified that property was searched, though there is insufficient information to determine if any property was damaged. However, no NZSAS personnel noted property damage in any of their post-activity reporting, including after completing the Key Leader Engagement (KLE) activity with local village elders at Khod later that day. That is, village elders did not raise it as an issue of concern to them at the time.

**Q: Are you satisfied with the conduct of NZSAS at Pay Kotel?**

A: In the main yes. The NZSAS had just been subject to a surprise night attack. They had driven it off, but had seen two of their own helicoptered out after suffering serious wounds; the wounds to one individual had nearly been fatal. It would only seem natural for them to be on edge and assertive in their actions post-contact. However, despite this, on the information available the NZDF concludes that apart from one exception, the NZSAS nonetheless conducted themselves professionally during this period.

**Q: What is the issue you have identified where a member of the NZSAS's actions did not meet expected standards while in the hamlet of Pay Kotel?**

A: During the course of examining events around this patrol subsequent to *The Valley* reporting in 2017, an NZSAS patrol member who had been present raised an issue about an event they recalled during the clearing of Pay Kotel. That member of the NZSAS recalled seeing one of the restrained males being held in a state of undress, and this individual was being questioned by an NZSAS trooper (through the interpreter), while the NZSAS trooper held a knife in his hand.

**Q: How did the NZSAS member who was questioning the detainee explain the detained man being naked?**

A: This trooper said the detained man was naked at that time as when the man was being restrained his clothes, which were old and worn, had literally disintegrated as he was being processed. The NZSAS trooper explained that he had the knife out as this was the weapon he was carrying, and there was nothing exceptional or untoward about holding a knife at the time. The NZSAS trooper denied that he had threatened the detained person's life.

**Q: What did the NZDF do with this information?**

A: The Military Police investigated this matter and recommended to the Commanding Officer that a charge be laid.

The length of time since the incident (that is, the 13 years to have passed since 2004 and the matter coming to light in 2017) meant that only the most serious charges were available for consideration due to limitation periods for lesser offences. Those possible charges being either threatening to kill or do grievous bodily harm, or to consider if the behaviour amounted to a war crime for degrading and inhumane treatment of a detainee.

The Commanding Officer had to determine whether the allegation was well-founded. Legal advice they received noted that there were evidentiary issues that might affect the prospect of a conviction. The Commanding Officer determined that there was insufficient evidence to form a reasonable belief that the charge might succeed.

**Q: Isn't that a bit convenient for the NZDF, was that the end of the matter?**

A: No this was not the end of the matter. Due to the seriousness to which the NZDF viewed this incident the NZDF referred its file to Crown Law for review.

As a consequence of the review, the NZDF MPs re-interviewed the NZSAS trooper who had raised the issue.

The Commanding Officer re-examined all the material in line with the additional statement and again determined that the allegation was not well-founded.

**Q: So the NZSAS trooper at the centre of this matter had no follow-up for his actions?**

A: It is the NZDF's view that there were aspects of the behaviour of the NZSAS member that fell below the standards of a professional soldier and which, if not precluded by the limitation of time provisions set out in the Armed Forces Discipline Act, would have likely resulted in disciplinary charges being preferred.

Consequently, the NZSAS trooper received administrative action in 2018 which noted in his file his “poor judgement” in respect of his actions in 2004.

**Q: Will the NZDF name the NZSAS trooper, at the centre of this matter?**

A: The NZDF has considered this issue carefully and weighed up its relevant responsibilities under, for instance, the Privacy Act and the Official Information Act, and does not believe the public interest in naming this individual outweighs the NZDF’s obligations of privacy in this instance.

Given that charges were not laid, the NZDF has determined that the NZSAS trooper should not be named. The NZSAS trooper left the NZDF in 2018.

**Q: While the hamlet of Pay Kotel was being searched, what were the other half of the NZSAS patrol doing?**

A: The other half of the patrol stayed at the night harbour (the place of the night before’s contact with the insurgents) and conducted a battlefield clearance.

They confirmed the locations the insurgents had used in their surprise attack, and found TWO dead insurgents in total.

Using information supplied by a local individual questioned at Pay Kotel, the NZSAS were able to ascertain the identity of one of the bodies, who was found to be the insurgent commander.

**Q: How did the two insurgents die?**

A: They were killed by small arms fire during the contact.

**Q: Did the two parts of the NZSAS patrol join-up again?**

A: Yes. The full patrol had reassembled back at the contact site/night harbour, a resupply of ammunition occurred and another vehicle was airlifted in to replace the damaged HUMVEE.

**Q: What happened next – did the patrol go back to Khod?**

A: Yes. In the afternoon the patrol re-entered Khod to keep the appointment they had made the previous day to meet with village elders, and explain what had occurred.

Initially, the local inhabitants were observed to be fearful of the patrol, but it was explained that the NZSAS patrol understood the attack had been driven by insurgents from other locations than Khod.

In the meeting with the village elders, the discussion involved issues affecting the village and surrounding area, including the impact of previous Coalition activity in the area.

The villagers were advised that they could collect one of the bodies of the insurgent dead at the contact site [as below, the second insurgent body was transferred by the NZSAS patrol to a nearby village], and that the patrol would not harm anyone who peacefully approached the area.

After the meeting with village elders in Khod concluded, the NZSAS patrol moved off to a new Lying-Up Point for the night.

**Q: The villagers which *The Valley* have used as their sources say that the day after the firefight that the NZSAS came back to Khod: “SIX tanks came. Each tank had a body. They dropped the bodies down, they tied our hands behind our backs.”**

A: This is incorrect. Firstly, the NZSAS were, and are, not equipped with tanks. The NZSAS returned to the village of Khod on the afternoon of the day after the firefight. Similar to their original entry to Khod of the day before, three Humvees entered the village, with the remaining two serviceable HUMVEEs at that time outside the village in over watch.

The NZSAS did not have any bodies on these vehicles. Neither of the dead insurgents were brought back to the village of Khod by the NZSAS.

The NZSAS advised the village that it was safe for them to retrieve the body of one of the insurgents at the contact site themselves [as per below, the second insurgent body was transferred by the NZSAS patrol]. Villagers were not restrained during the NZSAS patrol visit, and an amicable dialogue was established with village elders before the NZSAS patrol left without incident.

**Q: So for absolute clarity, alternatively, were there bodies on the NZSAS Humvees that went to Pay Kotel; were bodies dropped off there?**

A: No. No bodies were taken by Humvee to the hamlet of Pay Kotel either. But as described above, a local male wounded at Pay Kotel had earlier been transported at that scene on the bonnet of a Humvee so enhanced emergency first aid could be administered by a NZSAS patrol medic. That person later died from this wound.

**Q: Did the NZSAS move any bodies, anywhere?**

A: Yes, the body of the identified insurgent leader (one of the two bodies later found at the NZSAS night harbour that had come under insurgent attack) was taken back to his home village of Menara, approximately 15-20 kilometres away from Khod and Pay Kotel, on 19 June 2004.

This body was carried in a body bag, in the back of the Humvee, not on the bonnet.

**Q: Did the NZDF comply with its international legal obligations with regard to the deceased?**

A: Yes. The NZDF recognises an obligation to treat all deceased with respect and dignity. It should be noted also, that while the insurgent leader's body was taken to Menara in the back of a Humvee, it would not have been unusual to place bodies on the bonnet of vehicles if there was insufficient room within the vehicle itself. The NZDF would transport its own people killed or wounded in action in exactly the same manner.

**Q: Finally, what are the NZDF's overall conclusions about the accusations made by *The Valley* and what the NZDF learned when looking at this matter?**

A: There's a wide variance between what the two Afghan men said on *The Valley* documentary and what actually happened. The NZDF reached the following conclusions on these and related matters:

- There is no information to suggest that NZSAS personnel 'provoked' the firefight. It appears that the mere presence of the patrol and the decision to set up an encampment close to the village of Khod was a trigger for the attack. Taliban forces in the area appear to have been looking for targets of opportunity which the NZSAS presented due to their light security footprint and lack of close air support.
- There is no information to suggest that NZSAS personnel mistreated the deceased (that is, TWO dead from the firefight from the insurgent night attack; and a THIRD casualty from helicopter fire when warning shots were ignored by a fleeing male at the hamlet of Pay Kotel). The NZSAS personnel complied with their international legal obligations in treating casualties.
- Civilians in the village of Khod were questioned, some individuals were temporarily detained, and some were restrained. Individuals who attempted to flee and/or resisted being detained did suffer minor injuries in the course of apprehension and detention.
- Property was searched in the hamlet of Pay Kotel during a cordon and search. There is insufficient information to be able to conclude whether

property was damaged in any way or not. But it is noted that village elders never raised this as an issue of concern at the time.

- There is evidence that an isolated incident fell below the standard that the NZDF would expect of a professional soldier in the management of detained persons. A patrol member was investigated by the NZDF Military Police after he was alleged to have threatened to kill an Afghan male who was nude and restrained. The allegation was referred to the patrol member's Commanding Officer who determined that, although demonstrating poor judgement, these actions did not reach the 'well founded' threshold for a criminal offence pursuant to section 102 of the Armed Forces Discipline Act (AFDA).
- In addition to the allegations raised by the documentary, one person was inadvertently killed by shrapnel from Coalition aircraft in the hamlet of Pay Kotel. There was no information to suggest that this person was deliberately targeted, nor is there any information to suggest that as a casualty he was treated in any way other than in accordance with New Zealand's international legal obligations. This death was never raised by Afghans who participated in *The Valley* documentary and claimed to be present at that time.

ENDS.

**IMAGE 1**



IMAGE 2

