



Australian Government

Defence Honours and Awards Appeals Tribunal

Wright and the Department of Defence re: Hakewill [2017] DHAAT 11 (29 March 2017)

File Number(s) 2015/038

Re **The Hon Ken Wright OAM** on behalf of **Flying Officer James Austin Hakewill**
Applicant

And **Department of Defence**
Respondent

Tribunal Air Vice-Marshal A.J. Quaife AM (Ret'd) (Presiding Member)
Brigadier M.D. Bornholt AM (Ret'd)
Mr G. Mowbray

Hearing Date 21 February 2017

DECISION

On 29 March 2017, the Tribunal decided to recommend to the Minister that the decision of the Chief of Air Force, Air Marshal G.N. Davies, AO, CSC, that no further action be taken in recognition of the actions of Flying Officer James Austin Hakewill at Orsta Fjord, Norway on 5 December 1944, be affirmed.

CATCHWORDS

DEFENCE Honour – refusal to recommend the award of the Victoria Cross – World War Two - Norway

LEGISLATION

Defence Act 1903 as amended –ss 110T, 110V(1), 110VB(1)
Defence Force Regulations 1952 – Regulation 93B and Schedule 3
Defence Legislation Amendment Act (No 1) 2010 – Schedule 1 Part 2
Victoria Cross Regulations, Commonwealth of Australia Gazette No S25 of 4 February 1991.

REASONS FOR DECISION

Introduction

1. The applicant, the Hon Ken Wright OAM (Mr Wright) on behalf of Flying Officer James Austin Hakewill (FLGOFF Hakewill), seeks review of the decision of the Chief of Air Force, Air Marshal G.N. Davies, AO, CSC, (CAF) that no further action be taken in recognition of the actions of FLGOFF Hakewill at Orsta Fjord on 5 December 1944. FLGOFF Hakewill was a Royal Australian Air Force (RAAF) Beaufighter pilot of No 455 Squadron (455SQN), based at RAF Dallachy in Scotland in 1944.

Tribunal Jurisdiction

2. Pursuant to ss 110VB(1) of the *Defence Act 1903* (the Defence Act) the Tribunal has jurisdiction to review a reviewable decision relating to a defence honour if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence or the Defence Force to refuse to recommend a person for a Defence honour in response to an application.

3. Regulation 93B of *Defence Force Regulations 1952* defines a defence honour as those honours set out in Part 1 of Schedule 3.¹ Included in the defence honours set out in Part 1 is the Victoria Cross for Australia. The Tribunal considered that the CAF decision that recommended no further action be taken in recognition of the actions of FLGOFF Hakewill constitutes a reviewable decision. Therefore, the Tribunal has jurisdiction to review this matter.

4. In accordance with s110VB(1) of the Defence Act, as the matter under review concerns a defence honour, the Tribunal does not have the power to affirm or set aside the decision but may make recommendations regarding the decision to the Minister.

Conduct of the Review

5. On 12 June 2011, Mr Wright provided a submission to the Defence Honours and Awards Appeals Tribunal's *Inquiry into Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour* (the Valour Inquiry).² By letter dated 21 August 2015, Mr Wright was advised by the CAF that '*Air Force had recommended to the Tribunal, that no further action be taken in recognition of the actions of Flying Officer Austin Hakewill at the Orsta Fiord (sic) on 5 December 1944*'.³ On 17 September 2015, Mr Wright, in his capacity as the Chairman/Historian of the Mildura RSL RAAF Memorial and Museum, lodged an application for review of the CAF decision on behalf of FLGOFF Hakewill's eligibility for the Victoria Cross for Australia (VC).⁴

¹ Under Section 85 of the *Defence Regulation 2016*, the *Defence Force Regulations 1952* continue to apply to an application made under those regulations before their repeal on 1 October 2016.

² Valour Inquiry submission No 69

³ CAF letter to Mr Wright AB23498355 dated 21 August 2015

⁴ Application for Review of Decision by Mr Wright dated 15 September 2015

6. On 1 October 2015, the Executive Officer of the Tribunal acknowledged Mr Wright's application.⁵ Mr Wright replied to this letter on 8 October 2015, providing additional information regarding FLGOFF Hakewill.⁶ In a letter dated 15 October 2015, the Tribunal accepted Mr Wright's application for review.⁷ Also on 15 October 2015, the Chair of the Tribunal wrote to Defence requesting a report on FLGOFF Hakewill's eligibility for the VC.⁸ On 3 December 2015, the Tribunal received the Defence report.⁹ Mr Wright was provided with a copy of the Defence report on 3 December 2015 and provided his response to the Tribunal in a letter dated 11 January 2016.¹⁰

7. On 20 May 2016, Mr Wright forwarded additional photographic material and a sketch map depicting FLGOFF Hakewill's attack in Orsta Fjord.¹¹ This material was provided to Mr Wright by Norwegian Army Reserve Major Ove Roev (Major Roev) and Orsta Police Chief Guttorm Hagen (Police Chief Hagen).

8. On 1 July 2016 and 16 August 2016, the Executive Officer of the Tribunal wrote to Mr Wright seeking additional information regarding source material. Mr Wright provided further supporting information to the Tribunal in letters dated 9 July, 5 August, 26 August, 4 November and 2 December 2016. Police Chief Hagen and Major Roev provided the Tribunal with written material on 15 February 2017. The Tribunal forwarded Major Roev and Police Chief Hagen a series of questions on 16 February which elicited a number of email responses. Copies of all research material collected by the Tribunal Research Team were forwarded to Mr Wright for his information.

9. The Tribunal noted that the Valour Inquiry addressed the issue of retrospective honours and awards.¹² The Valour Inquiry developed guidelines that would be able to be applied in any later reviews and the Tribunal noted that Defence had used this guidance in reaching their recommendation and decision on eligibility for FLGOFF Hakewill.

10. The guidelines suggest that the first step in examining retrospective honours should be the conduct of a review to determine whether due process had been followed. This step should include '*an attempt to determine whether there is a case of maladministration and whether new evidence has come to light*'. The guidelines suggest that if due process had been followed, there was no maladministration, and if there was no new evidence, the original decision should remain unchanged.

11. Notwithstanding this guidance, it should be noted that section 110VB of the Defence Act requires the Tribunal to undertake a merits review of all reviewable decisions, where an application for review has been properly made. Accordingly, the Tribunal proceeded with a merits review of the CAF decision concerning FLGOFF Hakewill's actions on 5 December 1944.

⁵ DHAAT Letter to Mr Wright dated 1 October 2015

⁶ Letter from Mr Wright to the Tribunal dated 8 October 2015

⁷ DHAAT letter to Mr Wright dated 15 October 2015

⁸ DHAAT letter to Secretary Department of Defence dated 15 October 2015

⁹ AFHQ AB25376739 dated 27 November 2015

¹⁰ Letter from Mr Wright to the Tribunal dated 11 January 2016

¹¹ Letter from Mr Wright to the Tribunal dated 20 May 2016

¹² Defence Honours and Awards Appeals Tribunal, *Report of the Inquiry Into Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour* dated 21 January 2013

12. In accordance with its *Procedural Rules 2011*, a public hearing into this matter was conducted in Mildura on 21 February 2017. Mr Wright was invited to provide evidence at the hearing. As a good proportion of the supporting material submitted by Mr Wright was provided from Norway, Police Chief Hagen and Major Roev were also invited to attend the hearing via video conference and to provide evidence. The Tribunal also heard submissions from Mr James Hakewill, a relative of FLGOFF Hakewill, and Ms Shellie Peardon and Ms Katrina Parker, daughters of the late Squadron Leader (SQNLDR) Neil Smith. Defence was represented at the hearing by Flight Lieutenant (FLTLT) Simon Hall, the Air Force Staff Officer Honours and Awards, and Mr Martin James, the Air Force Historian.

Defence Records of FLGOFF Hakewill's Service

13. James Austin Hakewill, a 23 year old teacher from Mildura, enlisted in the 2nd AIF as a driver on 12 June 1940.¹³ He was discharged from the Army as a consequence of his 'enlistment in the Royal Australian Air Force' on 8 July 1942.¹⁴ He completed pilot training on 1 October 1943, and arrived in the United Kingdom on 11 January 1944. He was promoted to Flying Officer on 1 April 1944. After a period of advanced and operational training with No 6 (P) AFU and 132OTU he was posted to 455SQN on 5 August 1944. FLGOFF Hakewill was posted as a war casualty, presumed dead, on 5 December 1944.

14. FLGOFF Hakewill's RAAF service file details that he was eligible for the following awards:

- the 1939-1945 Star;
- the France and Germany Star;
- the Defence Medal;
- the War Medal 1939-45; and
- the Australian Service Medal 1939-1945.

Summary of the Hon Ken Wright's Claim

15. In his application to the Tribunal, Mr Wright has provided his interpretation of events and FLGOFF Hakewill's actions, during a 455SQN attack against enemy shipping in Orsta Fjord, Norway, 5 December 1944.¹⁵ A significant component of Mr Wright's claim is information provided by a Norwegian eye witness to the attack, the late Mr Sverre Hagen. Mr Wright states in his application that:

'Details of the 455 Squadron RAAF attack on enemy shipping in Orsta Fjord, Norway, are well known, in that two of the three freighters were sunk, the other damaged and the gunship put out of action. What is not known, was that the dangerous enemy gunship in the middle of the fjord was put out of action by FLGOFF Hakewill courageously sacrificing his own life in ramming the foredeck with his damaged Beaufighter and enabling all other 14 Beaufighters to return to their home base in Scotland.'

16. In his submission, Mr Wright states that his information provides new and compelling evidence of FLGOFF Hakewill's actions:

¹³ Service Record – Hakewill 417747 – NAA: A9300 Barcode 5246607

¹⁴ AMF Certificate of Discharge No 23965 dated 17 July 1942

¹⁵ Submission for Review of Decision by Mr Wright dated 15 September 2015

‘Two officers only saw FLGOFF Hakewill’s aircraft “crash into the sea” – no aircrew witnessed the ramming of the gunship. However, highly reputable citizens from the town, Sverre Hagen and Major Ove Roev, made Mildura RSL and the Hakewill family aware of what really happened.’

17. Mr Wright requested the retrospective award of a VC to FLGOFF Hakewill for his exceptional bravery in the attack on enemy shipping in Orsta Fjord, Norway, 5 December 1944 stating that the case for the award of the VC ‘is unique because the facts were not known here in Australia until 1985’ and ‘Hakewill’s act of supreme courage in ramming the gunship validates the submission’.¹⁶

No 455 (RAAF) Squadron

18. FLGOFF Hakewill was a member of 455SQN at the time of the Orsta Fjord raid. 455SQN was then based at RAF Station Dallachy in Morayshire, Scotland. The squadron operated under RAF Coastal Command and was equipped with twin engine Bristol Beaufighter TF MkX aircraft armed with forward firing rocket projectiles and 20mm cannon. As recorded in the official history, the Beaufighters of 455SQN were frequently employed in an anti-flak role against shipping in the Norwegian coastal region.¹⁷

19. In the latter months of 1944, the Coastal Command squadrons at Dallachy and Banff conducted daylight patrols of the Norwegian coast and fjords in search of German coastal shipping. These patrols frequently employed ‘outriders’ – one or two experienced crew would fly ahead of the main force to detect shipping hiding within the intricate, rugged coastline. Deep water allowed German shipping to anchor alongside steep cliff faces within the narrow Norwegian fjords. This positioning would constrain and often prevent effective attack from the air. The official historian has described how the physical characteristics of the fjords could constrain a simultaneous attack to a maximum of three aircraft, whereas the preferred tactic in open waters would employ 20 or 30 attacking aircraft.¹⁸

20. The 455SQN attack of 5 December 1944 came at the end of a quiet period for the squadron where enemy shipping had proved difficult to find or the weather had precluded operations. The attack against shipping in Orsta Fjord is described by historian John Herington as a brilliant success. The attack:

- ‘scored 36 rocket hits on a vessel of 2500 tons which was left blazing fiercely. A smaller vessel was also attacked in Selevik (sic); both ships were confirmed sunk by Intelligence sources.’¹⁹

The Mission

21. The 455SQN Operations Record Book describes the mission led by SQNLDR J.M Pilcher of 12 Beaufighter aircraft of 455SQN in company with five A/F Beaufighters of No 489 Royal New Zealand Air Force (RNZAF) squadron (489SQN) as an anti-shipping patrol

¹⁶ Ibid p.3

¹⁷ John Herington, *Australia in the War of 1939-1945, Series Three AIR, Volume IV Air Power Over Europe, 1944-194*, Australian War Memorial, Canberra, 1963, p. 368.

¹⁸ Herington, p.374.

¹⁹ Herington, p.375.

from Ytterone (Ytteroyane) to Molde, conducted at a height of 3000ft. The aircraft were armed with rockets and 20mm cannon. The aircraft were not carrying torpedos.

22. The 455SQN aircraft in the raid were each identified by a random letter of the alphabet. SQNLDR Pilcher was flying aircraft D/455. FLGOFF Hakewill was flying aircraft V/455 with Flight Sergeant (FSGT) Sides as his navigator/observer. Another key aircraft in the attack was Q/455 flown by FLGOFF N. Smith.

23. The Operations Record Book records that the squadron set course from RAF Dallachy at 1222 on 5 December 1944. FLTLT D. Willshaw DFC flew as outrider for the patrol making landfall on the Norwegian coast two miles to the north of Ytteroyane, nine minutes in advance of the main formation. A little over ten minutes into the patrol, five vessels were sighted in a fjord near Svelgen, anchored close to a steep cliff in a position considered unsuitable for attack.

24. At 1428, a number of vessels were sighted in Orsta Fjord and attacked. Two vessels were sighted on the southern side of the fjord off Selbervika and another vessel further up the fjord at the eastern end. A small motor vessel was also noted to be moored alongside at Orsta village and a small gun coaster was noted circling opposite Selbervika during the attack.

25. German naval records confirm this disposition. Steamers ‘Radbot’ and ‘Dockenhuden’ were at anchor in Selbervika bay. Steamer ‘Albert Janus’ was anchored at the head of the fjord and steamer ‘Cygnus’ moored at the Orsta village pier. Outpost boat ‘Guese (V6805)’ had cast off from a pier at Orsta on the initial air raid warning to sail back to the steamers in Selbervika bay. V6805 sailed ‘permanent figures of eight’ 400 metres to the north east of the steamers.

Orsta Fjord Attack

26. The 455SQN Operations Record Book compiles the official RAAF record of the attack in Orsta Fjord from the after-action reports of the aircrew involved. The record has the first three aircraft attacking in a wave ‘down’ the fjord suggesting a westerly attack heading, with a further three aircraft attacking in a second wave ‘up the fjord from land’. While ‘up the fjord’ suggests an easterly attack heading, ‘from land’ suggests the reverse.

27. Aircraft in the first wave are listed as D, F and J/455 (pilots Pilcher, Proctor and Addison). Aircraft G, A and Q/455 are listed as attacking in the second wave (pilots Herbert, MacDonald and Smith). In addition to these notes, the record book also contains the detail ‘Q/455 [Smith] also attacked a smaller motor vessel in Selbervik with cannon and claimed some hits’.

28. Because they did not return, the participation of FLGOFF Hakewill and FSGT Sides in V/455, and Pilot Officers Winter and Dunshae in M/455, were not included in the attack summary.²⁰ However, both V/455 and M/455 are listed under ‘damage and casualties’ as follows:

²⁰ At the hearing, Mr Martin James, the RAAF Historian explained that squadron operational records were compiled from the de-briefing sessions conducted by unit intelligence officers with returned aircrew immediately after landing.

V/455 [Hakewill] seen to be hit by flak, probably from gun boat – starboard wing disintegrated and aircraft dived in flames into sea. M/455 ditched off Sumburgh – crew safe.

29. The Operations Record Book of 489SQN describes an attack led by 455SQN against three motor vessels in Orsta Fjord. The five RNZAF aircraft attacked with cannon only. The RNZAF record simply notes that ‘V/455 was hit by flak and dived into the sea’.²¹

30. Ian Gordon’s book *Strike and Strike Again* presents the history of 455SQN 1944-45, and includes a report of the Orsta Fjord attack. The book describes the detachment of two additional outrider aircraft flown by FSGT Ray Dunn and Warrant Officer (WOFF) John Ayliffe, as the formation made landfall at Ytterrone light. The book also describes the transit and the discovery of vessels in Orsta Fjord. The first wave under SQNLDR Pilcher’s leadership is described attacking a ship anchored near the town of ‘Orsten’ in an easterly direction²², and FLGOFF Smith leading the second wave with FLGOFFs Herbert and Hakewill attacking from a position to the east of Orsta, down the fjord in a westerly direction.²³ The book contains two eye-witness accounts attributed by the author as comments on the book’s draft. The first from FLGOFF Herbert describes an initial attack on the vessel near ‘Orsten’ followed by the appearance of a ‘minesweeper’ as they flew as low as possible down the fjord; he states:

*Aussie Hakewill [in] V/455 was flying about 100 yards ahead on my port side firing at the ship when he received a direct hit and exploded in a huge orange ball of flame just above the water in front of the ship.*²⁴

31. The second account is from WOFF Ayliffe who joined in the second wave attack. WOFF Ayliffe recalls:

*On rounding a small headland I noticed another Beaufighter on my port side. As I flew alongside of this aircraft I saw a minesweeper steaming towards [us]. This minesweeper had a heavy calibre gun on its bow and was firing at the aircraft. Just as I lined up to attack I witnessed the other Beaufighter receive a direct hit and explode in mid-air. I have a vivid impression of the forward part of the fuselage and wings going in one direction and the rear portion of the fuselage going in the other direction. I am sure the plane was flown by Aussie Hakewill.*²⁵

32. The Australian Defence attaché in Berlin has obtained a translation of German archival documents contained as the ‘War Diary’ of the 68th Outpost Fleet, which included the vessel V6805 ‘Guese’.²⁶ The Battle Report of the V6805 describes the appearance of a reconnaissance aircraft at 1200 hours and the sighting of 40 – 50 aircraft at ‘around 1353’.²⁷ The report describes the attack commencing with eight aircraft all [incorrectly] identified as ‘Mosquitos’. The action is described as ‘attack following attack’. The report states ‘nine

²¹ Extract of the 489SQN RNZAF Operations Record Book, obtained from the New Zealand archives and received under cover of an email from Mr Jack Hayes, NZDF, 9 November 2016

²² SQNLDR Pilcher’s gun camera film confirms this initial attack is against the *Albert Janus*. www.awm.gov.au/collection/F02698

²³ Ian Gordon, *Strike and Strike Again 455 Squadron RAAF 1944-45*, Banner Books, Belconnen, 1995, p.132.

²⁴ Ian Gordon, p.133.

²⁵ Ian Gordon, p.133.

²⁶ War Diary of the 68th Outpost Boat Fleet 1-15 December 1944, translated to English

²⁷ Ibid p.1217

aircraft approached from the West, fifteen from the Southeast, seven from the East, another three from the South and again five from the West, one crossed us and four were approaching from the Northeast'. The report claims that the 3.7cm gunner scored clear hits on three aircraft, two of which *'veered off in a north-westerly direction'*. The report then describes the steamer *Radbot* under rocket attack by seven aircraft that approached from the south and being hit amidships.

33. The Battle Report then describes an attack on the V6805 by a single aircraft, attacking from the south, appearing from *'across the crest'*. This aircraft is reported as firing rockets and *'aircraft weapons'*. The report states:

the aircraft hits the forecastle of the V6805, breaks off the 3.7 cm and the 2 cm anti-aircraft guns before crashing in flames 30m to the 'starboard aftward' of the vessel.

34. The War Diary contains an 'Observations' log which also refers to 40-50 Mosquito aircraft flying across the convoy, several groups of up to 15 aircraft attacking the convoy, and three aircraft directly attacking the V6805. Also included in the War Diary is a detailed diagram of the battle between the V6805 and *'English Aircraft'*. This diagram depicts the tracks of some 60 aircraft and is marked with the *'crash point of a downed aircraft'*. Only one track is marked on the diagram with an ingress route but no egress route. This track is marked as the attack route of a single aircraft that originates almost due south of the position of the V6805.

35. Police Chief Hagen provided the Tribunal and Mr Wright with a copy of a letter held by the Aalesund Museum reported to have been written by Mr Kurt Heinowicz in 2004, in which he describes his experience as a crew member of the V6805.²⁸ The letter describes an attack by three aircraft against the V6805 in which one aircraft was struck by return fire taking two guns from the vessel before crashing and sinking in the fjord, leaving a propeller blade stuck in the ship's bridge. The Heinowicz letter also records a recollection of four aircraft being shot down during the attack, others that *'flew off in flames'* and a high state of confusion and destruction on the V6805.

36. Mr Wright has provided the Tribunal with accounts of the events by an eye-witness, Mr Sverre Hagen (dec), who was doing work in the forest in a position described as being on the north shore of the fjord opposite Selbervik, some 100 metres from the V6805. The first account from Mr Sverre Hagen is an undated, type-written summary labelled *'unofficial translation'* and was provided by Mr Wright with his initial application to the Valour Inquiry.²⁹ In this summary, Mr Hagen describes an attack by 15 Beaufighter aircraft escorted by five fighter aircraft. The low altitude attacks being conducted by groups of five aircraft. Mr Hagen notes the *Radbod* as the first vessel attacked and the vessel *Albert Janus* being attacked by the second group of aircraft. The summary has the aircraft attacking the *Albert Janus* arriving from the *'east, down the valley'*. The direction of the attack origin has been pen-amended on the document to read *'west'*.

37. Mr Hagen notes that the last aircraft in this second attacking group was struck by anti-aircraft fire from the escort ship in *'among other places in its right engine'*. Mr Hagen notes the aircraft that had been hit, continued its attack on the escort ship. The aircraft passed in

²⁸ Kurt Heinowicz letter to Mr Wright as a translation of a letter he sent to Aalsund Museum in 2004

²⁹ Account of Sverre Hagen as translated

front of Mr Hagen, firing at the V6805. Mr Hagen has noted that the right engine appeared inoperative with its propeller rotating slowly. Just prior to the aircraft passing in front of him, Mr Hagen caught sight of ‘*something white*’ behind the aircraft.

38. In a hand written letter to Mr Wright dated 25 July 2004, Mr Hagen has provided further detail of his recollections.³⁰ Mr Hagen has stated that the aircraft first appeared from behind the mountains about 12-14 km from the escort ship. The aircraft attacked the *Albert Janus* at the head of the fjord and came under fire from both the *Albert Janus* and the V6805. Mr Hagen claims the Hakewill aircraft was hit in the right motor at a distance of about 7 km from the escort ship. He notes that he saw the impact, some fire and smoke. Mr Hagen then describes the aircraft changing course towards the escort ship, ‘*still shooting with its machine guns*’.

39. In a statement dated 28 March 2016, Police Chief Hagen, son of the eye witness, describes his father especially remembering five of the attacking Beaufighters.³¹ His memory is of these aircraft attacking the *Radbod*, flying eastwards behind the mountains and then returning in a westerly direction towards the fjord. Mr Hagen senior is cited as remembering that the fifth aircraft was hit in the right engine by anti-aircraft fire from the escort ship.

40. In addition to the diagram held in the German archives, the Tribunal has been furnished with a number of sketch maps of the raid. In his submission, Mr Wright describes FLGOFFs Smith and Hakewill flying up the fjord, firing at the *Radbod* and *Albert Janus*. While FLGOFF Smith is said to flown over the town and out of the fjord on an easterly heading, FLGOFF Hakewill is described as making a U-turn to head back down the fjord. Mr Wright has included a sketch map that depicts the tracks that he has described. This map is included as Figure 1. In this map, FLGOFF Hakewill’s aircraft is depicted to have followed an easterly heading along the southern shore of the fjord before executing a left turn around the Orsta township onto a final westerly heading to attack the V6805. At the hearing, Mr Wright said this map was based on information provided from Norway by Police Chief Hagen and Major Røev.

³⁰ Letter from Sverre Hagen to Mr Wright dated 25 July 2004

³¹ Statement from Sverre Hagen (19 years old 1944) written by Guttorm Hagen dated 28 March 2016

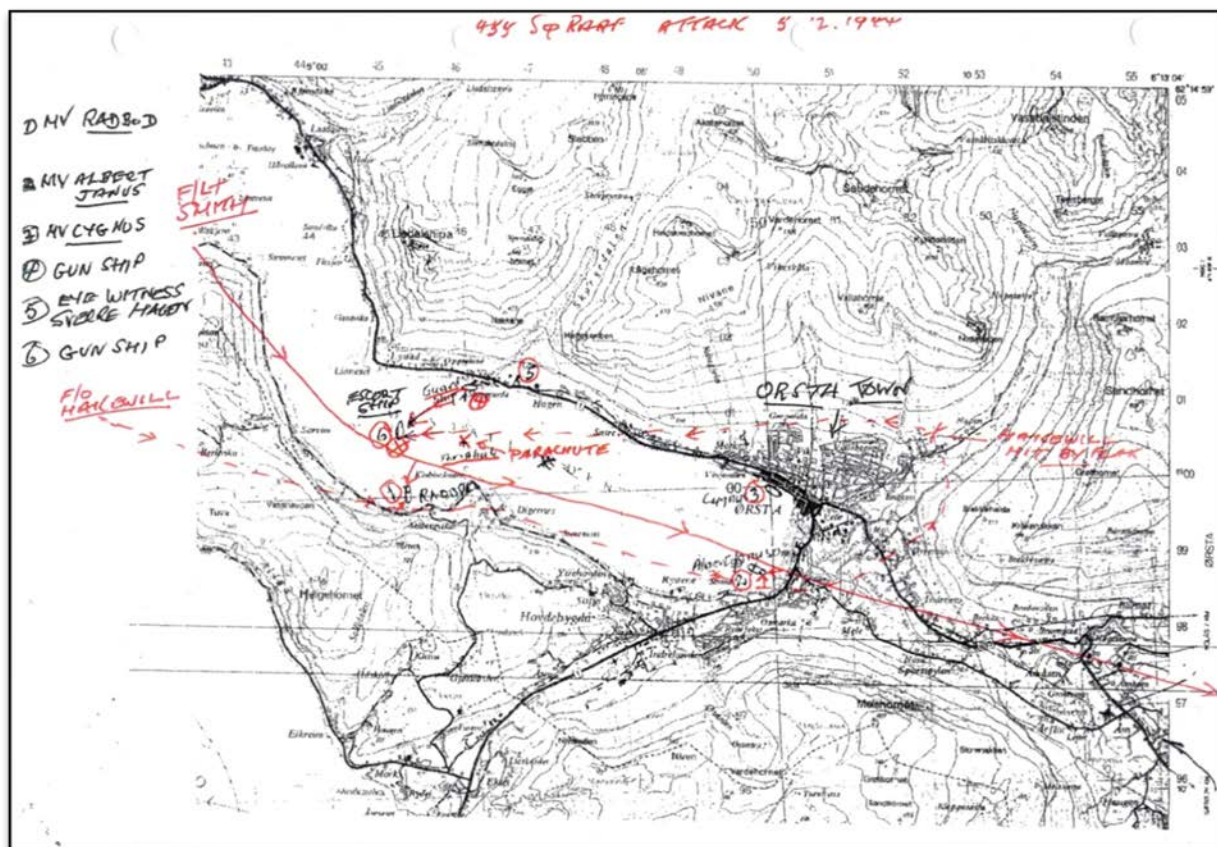


Figure 1. Sketch map of FLGOFF Hakewill's attack provided by Mr Ken Wright

41. In his letter to the Tribunal dated 22 May 2016, Mr Wright provided a more modest sketch map, signed by Police Chief Hagen, which first indicates the Hakewill aircraft at about 1.5 km to the east of the V6805 on its final westerly attack heading. At the hearing, Police Chief Hagen confirmed that he had prepared this map as a reconstruction of his father's description. This map is incorporated as Figure 2.

Smith expressed his relief that information from Orsta suggested FLGOFF Hakewill's aircraft was disabled by ground fire. SQNLDR Smith told Mr Wright that he had always held concerns that his own fire had hit his wingman's aircraft. At some point after the war, SQNLDR Smith provided a series of photographs to the Australian War Memorial. These photos are annotated with the description:

*'The view from the cockpit of 409954 Flying Officer Neil Reginald Smith's Beaufighter of 455 Squadron (Sqn), RAAF, as he positions his Beaufighter over snow-capped mountains for a rocket and strafing attack on German shipping which are anchored close to shore in the Orsta Fjord...'*³⁴

44. Additional photographic evidence of the raid is contained in a compilation of 455SQN gun camera film also held by the Australian War Memorial.³⁵ This compilation includes SQNLDR Pilcher's attack on the *Albert Janus* at the head of the fjord and FLGOFF Smith's attack on the *Albert Janus*, followed by his attack on the V6805. In frames 14-16 of the V6805 attack, a Beaufighter aircraft appears at extremely low altitude converging with FLGOFF Smith's heading from right to left. This aircraft appears to pass over the forward section of the V6805.

FLGOFF Hakewill's Actions

45. The 455SQN Operations Record Book records contain very little detail regarding FLGOFF Hakewill's participation in the Orsta Fjord attack. Which attack wave he flew in is not mentioned, and neither is any specific location given for the crash of his aircraft. The log records that:

V/455 (FLGOFF J.A. Hakewill and FSGT Sides F.G.) had the misfortune to be hit by flak, its starboard wing disintegrating and the aircraft diving in flames into the sea, where it exploded.

46. The 455SQN Operations Record Book is similarly short on detail for the other casualties of the raid although it is specifically recorded that M/455 was hit by a shell in the starboard engine, but flew on one motor until forced to ditch near the Shetland Islands.

47. The German V6805 Battle Report includes an eye-witness account of Hakewill's actions. The report describes the attack as follows:

Another single aircraft that also approached from a southerly direction across the crest directly attacked 'V6805' and opened fire with aircraft weapons and rockets. With the 3.7cm gun, the seaman first class Heinhelt downed the aircraft with three hits. The aircraft touched the forecastle of 'V6805' and broke off the 3.7cm gun and the 2cm Madsen anti-aircraft gun – excluding the bases - both of which were pulled overboard by the crashing aircraft which was in flames and hit the water 30 metres on starboard aftward where it sank. One part of the aircraft's propeller got stuck in the bridge of 'V6805'.

³³ The Hon Ken Wright's application refers to 'recent conversation' with retired farmer Squadron Leader Neil Smith at Naracoorte, SA. Mr Smith died 12 November 2003.

³⁴ AWM Photographs P05831.002 to P05831.012 and P05831.015

³⁵ www.awm.gov.au/collection/F02698.

48. Mr Sverre Hagen's description is very similar with additional detail that the aircraft:

- 'hit the ship with its right wing as it flew across the front deck – brushing the cannons and crew in this area over board. The right wing broke off and caught fire while the plane itself continued on for another 100-150 metre and ended in the sea where it sank a few minutes later.'

49. In his letter to the Tribunal dated 22 May 2016, Mr Wright has provided a copy of a photograph believed to have been taken from one of the 489SQN aircraft. The photograph's negative is annotated with the date of the attack and was provided by Police Chief Hagen. The photograph is of the Orsta Fjord looking east. The point of land at Selbervik is clearly visible, and a trail of burning material appears in a position that corresponds with the reported impact of V/455. A vessel, partially obscured by smoke, is labelled as the V6805. A copy of this photograph is at Figure 4.

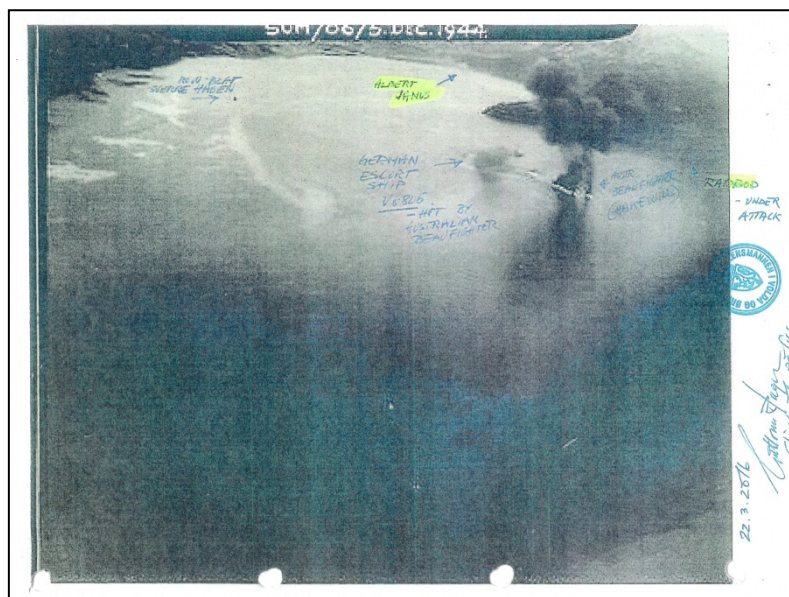


Figure 4. Overview photograph obtained by Major Roev from the internet, believed to have been taken from a 489SQN aircraft. The photograph is marked with the positions of the *Radbod*, *Albert Janus*, V6805 and the row boat of Mr Sverre Hagen. A large black smoke plume rises above burning fuel in the position reported for V/455 impact.

50. The Tribunal has obtained additional photographic evidence from the Australian War Memorial Research Centre. In a photograph annotated 5 Dec 1944 and captioned 'V.455 ABOUT TO DITCH' an aircraft can be seen beyond the V6805 just clear of the water. The aircraft's heading is indicated by a trail of weapon impacts that straddle the V6805. The vessel is executing a hard right hand turn. There is a bright spot on the vessel's bridge that may indicate fire. The negative is labelled DAL 147 5 DEC 1944//Q455 F.8 SHIPPING ATTACK ORSTEN F.O.400'.³⁶ At the hearing Major Roev said that he believed that this aircraft was in fact R/455 flown by WOFF Ayliffe. A copy of this photograph is included as Figure 5.

³⁶ AWM64 1/128 IMG 0474



Figure 5. *V.455 ABOUT TO DITCH.* Australian War Memorial Image AWM64 1/128 IMG 0474.

51. From his belief that FLGOFF Hakewill's aircraft was hit during an easterly attack on *Radbod* and *Albert Janus*, Mr Wright has asserted that FLGOFF Hakewill ignored opportunities to force land his aircraft and elected to '*forfeit his own life*' by turning his aircraft about onto a westerly direction and attacking the *V6805* with '*deadly accuracy*'. In his letter to Mr Wright dated 25 July 2004, Mr Sverre Hagen has speculated as to FLGOFF Hakewill's motivation, but stated that he was quite sure that:

- '*FLGOFF Hakewill's intention was to hit the V6805 with his aircraft.*'

Aftermath

52. After witnessing V/455 strike the *V6805*, Mr Sverre Hagen realised that the white object that caught his eye as the aircraft passed in front of him may have been a parachute. Mr Hagen took to the fjord in a small rowing boat and commenced a search for survivors. He located a deployed, but empty parachute in a position to the south of where the aircraft had crashed. The parachute was marked with a service number and the name: *Frederick Gordon Sides*. Mr Hagen continued his search until it started to get dark³⁷, covering a search area that he considered relevant on both the southern and northern sides of the fjord. Mr Hagen has noted that an undamaged life raft was located '*further out on the southern side of the fjord*'. No further trace was found of FLGOFF Hakewill or FSGT Sides.

53. Following the attack by 455SQN aircraft, the five aircraft of 489SQN attacked with 20mm cannon.

³⁷ Charts for Orsta give 1512 as the commencement of civil twilight and 1810 as night.

54. On their departure from Orsta Fjord, three of the attacking aircraft from 455SQN noted a passenger cargo type vessel stationary in Volda Fjord, immediately to the south of Orsta Fjord. No further attacks or sightings were reported by the patrol.

55. The 455SQN Operations Record Book summarises the result of the raid as *'Ship was smoking briskly and flames were seen at both bow and stern. No result seen from Q/455 (Smith) attack on smaller ship'*.

56. The 489SQN Operations Record Book includes the following 'Flash-back' note: *The 2500 ton vessel (name yet announced) attacked by 10 aircraft of 455 SQUADRON and 5 of our own is now assessed by HEADQUARTERS COASTAL COMMAND as being SUNK. Cannon only was used by our aircraft.*

57. The German V6805 Battle Report notes the *Albert Janus* in flames and run aground and the observation log notes steamers *Albert Janus* and *Radbod* sank after having been hit by rockets.³⁸ Mr Sverre Hagen observed that the *Radbod* sank and the *Albert Janus* was afloat, but on fire.

58. After the raid, the V6805 was brought alongside in Orsta and the injured were transferred to a hospital in Volda. In his Battle Report, the Captain of the V6805 notes three of his crew as killed and 15 injured. His vessel received 300-350 hits with significant damage occurring above the water line. Mr Wright has submitted that members of the Norwegian resistance reported that seven bodies were brought to shore and only three of the remaining crew were uninjured. The vessel was repaired, but only after several weeks in an Aalesund shipyard.

59. The V6805 was a Norwegian fishing trawler that had been requisitioned by the German Navy and converted to an escort vessel. After the war, the vessel was returned to its original owners with the embedded propeller blade from V/455 remaining in the superstructure with a plaque commemorating the date of the Beaufighter raid.

60. Soon after the end of the war, the parents of FSGT Sides visited Orsta Fjord seeking answers to what happened to their son. During the three months they spent in Orsta, they arranged a search for the aircraft wreckage and the construction of a commemorative memorial. A contemporary newspaper report suggests that FSGT Sides' parents were presented with their son's parachute and some personal belongings by the townspeople,³⁹ although Mr Sverre Hagen claims to have presented the parachute during a later visit to Australia in 1949.

61. Mr Wright has submitted a photograph of aircraft wreckage being raised from the fjord in August 1947. In his original type written statement, Mr Sverre Hagen refers to this event as follows:

In 1947 the aircraft was lifted from the seabed to the surface and inspected. No trace of the crew was found. The plane was lowered in a simple ceremony.

³⁸ The *Radbod* remains a popular dive site in Orsta Fjord just off Selbergvika.

³⁹ Sydney Morning Herald, *An Australian Memorial Rose on a Fjord's Shore*, Tuesday 30 December 1948, p. 2.

62. Mr Sverre Hagen subsequently reported that a prawn trawler operating in Orsta Fjord located a motor from the wreckage of V/455 in about 1984. A hobby diver located the motor at a depth of 80 m and recovered an oil pump and some other components. These relics are now exhibited at the Mildura RSL RAAF Museum.

63. In 1985, Major Roev visited Australia seeking the relatives of FLGOFF Hakewill. His contact with Mr Wright raised awareness of the events in Orsta on 5 December 1944, leading to the development of various visits and connections between the people of Orsta and Mildura.

The Defence Submission

64. The Defence submission to the Tribunal relies heavily on the limited material available in the National Archive of Australia. Defence has noted that no reference is made in the 455SQN Operations Record Book to FLGOFF Hakewill turning to re-attack the V6805 after being hit by ground fire. Defence also notes the absence of any reported radio transmission from FLGOFF Hakewill regarding his intentions.

65. With respect to the consequences of FLGOFF Hakewill's actions, Defence has observed that the records make no mention of his actions having any bearing whatsoever on the attacking aircraft's ability to egress the target area.

66. Defence has advised that their review has been unable to locate anything that would provide grounds for FLGOFF Hakewill to be nominated for the award of the VC. The submission concludes that while FLGOFF Hakewill and FSGT Sides both died as a result of the attack, there is no evidence regarding FLGOFF Hakewill's intention to ram the V6805 or his physical condition; only supposition from those on the ground.

Summary of the Hon Ken Wright's Oral Evidence

67. At the hearing, Mr Wright, said that he first became aware of FLGOFF Hakewill's action through Mr Ove Roev, in 1985.⁴⁰ He described FLGOFF Hakewill's action as '-deliberately putting the German gunship V6805 out of action by ramming the vessel with his Beaufighter aircraft and sacrificing his own life'. Mr Wright described the actions as being of '-extreme valour and self-sacrifice, worthy of the award of the Victoria Cross'.

68. Mr Wright described FLGOFF Hakewill's aircraft being hit in the starboard engine by enemy fire at least 7 km from the ship. He asserted that FLGOFF Hakewill, rather than ditching his aircraft, continued his attack against the manoeuvring ship in a manner unlikely to have been accidental. Mr Wright ascribed FLGOFF Hakewill's actions as being a choice to:

- 'silence the ship rather than save himself' and 'an act of extreme devotion to duty in the face of the enemy'.

69. Mr Wright described reliable witness statements from Orsta, photographic evidence from 489SQN, an extract from the Museum of Contemporary History in Stuttgart, and the Kurt Heinovicz letter held by Aalesund Museum as supporting his application.

⁴⁰ Oral submission by Mr Wright on 21 February 2017

70. In response to questions about the attack geometry, Mr Wright described his understanding that FLGOFFs Smith and Hakewill attacked the vessels in the fjord on an easterly heading with FLGOFF Hakewill then turning back through 180 degrees over Orsta town to attack the escort vessel, while FLGOFF Smith turned for home. He later amended this description and confirmed his belief that FLGOFF Hakewill's aircraft took damaging fire from the escort vessel at a distance of 7 km whilst *'flying in a straight approach'* on a westerly attack heading towards the V6805. Mr Wright described FLGOFF Hakewill's attack as being accompanied by FLGOFF Herbert and WOFF Ayliffe.

71. In his submission to the Tribunal Mr Wright stated that:

'- having lost his right engine, FLGOFF Hakewill made a u-turn and flew back down the fjord ignoring the opportunity to force land his aircraft on the calm water of the fjord or a small clearing nearby.'

72. At the hearing, Mr Wright explained that the opportunity for a forced landing was his own speculation as to what options may have been available to FLGOFF Hakewill. He also confirmed that no one is able to ascertain FLGOFF Hakewill's intent, but as a trained pilot, he believed it would have been a simple matter for FLGOFF Hakewill to have made a forced landing on the north side of the fjord. Mr Wright also offered his opinion that FSGT Sides would not have bailed out of the aircraft unless he had been ordered to do so.

73. Mr Wright also advised the Tribunal that there was significant military value in FLGOFF Hakewill's action as the destruction of the weapons on V6805 removed the threat of anti-aircraft fire for the subsequent 489SQN attack wave.

Summary of Oral Evidence from Major Ove Roev and Police Chief Guttorm Hagen

74. Major Roev described his commencement of research in 1984 and his gathering of data initially from archival material from the United Kingdom. He said that in 2001, retired SQNLDR Smith visited Orsta and he took the opportunity to discuss his recollections of the attack at length. His efforts to understand the events of 1944 included taking SQNLDR Smith on a flight in a light aircraft in order to reconstruct his route around the fjord. Major Roev captured the results of that research in the map presented to the Tribunal (Figure 3).

75. Major Roev described FLGOFF Smith making a deliberate decision at Bervika to position his formation for the attack by first tracking overhead Volda in order to approach the fjord from behind the high ground at Melshornet, commencing his sweep down the fjord with an attack on the *Albert Janus* at the head of the fjord then moving further westward to attack the V6805. Major Roev told the tribunal that in correspondence, FLGOFF Herbert had told him that he had seen FLGOFF Hakewill's aircraft hit in the right engine as they approached the V6805 and, as his aircraft was then flying faster and therefore ahead of FLGOFF Hakewill, he did not see the aircraft impact the vessel.

76. Major Roev said that the apparent bail out of FSGT Sides at very low altitude provides an indication that he had been ordered to do so by FLGOFF Hakewill. Major Roev described the impact and damage to the V6805. He also detailed the 489SQN attack as coming in an easterly direction and sinking the *Radbod* without enemy resistance.

77. In describing his father's physical position on the day and his reconstruction of the events, Police Chief Hagen stated that it would be impossible to land an aircraft on the northern shore of the fjord, leaving a ditching in the fjord as the only option for crash landing. Police Chief Hagen stated that his father was in a position near Skorgeura on the northern side of the fjord about 600 metres from the position of the V6805 and 4km from Orsta town.

78. Although statements indicate that FLGOFF Hakewill may have lost his right engine at a distance of 7 km from Mr Sverre Hagen's position, Major Roev reiterated his belief, based on the advice from FLGOFF Herbert, that FLGOFF Hakewill suffered destructive damage as he approached the gunship, opposite the point at Selbervik. Major Roev speculated that FLGOFF Hakewill's aircraft may have been hit at a distance of 7 km from Mr Sverre Hagen as he attacked the *Albert Janus* and again at a distance of about 1 km from the V6805.

79. Major Roev stated that he had located the photograph provided at Figure 4 from the internet. He confirmed that the photograph is of the Orsta Fjord looking in an easterly direction towards Orsta township at the top left and the point at Selbervika at top right.

80. With reference to the Australian War Memorial photograph labelled V.455 ABOUT TO DITCH, (Figure 5) Major Roev believes that the subject aircraft is actually the outrider aircraft flown by WOFF Ayliffe who joined in the attack on the V6805. Major Roev stated that SQNLDR Smith described his attack formation as him leading a 'vic' formation with FLGOFF Herbert to his left rear and FLGOFF Hakewill to his right rear. After receiving permission to join the attack, FLGOFF Ayliffe appeared ahead and to the right of FLGOFF Smith.

81. Police Chief Hagen described his father's conviction that FLGOFF Hakewill's impact with the ship was a deliberate act was based on his observation that the aircraft changed direction to track the ship, was firing continuously throughout, and that he believed FSGT Sides had bailed out of the aircraft. Police Chief Hagen stated that, further to his written description of seeing '*something white*' behind the aircraft, his father had also claimed to have seen an airman leave the aircraft at low level.

Summary of other Oral Evidence

82. Mr James Charles Hakewill, a second cousin, gave the tribunal a summary of FLGOFF Hakewill's family history. He described the family's appreciation of the work done by Mr Wright, Major Roev and Police Chief Hagen in recognising the actions of FLGOFF Hakewill.

83. Ms Katrina Parker, daughter of SQNLDR Smith, described the role of her father in leading the attack and his fear that he had been responsible for hitting one of his own aircraft during his attack on the V6805. She described his relief in being told that the fire that hit FLGOFF Hakewill had actually come from a ground position on the north side of the fjord. She confirmed that her father had not actually seen FLGOFF Hakewill's aircraft crash.

84. Ms Shellie Peardon, also a daughter of SQNLDR Smith, described her father's role in leading the attack and his concern that he had been responsible for the loss of FLGOFF Hakewill. Ms Peardon said that her father's concern arose from his belief that he was on a conflicting attack heading with FLGOFF Hakewill and his relief in being told many years later by Mr Sverre Hagen that the fire that downed FLGOFF Hakewill's aircraft had actually

come from German bunkers on the north side of the fjord. Ms Peardon told the Tribunal that Mr Sverre Hagen had told her that he had advised SQNLDR Smith after the war that the fire had come from German bunkers up on the hill on the northern side of the fjord. She also said that Mr Sverre Hagen told her that he had located a cap and other minor items (which she could not recall) along with FSGT Sides' parachute.

85. Responding to questions from the Tribunal, Major Roev submitted that there were no fixed German gun installations on the north side of the fjord. Police Chief Hagen had no knowledge of other items recovered from the fjord.

Summary of Oral Evidence provided by FLTLT Simon Hall and Mr Martin James representing the Department of Defence

86. Mr James noted RAAF appreciation of the contribution of Mr Wright, Major Roev, Police Chief Hagen and the Hakewill, Sides and Smith families in honouring the service of FLGOFF Hakewill and FSGT Sides and the contribution made to RAAF heritage and to the understanding of the service of our World War 2 airmen.

87. Mr James said that Air Force concurred with details of the attack by FLGOFF Hakewill against the V6805 and his aircraft striking the ship with its right wing and crashing into the water some distance beyond the ship.⁴¹ Mr James noted the considerable damage inflicted on the V6805 by FLGOFF Hakewill's attack as a result of his gunfire and the aircraft striking the ship.

88. Mr James described CAF's initial decision regarding the retrospective award of the VC, as being based on:

- a. FLGOFF Hakewill's actions being consistent with the actions of other members of the squadron during the attack of 5 December 1944,
- b. FLGOFF Hakewill's actions during the attack of 5 December 1944 being consistent with other squadron members actions during previous and subsequent attacks on enemy shipping,
- c. the absence of evidence suggesting maladministration,
- d. no VC nomination being found for FLGOFF Hakewill, and
- e. an assessment that the results of FLGOFF Hakewill's attack were not material to the other members of the patrol completing their attacks or their ability to leave the area.

89. Mr James said that after considering the additional material provided by Mr Wright and further Defence research, the facts supporting the original CAF decision remained valid. Mr James said that Air Force had concluded from the photographic evidence and the German records that the attack by FLGOFF Hakewill was ordered by SQNLDR Pilcher and was as part of a multi-aircraft coordinated attack – a method of attack routinely utilised by 455SQN.

⁴¹ At the hearing, Mr James explained that, given his position within the formation, Defence also assumes that FLGOFF Hakewill participated in the attack against the *Albert Janus* which immediately preceded the attack against the V6805, although no evidence has been located for that conclusion.

Mr James noted that the statements made by FLGOFF Herbert and WOFF Ayliffe in the book *Strike and Strike Again* made no reference to FGST Sides bailing out of the aircraft.

90. Mr James described concerns related to the assumptions contained within eye-witness accounts provided from the ground. He also pointed to the absence of any broadcast intentions from FLGOFF Hakewill and the inability to determine intention from ground observation. Mr James concluded that there was no certainty that FLGOFF Hakewill intended to ram the V6805 with the only certainty being that he flew directly at the vessel in order to aim his weapons at the target.

91. Mr James also stated his concern regarding the second assumption that FLGOFF Hakewill had ordered his navigator to abandon the aircraft. Mr James noted that FLGOFF Hakewill's instructions were not relayed to other squadron members and could not be determined from ground observation. He said that in the view of Defence, the fate of FGST Sides was 'unresolved'.

92. Mr James described the provision of planned and well established Air Sea Rescue support as being a feature of this raid, given the status of RAF Air Sea Rescue in 1944 and the response and rescue of the M/455 crew. This led Mr James to speculate that FLGOFF Hakewill would have been aware that a legitimate option existed for him to ditch his aircraft away from the Orsta Fjord and be rescued.

93. Mr James felt that additional research by Mr Wright and Defence had failed to resolve FLGOFF Hakewill's intent in attacking the V6805, other than as part of a formation ordered to conduct an anti-shipping attack in Orsta Fjord by his formation commander. He also said that Defence had been unable to determine whether FLGOFF Hakewill was in control of his aircraft at the time of its collision with the V6805 and unable to recover from his attack, or whether FLGOFF Hakewill was killed or wounded prior to impact with the ship.

94. In concluding his submission, Mr James said that Defence regarded the actions of all members of 455SQN taking part in the attack of 5 December 1944 to be consistent with the highest traditions of the RAAF and demonstrated the courage and determination of all the crews of the unit. He said that FLGOFF Hakewill's loss was tragic, that his service should be held in the highest regard, and that his actions were consistent with those of his fellow squadron members.

95. FLTLT Hall offered his assessment that the evidence re-affirmed the basis of the CAF decision with the essential deficit being no proof of intent. FLTLT Hall stated that for a VC nomination, the proof of intent has to be held at the highest level as it is the component which underpins the gallant action.

The Victoria Cross for Australia

96. Australian service personnel received honours and awards including the VC under the Imperial system until February 1975 when the Government introduced the Australian system. The VC was established by Letters Patent on 15 January 1991 to be:

'the highest decoration for according recognition to persons who, in the presence of the enemy, perform acts of the most conspicuous gallantry, or daring or per-eminent acts of valour or self-sacrifice or display extreme devotion to duty'.⁴²

97. The honour is governed by Regulations set out in the Schedule:

...

Conditions for award of the decoration

3. *The decoration shall only be awarded for the most conspicuous gallantry, or a daring or per-eminent act of valour or self-sacrifice or extreme devotion to duty in the presence of the enemy.*

...

Making of awards

7. *Awards of the decoration shall be made, with the approval of the Sovereign, by Instrument signed by the Governor-General on the recommendation of the Minister.⁴³*

The Tribunal's Consideration

98. The Australian War Memorial contains a series of photographs attributed to FLGOFF N.R. Smith and described as being cockpit views of a German merchant ship under attack in Orsta Fjord, 5 December 1944. The topography evident in these photographs does not match the topography of Orsta Fjord. By correlating the geographic features in the photographs, the Tribunal has determined that the series of 'fjord' photos are actually of vessels at a position N61.706585 E5.212061. The Tribunal formed the view that these photographs are likely to have been taken on a 455SQN mission against shipping in Midtgulen Fjord, conducted on 8 March 1944.

99. The Tribunal was reasonably satisfied that the disposition of the ships in Orsta fjord at the time of the attack was accurate. The German records are quite definitive and all other reports agree. The Tribunal is also reasonably satisfied by FLGOFF Smith's gun camera film that the V6805 anchored off Selbervika is the '*smaller ship*' attacked by Q/455 as noted in the 455SQN operations record book.

100. In contrast, the attack profiles flown by 455SQN are quite unclear from the 455SQN Operations Record Book. The Tribunal considered that the Record provides a confused picture by referring to an initial wave as being '*down the fjord*' while the second wave is described as being '*up the fjord, but from land*'. However, the Record does clearly suggest that the first and second waves of attack were in opposite directions.

101. Of the various speculative maps of the attack, the Tribunal was reasonably satisfied that the sketch map at Figure 3, prepared on the basis of SQNLDR Smith's recollections and the reconstruction efforts of Major Roev, more accurately represents the probable route flown by FLGOFF Hakewill.

⁴² *Commonwealth of Australia Gazette No. S25 – Victoria Cross Regulations*– dated 4 February 1991

⁴³ *Ibid*

102. Photographs and gun camera film found in the Australian War Memorial archive provide indications that in the view of the Tribunal, confirm attack directions. One photograph is clearly of the *Albert Janus* under attack at the head of the fjord. As the negative for this photograph includes a reference to J/455, the Tribunal considers this aircraft to be the source of the photograph. From the 455SQN Operations Record Book it appears that aircraft D, F & J/455 executed the first wave of the attack and the photograph indicates an easterly attack direction – described in the operations record as being ‘*down the fjord*’. The orientation of this photograph matches the gun camera film of SQNLDR Pilcher’s attack on the *Albert Janus*. Similarly, FLGOFF Smith’s gun camera film confirms his attack directions for the *Albert Janus* and the V6805.

103. The eye-witness accounts from the fjord point to the difficulty faced by ground observers attempting to track aircraft movements. The Tribunal considered that the over-estimation of aircraft numbers in German reports is probably reflective of the attacking aircraft using the surrounding high terrain to shield their approach and attack in coordinated waves from multiple directions. Noting some inconsistencies, the Tribunal gave some weight to the V6805 Battle Report as being an account which accurately captures the confusion experienced during the attack. Equally, Mr Kurt Heinowicz’s description of the attack in his letter to the Aalesund Museum contains some inconsistencies; although the Tribunal agreed that this letter reinforced the level of chaos experienced by the crew on the V6805 whilst they were under intense and accurate fire.

104. In contrast to the other ground based observations, Mr Sverre Hagen’s accounts are quite precise. Mr Hagen records FLGOFF Hakewill’s aircraft first appearing at a distance of 12–14 km, and being hit by ground fire at a distance of 7 km. These ranges suggest Mr Hagen had visual contact with FLGOFF Hakewill’s aircraft from the moment he first appeared, in company with FLGOFFs Smith and Herbert, rounding Melshornet.

105. Utilising the map prepared by Major Roev and the range estimates provided by Police Chief Hagen, the Tribunal considered the range from Mr Sverre Hagen’s observation point to the point where FLGOFF Hakewill’s aircraft was likely to have first become visible to be about 8 km. The Tribunal observed that the correlation between the events reported by Mr Sverre Hagen and Major Roev’s reconstruction of FLGOFF Smith’s attack profile is less precise in the initial attack phase.

106. The Tribunal compared Mr Sverre Hagen’s description of events reported at longer range with the far more modest map prepared by Police Chief Hagen (Figure 2) to record his father’s recollections. In this map, FLGOFF Hakewill’s aircraft is first annotated about 1.5 km from the V6805. The Tribunal concluded that this map represents the portion of FLGOFF Hakewill’s track where Mr Sverre Hagen was very confident of what he had observed and can therefore be regarded as reliable.

107. The Tribunal considered that the level of confusion experienced by defending German naval personnel, and the absence of correlating detail within official records, should place limits on the extent of extrapolation and assumption that can be accepted from ground based eye-witness accounts. For example, the Tribunal notes that aircraft M/455 was hit by ground fire while attacking ships in the fjord. We know from the record that this aircraft was hit in the right engine, but we do not know what position this aircraft held in the raid. Having two aircraft reported to have been hit in the right engine adds an additional layer of uncertainty regarding which aircraft is flying in which direction, where and when.

108. The Tribunal was reasonably satisfied that FLGOFF Hakewill's position in the formation as FLGOFF Smith's wingman was reliable. Concomitantly the Tribunal was therefore confident that FLGOFF Hakewill attacked in the second wave and that he was with FLGOFF Smith during his attack on the V6805. The Tribunal is also reasonably satisfied that FLGOFF Smith's concern regarding his possible shooting down of his wingman confirms that FLGOFF Hakewill was in close proximity to FLGOFF Smith's aircraft during the attack.

109. The Tribunal finds the tendered photographic evidence to be compelling. The overview photograph said to have been taken by 489SQN (Figure 4) confirms the position of the V6805 and the crash of V/455. By reference to the surrounding terrain, the photograph 'V.455 ABOUT TO DITCH' (Figure 5) also confirms the attack direction being flown by the subject aircraft. This photograph's negative includes identification and file markings that include reference to Q/455; FLGOFF Smith's aircraft. The Tribunal finds that this photograph is likely to have been taken from FLGOFF Smith's aircraft probably by his navigator/observer FLGOFF F.E. Jones.

110. The Tribunal considered that if FLGOFF Hakewill's aircraft is indeed the subject of this photograph, it clearly indicates that FLGOFF Hakewill was ahead of the photography platform (FLGOFF Smith), and not in a trailing position in the attack wave. FLGOFF Smith has been reported as believing for many years that he may have been responsible for damaging FLGOFF Hakewill's aircraft. Accepting FLGOFF Smith's aircraft to have been the photography platform and FLGOFF Hakewill to be the subject would explain this belief.

111. However, the Tribunal noted that Major Roev provided oral evidence that casts doubt as to this aircraft being V/455 (Hakewill's aircraft). The disposition of aircraft described by Major Roev suggests the photograph 'V.455 ABOUT TO DITCH' is incorrectly labelled. Major Roev described FLGOFF Herbert's aircraft as being to the left rear of FLGOFF Smith and FLGOFF Hakewill's aircraft trailing to the right rear. If FLGOFF Hakewill were actually trailing to the left rear of FLGOFF Smith (i.e. the reverse 'vic' to that described by Major Roev), the disposition would match the eye-witness descriptions of WOFF Ayliffe and FLGOFF Herbert that appear in the book *Strike and Strike Again*. While it has no bearing on the Tribunal's recommendations, the Tribunal considered it most likely from the various eye-witness statements that the aircraft depicted in 'V.455 ABOUT TO DITCH' is actually WOFF Ayliff's aircraft R/455, and that FLGOFF Hakewill flew a trailing position to FLGOFF Smith in a loose combat left position.⁴⁴

112. The Tribunal, having considered all of the evidence, could not determine the precise geometry flown by FLGOFF Hakewill prior to his final attack against V6805; but was reasonably satisfied that the attack was prosecuted from east to west, probably including a firing pass against the *Albert Janus*, before moving down the fjord to attack V6805 at Selbervik. The Tribunal was therefore satisfied that FLGOFF Hakewill was likely to have been flying in a trailing combat left position behind SQNLDR Smith's aircraft.

113. Relying on the reports of Mr Sverre Hagen and the captain of the V6805, the Tribunal considers it probable that FLGOFF Hakewill's aircraft was hit during its attack against

⁴⁴ *Loose combat left* is an extended left echelon formation position flown to the left and rear of the leading aircraft.

V6805. Two eye-witness accounts record FLGOFF Hakewill firing at the V6805 throughout his attack. As the Beaufighter armament is forward firing and aligned to the flight path of the aircraft, V/455 itself must have been aimed directly and continuously at the vessel to inflict the considerable damage reported in the records.

114. The Tribunal finds that Beaufighter V/455 failed to recover from its cannon attack and impacted the foredeck of the vessel V6805 before crashing into the fjord. This finding is consistent with the 455SQN Operations Record Book although no damage to the V6805 was noted at the time.

115. There is no substantive evidence that provides any insight as to why FLGOFF Hakewill failed to recover the aircraft from its cannon attack. It is possible that FLGOFF Hakewill's navigator/observer FSGT Sides had some forewarning of the impending crash and attempted to escape from the aircraft. The Beaufighter aircraft was equipped with two escape hatches to facilitate in-flight abandonment. However, the probability of a successful escape and parachute descent from low altitude (below 1000') would be negligible. While Police Chief Hagen and Major Røev have reported that Mr Sverre Hagen witnessed a crew member bailing out of the aircraft, no direct eye witness accounts reflect this detail. The Tribunal accepts that the recovered parachute offers circumstantial evidence that FSGT Sides left the aircraft.

116. The Tribunal finds that there is no evidence available to determine what FLGOFF Hakewill's intentions may have been with respect to his direct attack on V6805. The Tribunal could not be satisfied that FLGOFF Hakewill's aircraft was critically damaged some time prior to the attack against the vessel. Rather the Tribunal was reasonably satisfied that the impact with the V6805 was a direct consequence of damage sustained during FLGOFF Hakewill's attack against that vessel. The Tribunal is unable to form any view of FLGOFF Hakewill's physical condition prior to impact with the V6805.

117. Following the second attack wave, all 455SQN aircraft left the Orsta Fjord and five 489SQN aircraft conducted a further cannon attack. The Tribunal finds it difficult to accept Mr Wright's assertion that FLGOFF Hakewill's action was critical to the success of the mission. The Beaufighters of 455SQN have been noted by the official historian as having performed a flak suppression role. While this particular role would more likely be performed in support of other aircraft conducting torpedo attacks, the Tribunal notes that the aircrew of 455SQN would have been experienced in conducting attacks against vessels and anti-aircraft batteries returning fire.

The Tribunal's Conclusions

118. The Tribunal has no doubt that FLGOFF Hakewill and the other aircrew of 455SQN exhibited great courage in conducting their attacks against German shipping in Orsta Fjord on 5 December 1944. The Tribunal determined that the attack by FLGOFF Hakewill against the escort ship V6805 was particularly effective, but with a most tragic outcome.

119. The Tribunal noted that Mr Wright has interpreted the absence of alternative action as meaning that FLGOFF Hakewill made a conscious decision to sacrifice his life. He also stated that 'no one can know for sure that this was FLGOFF Hakewill's intent'. The Tribunal noted that the Air Force historian provided alternate hypotheses to explain the tragic outcome - these theories are equally unsupported by evidence.

120. While one view of the circumstances may suggest individual gallantry, it is not possible for anyone to know FLGOFF Hakewill's intent. Despite the painstaking reconstruction of events and the exhaustive research efforts of all concerned, the Tribunal has been unable to find the evidence of intent that would be required to support a recommendation of FLGOFF Hakewill for the VC or any other gallantry award. That FLGOFF Hakewill lost his life in the service of his country is beyond doubt. The Tribunal finds FLGOFF Hakewill's attack on shipping within Orsta Fjord on 5 December 1944 accords with the highest traditions of the RAAF and demonstrates courage and determination but without clear evidence of intent, the Tribunal is unable to recommend an award for gallantry.

DECISION

121. The Tribunal decided to recommend to the Minister that the decision of the Chief of Air Force, Air Marshal G.N. Davies, AO, CSC, that no further action be taken in recognition of the actions of Flying Officer James Austin Hakewill at Orsta Fjord, Norway on 5 December 1944, be affirmed.