



Australian Government

Defence Honours and Awards Appeals Tribunal

Treadwell and the Department of Defence re: Doolan [2020] DHAAT 3 (20 February 2020)

File Number 2018/039

Re **Ms June Treadwell OAM** on behalf of
Driver William Thomas Doolan
Applicant

And **The Australian Army** on behalf of
The Department of Defence
Respondent

Tribunal Ms Anne Trengove (Presiding Member)
Rear Admiral James Goldrick, AO, CSC, RAN, (Retd)
Mr David Ashley, AM

Hearing Date 13 August 2019

DECISION

On 20 February 2020, the Tribunal recommended to the Minister:

- a. that the decision by the Chair of the Defence Historical Honours Review Board of 18 April 2018 to refuse to recommend a gallantry award for Driver William Doolan for his actions with 2/21st Battalion attached to the Gull Force of the 8th Division during the Japanese invasion of Ambon Island on 1 February 1942 be set aside;
- b. the Minister recommend to the Governor-General that Driver William Doolan be posthumously awarded the Medal for Gallantry for acts of gallantry in action in hazardous circumstances as a volunteer on a reconnaissance patrol and then further volunteering to fight off advancing Japanese forces, alone, with little chance of survival on 1 February 1942 at Kudamati village, during the Japanese invasion of Ambon Island; and
- c. the Minister direct Army to review the eligibility of Major Mark William Horton Newbury, the Officer Commanding Laha Aerodrome, Ambon, for a defence honour.

CATCHWORDS

DEFENCE HONOUR – *Gallantry Decorations - 2/21st Battalion - Driver - Second World War - Gull Force - Confrontation during the Japanese invasion of Ambon Island, Indonesia - historiography of the Ambon campaign, particularly on 1 February 1942 at or near the village of Kudamati, to the south of Ambon City - establishing evidence of the action of that day from Australian, Japanese, Dutch and Indonesian records and accounts - child eye-witness account - maps - myth and legend - Tribunal research - Nomination process for Imperial Awards - lawfulness of 8th Division's Administrative Instruction of No 2/45 of 21 December 1945 - maladministration - previous considerations for medallic recognition - gallantry assessment - hazardous circumstances - death in action - posthumous honour for acts of gallantry - model litigant obligations.*

LEGISLATION

Defence Act 1903 – Sections 110V(1), 110VA, and 110VB(1)

Defence Regulation 2016 – Section 35

Commonwealth of Australia Gazette No. S25, Victoria Cross Regulations and Gallantry Decorations Regulations dated 4 February 1991

Defence Honours and Awards Appeals Tribunal Procedural Rules 2011

Legal Services Directions 2017

REASONS FOR DECISION

Background

1. On 26 May 2014, Ms June Treadwell OAM, (the Applicant), made application to the Department of Defence for a posthumous ‘bravery award’ on behalf of her father, the late Driver William Doolan. Driver Doolan was killed on 1 February 1942, during the Japanese invasion of Ambon Island, in the Netherlands East Indies, now Indonesia.
2. After considerable delay, on 5 October 2017, Colonel Sue Kerr, Acting Director General Personnel – Army, on behalf of the Department of Defence (the Respondent) advised Ms Treadwell that her application would be referred to the Defence Historical Honours Review Board (the Board). On 21 November 2017, the Board sat and decided the application. On 18 April 2018, the Chair of the Board, Air Vice-Marshal Greg Evans, DSC, AM advised Ms Treadwell that the Board decided it would not be taking any further action to recognise her father’s actions.
3. On 14 August 2018, Ms Treadwell applied to the Tribunal for review of her father’s eligibility for an ‘Award or Medal for Gallantry – VC, SOG, MOG, COG’.¹
4. On 13 September 2018, the Tribunal sought a report from the Secretary of the Department of Defence as to the decision to deny a gallantry award. The Tribunal asked that the report provide all the evidence considered relevant to the decision to refuse to recommend Driver Doolan for recognition. This included ‘the findings on material questions of fact and the reasons for the decision’ and ‘reference to the evidence on which the findings were based’.²
5. This request was answered by Air Vice-Marshal Evans in his letter of 16 November 2018, which provided the Board Minutes of 17 October 2017 and the *Report into Application for Retrospective Bravery Award - VX35406 Driver Doolan* (the Army research report). The Respondent had conducted its own research *ab initio* principally by the Army Principal Research Officer, Major Philip Rutherford (who has since retired). The resulting report was endorsed by Lieutenant Colonel E. O’Mahoney, Staff Officer Personnel Policy in Army Headquarters in September 2017.
6. The letter of 16 November 2018 also set out that on 26 October 2018, the Chief of Army, Lieutenant General Rick Burr, AO, DSC, MVO, agreed that no further action be taken to recognise Driver Doolan, relying upon the recommendation of the Board.³

¹ Application for Review of Decision, Ms June Treadwell OAM, 14 August 2018. The Tribunal interpreted the abbreviations to mean Victoria Cross for Australia, Star of Gallantry, Medal for Gallantry and Commendation for Gallantry.

² *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011*, Rule 7

³ Letter, DH&A/OUT/201X/0092 (sic), 16 November 2018.

7. The Board’s letter 16 November 2018 and the Army research report were sent to Ms Treadwell on 17 December 2018. She responded with further comments on 17 December 2018.⁴

8. The decision and reasons are set out hereunder under the main headings as follows:

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Tribunal Jurisdiction

9. Pursuant to Section 110VB(2) of the *Defence Act 1903* (the Act) the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in section 110V(1) and includes a decision made by a person within the Department of Defence to refuse to recommend a person for an honour or award in response to an application. Section 35 of the *Defence Regulations 2016* lists the defence honours applicable to the Tribunal’s review function. Included in the defence honours set out in section 35 are the gallantry awards referred to in Ms Treadwell’s application, namely the Victoria Cross (VC), Star of Gallantry (SG), Medal of Gallantry (MG) and the Commendation for Gallantry. Therefore, the Tribunal has jurisdiction to review decisions in relation to the honours sought.

⁴ Letter, Ms June Treadwell OAM, received 17 December 2018.

10. As the Applicant, on behalf of her father, seeks 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, in accordance with section 110VB(1) of the Act.

Merits review

11. **General.** Section 110VB of the Act requires the Tribunal to undertake a merits review of all reviewable decisions. This requires an examination of the merits of the matter in dispute rather than the lawfulness of the decision under review.

12. The facts, law and policy aspects of the decision are all considered afresh and a new decision made.⁵ The Tribunal reviews the decision, and not the reasons for the decision. In doing so, there is no legal onus of proof, and there is no presumption that the decision was correct.⁶ The Tribunal is bound to make what it regards as the ‘correct or preferable’ decision and must reach a decision that is legally and factually correct.⁷

13. Merits review revolves around the evidence and accordingly, the Tribunal conducts an independent review, with values, expertise, methods and procedures of its own, and not those of the decision-maker.

Driver Doolan’s Service Record

14. William Thomas Doolan VX35406 enlisted in the 2nd Australian Imperial Force on 11 July 1940. After basic training, he was allotted to 2/7th Australian Infantry Battalion.

15. Being a heavy vehicle driver prior to enlistment, Private Doolan was sent on Army driving courses, graduating with the rank of Driver in February 1941. Rather than following 2/7th Battalion to the Middle East, Driver Doolan was eventually posted to 2/21st Battalion in northern Australia. He departed with the Battalion for overseas duty in Ambon as part of Gull Force, attached to the 8th Division, on 17 December 1941 as an infantryman.

16. During fighting with the Japanese on 2 February 1942, Driver Doolan was listed as ‘missing’. On 26 February 1942, he was reported as being ‘killed in action.’ This date was later amended to 1 February 1942.⁸

⁵ Pearson, Linda, “Merit Review Tribunals”, in Creyke, Robin and McMillan, John, *Administrative Law – the Essentials*, AIAL 2002, p. 68.

⁶ *McDonald v Director-General of Social Security* (1984) 1 FCR 354.

⁷ *Council of Australian Tribunals Practice Manual* dated 7 April 2006 p.1.3.1.2.

⁸ Service Record, Doolan, William Thomas, NAA: B883, VX35406.

17. At his death, he was 29 years of age. Driver Doolan was initially buried in Kudamati, south of Ambon city, where his body had been found a few days after his death. After the end of the war, his body was exhumed and transferred to the war graves cemetery at Tantui Galala.

18. For his service in the Army, Driver Doolan was awarded the:

- 1939-1945 Star
- Pacific Star
- Defence Medal
- War Medal 1939-1945
- Australia Service Medal 1939-1945

Prior considerations for medallic recognition

19. Previous representations have been made to Australian governments over the years to recognise the actions of Driver Doolan. These representations and ensuing investigations were largely in response to articles in the Australian media. The claim was that Doolan had volunteered to remain behind to cover the withdrawal of a reconnaissance patrol and that he had made a heroic stand against Japanese troops in the village of Kudamati, causing many casualties, but was eventually overwhelmed and killed.

20. Noting that an Australian newspaper article in 1947 referred to an assertion that Driver Doolan had been posthumously awarded the “Dutch equivalent of the British Victoria Cross”, the then Minister for the Army initiated certain enquiries with the Royal Netherlands Legation. The resulting advice was that there was no known bestowal of any Dutch honour or award on Driver Doolan.⁹

21. In 1949 a further representation by G.J. Bowden MC, MP was made and an investigation was initiated by the then Minister for the Army.¹⁰ In a letter of 1 June 1949, the Minister for the Army advised that the evidence available did not reveal any action on the part of Driver Doolan, other than that expected of a soldier in the ordinary course of duty in operations. It was stated that as no recommendation had been submitted for an award by Driver Doolan’s chain of command, further consideration could not be given to his case.¹¹

⁹ Secretary, Department of Defence, Memorandum 890 dated 20 May 1948 to Secretary, Department of the Army, AWM119/222.

¹⁰ Military Secretary Letter dated 13 April 1949 to Lieutenant Colonel W.J.R. Scott, AWM119/222.

¹¹ Minister for the Army Letter dated 1 July 1949 to G.J. Bowden Esq, MC, MP. AWM 119/222.

22. Further, in 1957 the Director of Public Relations in the Department of the Army wrote to the Editor of the *Australasian Post*, concerning additional information provided by Mr F.H. Waaldyk of the KNIL (Royal Netherlands Army). The letter stated that this information did not alter the position and there was insufficient information to give further reconsideration to medallic recognition for Driver Doolan.¹²

23. In 1984 Ms Treadwell submitted an earlier application to the then Minister of Defence for an award for her father. This application was refused on 29 October 1984, at a time when there was no avenue for review of such decisions.

24. While the Tribunal notes the previous unsuccessful considerations for medallic recognition, it reiterates that it is obliged to determine the actions of Driver Doolan against the statutory eligibility criteria set out at paragraphs 254-258 and the current decision under review of 18 April 2018, and not any earlier considerations.

25. Helpfully, the prior applications and considerations contained evidentiary material which was of assistance in determining the actions of Driver Doolan and how the nomination process was applied by the 8th Division shortly after the war.

The Decision under review

26. The Tribunal makes the following observations concerning the decision under review and makes further comments at paragraphs 83-94 below under the heading ‘obligations as a model litigant’.

27. **Delay.** At the outset, the Tribunal noted there was unexplained delay between the decision under review of the Board of 17 October 2017 and the communication of the decision to the Applicant some six months later on 18 April 2018. It should be noted that this delay came on top of an extremely long delay to decide the application, noting it was lodged on 26 May 2014.

28. **Brief reasons.** The Board’s decision letter of 18 April 2018 was brief in its reasons for refusal. The decision referred to the Applicant’s submission and the Army research, but did not do so in any detail. It did not enclose the research. The Board’s reasons for refusal are set out as follows, that:

- the [Army] research did not locate substantiating evidence that maladministration had occurred in relation to a nomination for recognition at the time;

¹² Director of Public Relations Army Letter D/4/3040 (G11) dated 29 November 1949 to Editor *Australasian Post*, AWM119/222.

- the [Army] research indicated that the survivors of the action for which recognition was sought were capable of submitting formal recognition for Driver Doolan at the time;
- there was no evidence available to suggest Driver Doolan was nominated or recommended for such recognition; and
- there were no compelling reasons to alter the decisions taken at the time by the chain of command where he was not recommended for an award, or to alter the decisions taken when the matter of Driver Doolan's actions in Ambon were reconsidered in 1949.

29. The Tribunal further notes that the Board's Minutes of 21 November 2017 made brief reference to the 'supporting evidence provided by the Army Historian for a retrospective bravery award...' and 'noted the research did not indicate that maladministration occurred.'¹³

30. Similarly, by letter dated 16 November 2018, the Chair of the Board reiterated the same reasons for refusal as referred to in the letter of 21 November 2017. The letter enclosed the Army research report as requested by the Tribunal. Whilst it stated the Board 'considered' the Army research report, it did not refer to the research or how it related to the Board's refusal or reasons for the same.

The Evidence and the Report of the Secretary of Defence – 'The Army research report'

31. The Army research report utilised material from the Australian War Memorial and the Australian National Archives, as well as a number of published works and media reports. (The material was listed in Annex A to the Army research report).¹⁴

32. The historiography of the Ambon campaign is examined in detail later in these reasons. Nevertheless, some points should be noted about the evidence and the analysis and the findings of the Army research report. It was observed at the outset there are no contemporaneous records relating to the actions of Driver Doolan. There are no official Australian or Japanese after-action reports. There are no known Australian eye-witnesses to the immediate action before Driver Doolan's death. There seems to have been no other actual eye-witnesses other than Job Lekatompessy, a local boy, 8 years old at the time. Job himself provided varying accounts to adults over the years. As a result, it was an extremely difficult task to reconstruct events around Kudamati on 1 February 1942 and Driver Doolan's role in the action prior to his death.

¹³ BK1201572 dated 10 October 2018, 'Decision Brief for CA on the Defence Historical Honours Review Board outstanding referrals for Army'.

¹⁴ R31038104 Dated September 2017 'Report into Application for Retrospective Bravery Award – VX35406 Driver William Thomas Doolan', Annex A.

33. From the Australian source material, namely from recollections from Lieutenant D.W. Smith, Transport Platoon Commander, it could be determined that Driver Doolan volunteered for a reconnaissance patrol to the village of Kudamati at sunrise on 1 February 1942. Driver Doolan then elected to stay behind, alone, and failed to return. The details of any last stand are unknown from Australian accounts. His body was found at Kudamati some days later.

34. The Australian material was largely sourced from an Australian Army report by Major Ian Macrae. This report was originally written 10 months after the surrender and then condensed into code and concealed, but afterwards destroyed to prevent discovery by the Japanese. It was later recreated and edited by Lieutenant Smith after the end of hostilities. The Tribunal refers to this document as the 'Australian report' throughout these reasons. The report attached a sketch map Annex I produced by Lieutenant Smith of Australian and Dutch troop positions. The Australian report referred to the following single entry relating to Driver Doolan:

'On Sunday 1 Feb a patrol of Tpt personnel under Sgt. J O'Brien reported enemy tps in the town of Ambon. One of the patrol (Pte Doolan) failed to return (K.I.A).'¹⁵

35. Some years after the war, Lieutenant Smith, set out his recollections which were relayed to the Secretary of the Department of the Army on 5 June 1949 in a letter from the Director of the Australian War Memorial.¹⁶ The excerpt below, which also appears in a letter from Smith to the Military Secretary dated 16 May 1949 is the only direct evidence from Australian sources of the action of Driver Doolan:

'On Sunday Feb. 1, at 0400 hours, I sent a small reconnaissance Patrol under Pl. Sgt. J. O'Brien towards the enemy lines. All patrols during this action were composed of volunteers, and on this occasion Doolan was one of the volunteers. It was essential that the patrol or some of its members return with the information required.

O'Brien returned about 0700 [0730 +9] hours, gave me the information, and advised that Doolan had elected to remain behind, to ensure the successful withdrawl [sic] of the party. I could hear S.A.A & M.G. fire which ensued during Doolan's engagement of the enemy, but could not see anything. The firing took place before O'Brien actually returned to my position.

¹⁵ 'Action of the Gull Force on AMBOINA December 1941 – 3 February 1942', p.12. AWM54 573/6/1A Part 3.

¹⁶ Based on Lieutenant Smith's narrative as provided to the AWM. Director AWM Letter 74/8/39 to Secretary Department of the Army dated 5 June 1949. Smith's narrative, cited by the Director (but not, significantly, by Smith himself) as 'a quotation from his personal diary' as presented in this letter is slightly more complete about the circumstances of Doolan's burial than that given in Lieutenant D.W. Smith Letter to Military Secretary dated 16 May 1949. AWM 119, 222.

Some days later, when the action was over, and the surrender took effect, I observed Doolan's body near a tree, at the side of the road in the village of Koedamati. His body was riddled with bullets, and his head practically severed by what appeared to be bursts of M.G. fire at short range.' ¹⁷

36. To summarise, there is no account by Sergeant O'Brien, any member of the reconnaissance patrol or anyone in Driver Doolan's chain of command other than Lieutenant Smith.

37. Thereafter, the story of Driver Doolan's final action and death is based on the recollections of Ambonese villagers (with the only actual eye witness being a then eight year old boy Job Lekatompessy). Job knew Doolan as Doolan had come to his house at intervals during the period immediately before the Japanese invasion.

38. Job gave varying accounts to a number of adults about what he had seen. These hearsay accounts are set out at paragraphs 206-208 of these reasons. His accounts of Driver Doolan's action make claims to huge numbers of Japanese casualties. The Tribunal notes that Job himself was not consistent in the figure he gave, nor in some of the details of the fighting.¹⁸ Doolan was said to have given Job of photo of his family before entering the fight. Job admitted in one interview that he 'could not see much of the fight', but his story was that Driver Doolan had climbed a tree with a light machine gun, that the tree was on a slope and that the Japanese, who had arrived in the area in trucks, made repeated advances but were forced to fall back, while 'the dead lay like stones in a watercourse.'¹⁹

39. The Army research report largely encapsulated the above information and also heavily relied upon the Japanese Unit Association history of the 228th Infantry Regiment translated by Dr Steven Bullard. Major Rutherford described it as a Japanese 'after action report'. However, the Tribunal refers to the Unit Association history throughout these reasons as the 'Japanese account' as it is not an 'after action report' or a record of the action at the time, but a narrative compiled by veterans of the 228th Infantry Regiment many years later.²⁰

¹⁷ Lieutenant Smith's recollections were then repeated in C.F. Coady, "'Gull" Force, Ambon: A History of the 2/21st Battalion' *Reveille*, July 1, 1962. pp. 5 & 34.

¹⁸ Job is cited as claiming 200 dead by Pat Burgess, 'The Ballad of Driver Doolan. Day 2: Doolan stays to fight!'

¹⁹ Job as quoted directly by Pat Burgess, 'The Ballad of Driver Doolan. Day 2: Doolan stays to fight!'

²⁰ Hohei Dai 228 Rentai-shi Hensan Iinkai (228th Infantry Regimental History Compilation Committee) Eds, *Hohei Dai 228 Rentai shi (History of the 228th Infantry Regiment)*, Hohei Dai 228 Rentai-shi Hensan Iinkai, Nagoya, 1st ed. 1973 (2nd ed. 1978). Translated by Dr Steven Bullard 2007. AWM MSS1912.

40. The relevant sections of the Japanese account described an engagement between Japanese troops of the 9th Company and a concealed enemy on 1 February 1942. The account states that the 9th Company headed south down the coastal road from Ambon when they suddenly came under enemy mortar and heavy arms fire. The firing was said to be concentrated and from a Bren machine-gun by a concealed enemy at fairly close range. But the enemy was nowhere to be seen. The unit was said to be pinned down for several hours by the attack with significant casualties until a grenade-launcher squad successfully silenced the 'enemy camp'.²¹

41. The relevant passages of the Japanese account are set out below, **(emphasis added in bold)**

1 February

*Battalion commander Nishiyama advanced the front line to the coastal road, and deployed the 9th Company as reinforcements along the road with the aim of increasing gains in the area. **However, the prepared enemy mortar and heavy arms fire was accurate and pervasive.** The commander of the 3rd Platoon, 2nd Lt Muto achieved death in battle at the edge of the opening into the coconut plantation. Casualties mounted and the advance was held.*

*The battalion commander judging that conditions for a daytime attack were unfavourable, began to prepare for a night attack. All companies began a simultaneous advance on the front line at 2000 hrs, engaging the enemy covertly.*²²

....

9th Co - 'Clearing operations of Ambon'

The 9th Company with Kawake's 1st Platoon left in Ambon City in reserve, headed south-west along the shoreline of the bay in the following order: Koseki's 2nd Platoon, Muto's 3rd Platoon, then Shirai's Command Squad. During this time they found some enemy remaining troops.

*In order to attack this enemy, the Company cut through the plantation to the right of the road and reached a slightly elevated grassy area. With the command squad deployed to the centre, the 3rd Platoon to the right and then 2nd Platoon to the left, the unit advanced on the high ground. **When they were 200 – 300 meters away, they suddenly came under concentrated fire from a Bren machine-gun fired by a concealed enemy at fairly close range.** At the head of the unit, Platoon commander Muto and Lance Corporal Kondo were killed in an instant, and the advance was halted. The enemy was nowhere to be seen, so there was not even a faint movement to aim at. The unit was pinned down for several hours in the open field, with absolutely no cover. It was not even possible to get aid to the casualties.*

*Platoon leader Koseki on the left finally managed to move to the trees on the left, **then advanced quickly to the flanks of the enemy to try and destroy them***

²¹ The relevant excerpts, translated by Bullard, are set out at Annex A.

²² *History of the 228th Infantry Regiment.*

in one fell swoop. Just as the Kamyā Squad were positioning in light machine gun at the edge of the trees, they were subjected to heavy fire from the enemy waiting for them, immediately killing rifleman Sugiyama Kyochi, and superior privates Ando Hisayoshi, and Handa Goichi. The Platoon Commander immediately ordered Isaji of the grenade-launcher squad to attack. The enemy camp was finally silenced with the strength of this attack.

*However, the sacrifices of the unit during the attack under the bright sun in this field were in vain. As a result, the unit changed its attack to a night assault.*²³

42. Major Rutherford formed the view that the actions of a concealed shooter against the Japanese, as set out above, tallied so closely with the Ambonese narratives that it could be inferred that the account described Driver Doolan's actions immediately prior to his death and Driver Doolan's gallantry.²⁴

43. Major Rutherford concluded that there appeared to be 'significant evidence of gallantry in choosing to remain behind to engage Japanese troops' and that by 'doing so he [Doolan] was likely to lose his life'.²⁵

44. The Army research report explicitly recommended that, 'Doolan be submitted to the Historical Honours and Review Board for consideration of an appropriate medallion recognition.'²⁶

Tribunal proceedings

45. **Preparation for hearing.** In preparation for hearing, it was difficult to reconcile the conclusion expressed in the commissioned and endorsed Army research report that there was 'significant evidence of gallantry' and the Board's decision that there were no compelling reasons to alter the decision not to recognise Driver Doolan with a gallantry award.

46. The parties were advised on 30 May 2019 that the Tribunal sought oral expert evidence at the hearing to assist with determining the actions of Driver Doolan. The Tribunal indicated that it sought the expertise of Major Rutherford, who by this time had retired from his role as the Army Principal Research Officer. The Tribunal also invited Major Paul Rosenzweig (Retd), who wrote a thesis titled 'Ziarah' – *The Gull Force Association Pilgrimages to Ambon in 2000*.

²³History of the 228th Infantry Regiment.

²⁴ R31038104 Dated September 2017 'Report into Application for Retrospective Bravery Award – VX35406 Driver William Thomas Doolan', p. 5.

²⁵ R31038104 Dated September 2017 'Report into Application for Retrospective Bravery Award – VX35406 Driver William Thomas Doolan', p. 6.

²⁶ R31038104 Dated September 2017 'Report into Application for Retrospective Bravery Award – VX35406 Driver William Thomas Doolan', p. 7.

47. There was no objection by the parties to the Tribunal adopting this course or their respective readiness for hearing set down for 13 August 2019.

48. **Provision of late evidence by Respondent.** Considerable material was provided by Defence shortly before hearing.

49. On 7 August 2019, a week prior to the hearing, the Respondent disclosed additional archival material relating to 1947 and 1949 concerning public interest in Driver Doolan.²⁷ The Tribunal provided the additional material to the Applicant and the two expert witnesses on the same day.

50. On 9 August 2019, a further document, namely an 8th Division *Administrative Instruction of No 2/45* of 21 December 1945 (the *Administrative Instruction*), was supplied by the Respondent to the Tribunal.²⁸ Due to the timing of the disclosure, the Applicant was not able to be provided this document until the hearing.

51. Although the Applicant had limited time to consider the new material, the Tribunal considers there was ultimately no procedural unfairness to the Applicant as both parties were given liberty to make further submissions after the hearing in relation to any issues arising from the late evidence.

52. **Hearing of 13 August 2019.** The hearing was heard in public, in Canberra. It was attended by the Applicant and her support person. There were a number of representatives for the Respondent, namely Air Vice-Marshal Evans, Chair of the Board, Brigadier Mark Holmes, AM, MVO (Retd) and Colonel Griffith Thomas on behalf of Chief of Army and Ms Petrina Cole, Director Honours and Awards.

53. Major Rutherford gave evidence in person and Major Rosenzweig gave evidence by way of telephone conference. Submissions were made by both the Applicant and by Air Vice-Marshal Evans, Brigadier Holmes and Ms Petrina Cole for the Respondent.

54. At the conclusion of the hearing, the Tribunal invited the parties to provide further submissions concerning the late evidence provided, which included the *Administrative Instruction*.

²⁷ 'Foreign Award to Driver Doolan (Prisoner of War) Enquiries 1947-1957', AWM 119/222.

²⁸ Headquarters 8th Division Administrative Instruction 2/45 dated 21 December 1945, AWM PR89/099.

Summary of Tribunal hearing

55. **Applicant's Submissions.** Ms Treadwell submitted that the actions of her father should be further recognised. She relied upon the research of Major Rutherford and his findings and conclusions in relation to her father's actions and gallantry.

56. In her submissions, she elaborated upon her written application of 26 May 2014 which included numerous Ambonese and Australian newspaper reports, as well as historical accounts, including extracts of *Gull Force* by Professor Joan Beaumont.²⁹

57. Ms Treadwell explained to the Tribunal that she visited Ambon in the 1990s during the various pilgrimages and was able to speak to Ambonese locals, including Mr Paul Kastanja, formerly of the Dutch forces, who knew her father.

58. She included in her submission letters by Mr Kastanja, including one dated 11 August 1982, which states that her father and he were 'good friends'. Mr Kastanja also described that he and his friends had dug a grave for her father, three days after his death, under a gandaria tree. This grave was said not to be far from where the Japanese forces killed him at Kudamati.

59. Ms Treadwell submitted to the Tribunal that Mr Kastanja had related to her that 8 year old Job was apparently close by the action and saw fighting between her father and the Japanese. She also related how Mr Kastanja returned from Mt Nona with his friend Ebenezer Huwae to find Doolan's body surrounded by Japanese bodies. She was impressed by Mr Kastanja who she believed was relaying credible and reliable information.

60. Ms Treadwell suggested that there was likely some bias at play in acknowledging her father's actions, namely that Australian and Dutch sourced accounts were considered more reliable than local indigenous Ambonese sources, whose accounts tended, in her view, to be discounted. Ms Treadwell made a short submission as to the potential for maladministration which is referred to under the heading 'maladministration' at paragraphs 121-147 below.

61. Ms Treadwell concluded by proudly acknowledging that the 'Story of Doolan' incorporated in the 'Song of Doolan' had become something of legend at Ambon and Australia. She finds it incongruous that her father's bravery has not been recognised in Australia by any kind of medallic recognition. She seeks appropriate medallic recognition.

²⁹ Joan Beaumont, *Gull Force: Survival and Leadership in Captivity 1941-1945*, Allen & Unwin, Sydney, 1988.

62. **Testimony of Major Philip Rutherford (Retd).** Major Rutherford at the outset submitted that there may have been maladministration at play in Driver Doolan's failure to be recognised. His view is set out at paragraphs 125-130 under the heading 'maladministration'.

63. Major Rutherford then gave evidence elaborating upon his analysis of the sources and his conclusion in the Army research report. He explained that Driver Doolan volunteered to go on a reconnaissance patrol to the village of Kudamati at sunrise on 1 February 1942 and then elected to stay behind, alone. Major Rutherford believed that Driver Doolan could have been armed with a Bren machine-gun as this is what the Australian troops used. The Bren was capable of single shots as well as machine-gun fire and being a weapon Driver Doolan would have been trained on as part of basic field training.

64. Major Rutherford gave evidence with the assistance of the map at **Annex B** which was attached to the Japanese account. He gave evidence of the Japanese 9th Company advance and the location of the Australian troops in the area south of Ambon. He concluded that the timing, and last known movements of Driver Doolan in that area, combined with his proximate place of death in conjunction with the account of local boy Job Lekatompessy, meant that it can be circumstantially inferred that the actions of the enemy shooter in the Japanese account were in fact those of Driver Doolan and not any other person.

65. In Major Rutherford's assessment of the Japanese account, it is likely that it was Driver Doolan's action which inflicted heavy Japanese casualties and held up the Japanese assault for at least 12 hours, and changed the Japanese attack from a day attack to a night assault.

66. Some questions of clarification from Colonel Thomas for the Respondent were put to Major Rutherford. These concerned the markings and information on the map Annex B, specifically the location of named Japanese casualties and timings of their death as identified. It was asserted by Colonel Thomas that the information on the map was at odds with the known location and timing of Driver Doolan's movements set out in the Australian report and information subsequently provided by Lieutenant Smith.

67. While this line of questioning called somewhat into question the Japanese account as being referable to actions of Driver Doolan, Major Rutherford's testimony was largely unchallenged by the Respondent. Major Rutherford's assessment of Driver Doolan's gallantry was unchallenged.

68. Later in the hearing, whilst during the Respondent's submissions, it became clear that Major Rutherford's assessment of the Japanese account as being referable to the actions of Driver Doolan was not accepted. The Respondent submitted that there were a number of additional inconsistencies (discussed at paragraph 70 below) between the Japanese account which cast significant doubt over Major Rutherford's conclusion.

69. Major Rutherford was then recalled and the Presiding Member required the Respondent to put those asserted inconsistencies to Major Rutherford.

70. The additional inconsistencies included the type of weaponry used by "the enemy" in the Japanese account, referred to as a Bren machine-gun and mortars. This was at odds with Lieutenant Smith's recollection which stated that Driver Doolan only had a rifle and hand grenades. In addition, the Japanese account referred to the enemy in the plurality, such as, 'enemy flanks' and 'enemy camp' and Driver Doolan was said to have stayed behind alone. In short, it was put to Major Rutherford that the account of the Japanese 9th Company could have been describing some other action with the enemy that day and not an encounter with Driver Doolan.

71. In response, Major Rutherford reiterated that the three lines of Japanese advance as marked on the map Annex B were consistent in his opinion with the last known area of Australian defensive positions and where Driver Doolan was last seen. He said it was also broadly consistent with timings shown on Annex B. Although Major Rutherford conceded that the Bren machine-gun referred to in the Japanese account could have been operated by Australian forces other than Driver Doolan, given the potential for activity in the area, he maintained there were sufficient similarities between the Japanese account and the last known movements of Driver Doolan derived from the Australian report and Lieutenant Smith's recollections and the accounts by Job. Importantly, from the Australian sources, he did not believe there was any other action in the area consistent with the last known location of Driver Doolan. He maintained his conclusion as set out in the Army research report that the Japanese account was referable to Driver Doolan's actions.

72. **Testimony of Major Paul Rosenzweig (Retd).** Major Rosenzweig, historian, gave evidence, elaborating on his thesis '*Ziarah*' – *The Gull Force Association Pilgrimages to Ambon in 2000*. A key element to his thesis addressed the basis for the controversy regarding the 'Doolan Memorial' and Indonesian remembrance.

73. Major Rosenzweig stated that he had reviewed Major Rutherford's Army research report and agreed with his conclusion that the Japanese account seemed to generally 'fit' with the narrative of Driver Doolan's last stand. He stated at the outset it was important to separate from hard evidence the hearsay accounts of Doolan's actions, many of which had been published and most of which, he opined, were grossly exaggerated and embellished.

74. Major Rosenzweig stated that during his research and Gull Force pilgrimages, he met Mr Kastanya, former Sergeant of the KNIL who described burying Doolan's mutilated body, as well as another local, Mr Pete Papilaya, who had been in the Kudamati area at the relevant time. Mr Kastanya had had the benefit of hearing Job Lekatompessy's account. Major Rosenzweig also spoke with members of the Gaspersz family, locals who knew Driver Doolan during the period before the invasion. The abovementioned people had all impressed Major Rosenzweig as giving reliable and credible information regarding Driver Doolan.

75. Major Rosenzweig further observed that Gull Force survivors interned as prisoners of war at Tan Toey tended to resent the 'legend of Doolan' as opposed to those interned at Hainan Island³⁰. To Major Rosenzweig, this may have had a bearing on Driver Doolan's failure to be recognised to date.

76. **Respondent's submissions.** Air Vice-Marshal Evans, Chair of the Board, primarily made submissions on behalf of the Respondent. He acknowledged the service of Driver Doolan and his sacrifice for his country.

77. Air Vice-Marshal Evans then sought to 'clarify' the Army research commissioned by the Respondent. It was submitted that the Japanese account, contrary to Major Rutherford's conclusion, could not be considered as referring to Doolan's last actions. It was submitted there were too many inconsistencies.

78. As such, the Japanese account did not represent 'compelling new evidence' to the Respondent.

79. To the Respondent, the reliable evidence of Driver Doolan's actions are those attributed to him by Lieutenant Smith as set out in the Australian report and in his correspondence in 1949 at paragraph 114. The evidence concerning Driver Doolan's actions in volunteering for the reconnaissance patrol and further volunteering to remain behind to fight, alone, was therefore not contested by the Respondent.

80. Upon questioning from the Tribunal, Air Vice-Marshal Evans stated that he did not resile from the conclusion of Major Rutherford, as expressed in the Army research report that there was 'significant evidence of gallantry in [his] choosing to remain behind to engage Japanese troops' and that by 'doing so [Driver Doolan] was likely to lose his life'.³¹

³⁰ Note Lieutenant Smith and Lieutenant Colonel Scott were POWs on Hainan Island.

³¹ Army report R31038104 Dated September 2017 'Report into Application for Retrospective Bravery Award – VX35406 Driver William Thomas Doolan', p. 7. See transcript of hearing p. 61.

81. As to whether a gallantry award should be awarded for Driver Doolan's actions, it was submitted that Lieutenant Smith, having survived the war, was in a position to put Driver Doolan forward for a Mention in Despatches (MID) if he believed his actions warranted. He did not do so. The Respondent submitted there was no evidence of *malafides* on Lieutenant Smith's part nor anyone else in Driver Doolan's chain of command in not putting him forward

82. Air Vice-Marshal Evans concluded the undisputed actions of Driver Doolan attributed to him by Lieutenant Smith could not be considered for the purposes of the *Australian Gallantry Decorations Regulations*, noting the Chief of Army's policy on retrospective awards in the absence of maladministration or compelling new evidence.

Defence obligations as a model litigant

83. At this juncture, the Tribunal takes the opportunity to remind the Respondent, that, as a Commonwealth Department, it has obligations as a model litigant, which includes merits review proceedings before Tribunals.³² These obligations apply to whether Government Departments are legally represented or not. Being a model litigant requires the Government parties to litigation to act with complete propriety, fairly and in accordance with the highest professional standards. The obligations are particularly important where applicants, such as Ms Treadwell, are unrepresented.

84. **Being a model litigant includes applying policy which is consistent with the law.** The Tribunal notes the Chief of Army's policy on retrospective awards as applied to this application and similar applications before the Tribunal. Government policy is a relevant consideration in merits review and is usually applied in the absence of reasons not to follow such policy. However, the Respondent's policy in relation to retrospective honours,³³ as the Tribunal understands it, is at odds with the eligibility criteria for the *Australian Gallantry Decorations Regulations*. It is also at odds with the Tribunal's obligations under section 110VB of the Act. The full Federal Court in the *Minister for Home Affairs v G* [2019] FCAFC 79, discussed the effect of government policy with respect to administrative decisions. It held that:

The boundary is clear: policy is to not become the rule of law. The statute is the expression of the rule of law. Executive policy cannot, in form or more importantly in substance, be perceived by decision-makers, as or operate, as a rule...

³² Annex B 'Model Litigant' to the *Legal Services Directions* 2017, 29 March 2017, <https://www.legislation.gov.au/Details/F2017L00369/Controls/>

³³ The Tribunal observes that the policy adopted and maintained by the Respondent had its origins in the conclusions of the Tribunal that completed the *Inquiry into unresolved recognition for past acts of naval and military gallantry and valour* (the Valour Tribunal). In reaching a conclusion that retrospective awards should only be contemplated in 'the most compelling of cases', the Valour Tribunal, in the view of this Tribunal, had adopted a cautious approach. The Valour Tribunal did not contemplate how a decision-maker should examine a case to determine if it were 'most compelling'.

85. It appeared that the Board did not turn its collective mind to consider whether in performing undisputed actions, Driver Doolan had also performed an act or acts of gallantry. Furthermore, there was no assessment of any gallantry against the statutory eligibility criteria. Instead, the Board heavily relied on policy as formulated by the Chief of Army to refuse the application, at odds with the law.

86. **Being a model litigant requires the decision-maker to properly address the merits of the application before it.** It is incumbent upon decision-makers to identify the law that must be applied, establish the relevant facts and apply the law to those facts. This requires a merits consideration.

87. However, the Board's Chair stated in the letter of 16 November 2018 that a 'separate merits review' did not take place.³⁴ This is notwithstanding the Board was said to be established to conduct 'merits reviews of historical cases.'³⁵ The Board's letter states there was only discussion at Board about the strategic environment and operational context of the time, noting there was no evidence of maladministration or compelling new evidence.³⁶ However, it became apparent during the hearing that the Board had closely considered the Army research report and its conclusion and to that extent it did consider some of the merits of the application. Regrettably this consideration and reasoning were not referred to in the refusal decision for the benefit of the Applicant, nor in the Statement of Reasons provided to the Tribunal.

88. In summary, as opposed to a fresh merits consideration, to the Tribunal there appeared to be undue focus by the Board on the issue of maladministration and upon decisions made immediately post-war not to recommend Driver Doolan and during the reconsideration of 1949. As a matter of procedural fairness, decision-makers are obliged to make their own assessment of the merits of an application.

89. **Being a model litigant also includes endeavouring to limit the scope of litigation.** It is good practice for Government agencies to clearly set out the evidence it seeks to rely upon. This assists in narrowing the issues in dispute and helps an Applicant prepare their case for hearing. It also assists the Tribunal in its preparation for hearing and the conduct of the hearing itself.

90. Neither the decision under review of 18 April 2018, the accompanying Board Minutes nor the Board's letter of 16 November 2018 referred to the findings or conclusion of Major Rutherford, as set out above or at all. Rule 7(4) of the *Tribunal's Procedural Rules* states that the Defence Report must set out findings on material questions of fact and the reasons for the decision. The refusal decision did not qualify

³⁴ HHRB Chair Letter DH&A/OUT/201X/0092 dated 16 November 2018. Also confirmed in the HHR Board Minutes of the Meeting on 21 November 2017, p. 2.

³⁵ 'Defence Historical Honours Review Board Terms of Reference and Guidelines', AL16455488.

³⁶ HHRB Chair Letter DH&A/OUT/201X/0092 dated 16 November 2018.

in any way the gallantry assessment in the Army research report. In particular, it did not address Major Rutherford's conclusion that relevant passages of the Japanese account were referable to the actions of Driver Doolan. Taken at face value, the Applicant and the Tribunal were entitled to assume that the Respondent accepted Major Rutherford's conclusion.

91. As previously stated, the Tribunal was taken by surprise by the Respondent's submission later in the hearing that it did not accept critical aspects of the research that it had commissioned, endorsed and later provided (as, indeed it was required to do).

92. Failure to identify the critical aspects of the evidence did not assist focus on the issues or limit the scope of the litigation.

92. **Being a model litigant includes the obligation to deal with an application promptly and without unnecessary delay.** This obligation includes making an early assessment as to the prospects of an application. While the Tribunal notes that Air Vice-Marshal Evans acknowledged the regrettable delay in considering the application at the commencement of the hearing and apologised for the delay within the decision under review, the Tribunal viewed the four year delay by Defence in processing Ms Treadwell's application to be excessively long. Having finally decided the application in October 2017, there was a further six month delay in communicating the outcome to the applicant. The Tribunal considers unexplained delays of this magnitude to be unacceptable.

93. **Finally, being a model litigant also includes the obligation to abide by the procedural rules.** It includes the obligation to provide evidence in a timely manner and abide by the timeframes as set down in the Tribunal's Procedural Rules. Defence evidence, in this case, was provided well outside the timeframes set and could only be provided to the Applicant at hearing.³⁷

94. The above observations above are intended to assist the Respondent in better decision-making with respect to honours and ensure compliance with its obligations as a model litigant and its obligations before the Tribunal.

Tribunal proceedings - post hearing

95. **Submissions sought from the Respondent.** Noting the Respondent's position as to an absence of maladministration, the Respondent was asked to submit the contended legal basis of the *Administrative Instruction* and what impact, if any, the

³⁷ Procedural Rule 14 of the *Tribunal Procedural Rules* also sets out that the Secretary of the Department of Defence, on behalf of the Respondent must use his or her best endeavours to assist the Tribunal in relation to the review.

Instruction might have on the nomination process in respect to deceased Australian Army personnel, such as Driver Doolan.

96. On 9 September 2019, the Tribunal received a response from Ms Cole, the Director of Honours and Awards,³⁸ which was provided to the Applicant for any further comment to which she declined.

97. **Tribunal conducts research.** Noting that the Respondent now clearly disputed the Japanese account as being referable to the actions of Driver Doolan, the Tribunal decided to undertake research of its own pursuant to Rule 6(1) of the Tribunal's Procedural Rules.³⁹ This included systematically researching the events south of Ambon, on 1 February 1942 from Australian, Dutch, Japanese and local sources before focusing on Driver Doolan's likely involvement within that action.

98. The Tribunal's draft research essentially shed doubt over the Japanese account as referring to the actions of Driver Doolan, as the research tended to indicate that the account was referring to actions at a later time and in a different location on the relevant day. On 15 October 2019, the Tribunal disclosed a draft narrative of its research and the evidence relied upon in formulating the same, to the Applicant, the Respondent and Major Rutherford for comment.

99. **Response by Major Rutherford to the Tribunal's research.** On 31 October 2019, Major Rutherford provided his comments, which were to the effect that he maintained that Driver Doolan's actions were as he had originally concluded.⁴⁰ He also referred to and relied upon evidence, not previously set out in his Army Research Report, namely a thesis by Dr David A. Evans *The Ambon Forward Observation Line Strategy: 1941 – 1942. A Lesson in Military Incompetence*.⁴¹ Major Rutherford stated that this work lent further support to his conclusion that Driver Doolan was the single soldier who held up the 9th Company. He maintained there was significant correlation between the map Annex B and the series of slides at Annex J provided by the Tribunal, in terms of place and time. (Major Rutherford's response was also provided to the parties for comment).

100. **Response by the Applicant to the Tribunal's research.** On 5 November 2019 Ms Treadwell provided her comments and essentially agreed the points raised in the draft research of the Tribunal. She stated it was clear from the evidence that her father volunteered for the patrol and later bravely volunteered to stay behind and fight alone,

³⁸ Director of Honours and Awards Letter DH&A/OUT/2019/0039 dated 9 September 2019.

³⁹ See also Subrule 22(3) The Tribunal is not bound by the rules of evidence but may inform itself on any matter in any way it considers appropriate.

⁴⁰ Major Philip Rutherford Email dated 30 October 2019.

⁴¹ David A. Evans, *The Ambon Forward Observation Line Strategy: 1941 – 1942. A lesson in Military Incompetence*, Unpublished PhD Thesis, Murdoch University, 2010, <https://researchrepository.murdoch.edu.au/id/eprint/10632/2/02Whole.pdf>

after giving Job Lekatompessy a photo of his family. From this, she submitted, it could be inferred that her father expected he would likely die.⁴² She conceded that there were unknowns about her father's last stand, except to say that it was likely to have lasted for two hours according to Job. It was not known how many Japanese soldiers Driver Doolan killed, but because he was attacked with bayonets, revenge could be inferred, she submitted. In Ms Treadwell's view, the Tribunal's draft research lent support to her application that in the circumstances her father's bravery ought to be recognised.

101. **Response by the Respondent to the Tribunal's research.** On 13 November 2019, Ms Cole on behalf of the Directorate of Honours and Awards stated that the Directorate did not dispute any aspects of the Tribunal's draft research.

102. The thesis by Dr David Evans and relevant primary sources relied upon in that thesis were provided to Ms Treadwell on 29 November 2019, and to the Respondent on 13 December 2019, for final comment by 29 January 2020. Ms Treadwell provided her final response on 13 December 2019 and the Respondent provided its final response on 16 January 2020.

103. The Tribunal carefully considered the new evidence set out by Major Rutherford and in particular the thesis by Dr Evans, together with all of the evidence, including those of the experts and submissions by the parties provided prior, during and after the hearing.

Tribunal Consideration

104. **Respondent's submission – the nomination process and absence of maladministration.** The Respondent submitted that the asserted absence of maladministration and the fact that those in Driver Doolan's chain of command who survived the war were in a position to recommend him, was a basis to reject the application.

105. However, to the Tribunal, assessing the merits of the application against the statutory eligibility criteria, it was not necessary for the Respondent to establish whether there was any maladministration in the failure or otherwise to process of an award recommendation in the past.

106. Nonetheless, given the focus the Respondent placed on this argument both in the refusal decision and submissions at hearing, the Tribunal considered it was obliged to consider the contention. In doing so, the Tribunal emphasises that, as the Tribunal's has a statutory obligation to conduct merits reviews, any application for an honour or award does not 'rest or fall' on whether there was a failure to follow due process or whether there was maladministration.

⁴² Ms June Treadwell OAM Letter dated 5 November 2019.

107. **The Nomination Process.** During and after the Second World War, the granting of honours and awards for gallantry and distinguished service was the prerogative and under the authority of the Sovereign, King George VI and the Governor-General of Australia.

108. The nomination process for honours and awards for Australian Defence personnel, was set out in Cablegram 379 of 24 April 1942, from the Secretary of State for Dominion Affairs to the Prime Minister of Australia, which relevantly specifies at paragraph 10 in the case of posthumous recommendations:

*Posthumous recommendations may be made only for the V.C., G.C., Mentions and Commendations. For all other awards the person must have been known to be alive at the time the recommendation was initiated.*⁴³ [underlining in original]

109. Within a few years of the conclusion of hostilities, King George VI had ‘decided there would be no further awards for service in the Second World War’.⁴⁴

110. **Nomination process as applied to deceased Australian Defence personnel of the 8th Division.** The Tribunal recognises that the situation immediately before and after the surrender of Gull Force did not allow for formal recommendations for awards to be generated and passed through the chain of command. The opportunity for this came only after repatriation of the survivors to Australia during the period in late 1945 and early 1946. During this time, the command of the 8th Division caught up with the events of the previous four years including recommendations for operational awards.

111. **Administrative Instruction.** The nomination process set out in Cablegram 379 above was later qualified by *Administrative Instruction* No 2/45 of 21 December 1945, issued by Headquarters 8th Division under the authority of Colonel (later Sir) Wilfrid Kent Hughes MVO, MC as Assistant Adjutant and Quartermaster General.

112. The *Administrative Instruction* called for recommendations for awards for the End of Hostilities Honours List. It set out that all Brigade Commanders, COs, and OCs were to submit recommendations for inclusion in the honours, awards and MIDs – end of hostilities list. After stating that ‘Recommendations should be for services rendered from the formation of the unit to demobilisation, including PW period’, the *Instruction* then states explicitly, ‘No deceased personnel will be recommended.’⁴⁵

⁴³ Secretary of State for Dominion Affairs to Prime Minister of Australia, cablegram 379 of 24 April 1942, received 25 April 1942.

⁴⁴ Defence Honours and Awards Appeals Tribunal, *The Report of the Inquiry into unresolved recognition for past acts of naval and military gallantry and valour*, Commonwealth of Australia, 2013, pp. 62-63. The last Australian awards for the Second World War were only prevented from being gazetted on 11 February 1949 by an administrative error (and were in fact backdated to that date when finally promulgated on 6 October 1950).

⁴⁵ Papers of LTCOL W.W. Leggatt, AWM: PR 89/099.

113. At the outset, the Tribunal noted that the *Administrative Instruction* was inconsistent with the higher authority, Cablegram 379. Furthermore, it is clear that the *Administrative Instruction* was in circulation at the time and relied upon by those in the 8th Division, to the potential detriment of deceased personnel who might have otherwise been recommended.

114. Lieutenant Smith, Driver Doolan's Transport Platoon Commander, confirmed this in his letter of 16 May 1949 to the Military Secretary, writing that:

‘An Administrative Instruction was issued by this [8th Division] H.Q. which distinctly stated that no deceased personnel were to be recommended. I do not know what my C.O. had in mind about Doolan, but I knew he had intended to recommend the late Major Horton Newbury, O.C. defence Laha Aerodrome, Ambon, for a very high Honour. As a result this gallant officer received no recognition whatever.’⁴⁶

115. It is clear from Lieutenant Smith's letter that he did not recommend Driver Doolan for an honour or award and he reports that neither did his commanding officer Lieutenant Colonel Scott. He did not believe that any others in Driver Doolan's chain of command had done so. Further, Major Macrae does not list Driver Doolan in the Australian report, compiled in captivity 10 months after the surrender as a member he intended to recommend.

116. Reconsiderations of Driver Doolan's case over the years, and notably the one in July 1949 when the Minister for the Army was asked whether Driver Doolan was nominated or should have been nominated, make it clear that in all likelihood Driver Doolan was never nominated for the MID or any other form of recognition, including from the Netherlands government.

117. The Respondent advised that the following honours were awarded to Gull Force personnel, gazetted between 1943 – 1947:

- Officer of the Order of the British Empire - 1
- Member of the Order of the British Empire – 3
- George Medal - 1
- British Empire Medals - 2
- Mention in Dispatches - 21

118. The Respondent confirmed that none of the above honours were awarded to Driver Doolan.

⁴⁶ Lieutenant D.W. Smith Letter to Military Secretary dated 16 May 1949. AWM119/222.

119. The Tribunal therefore finds there was no evidence available to suggest that Driver Doolan was nominated or recommended for recognition.

120. **Driver Doolan's chain of command.** His chain of command at the time of the Ambon campaign, including those alive at the end of the war, were namely:

Officer Commanding 2/21 st Battalion:	Lieutenant Colonel W.J.R. Scott
2IC 2/21 st Battalion:	Major I.F. Macrae
OC B Echelon (until 31 January 1942) QM)	Captain P. Miskin (Battalion)
OC B Echelon (after 31 January 1942)	Captain J.M. Turner
OC Transport Platoon	Lieutenant D.W. Smith
Platoon Sergeant (and Patrol leader)	Sergeant J. O'Brien

Whether the failure to nominate Driver Doolan was due to maladministration?

121. **Maladministration.** The Tribunal notes that “maladministration” is a term which has been described to include bias, neglect, delay, inattention, incompetence, ineptitude, perversity and arbitrariness. Decisions made with a conflict of interest could also amount to maladministration. Acts of maladministration may be with malice or be of the non-intended kind. In the report of the its *Inquiry into unresolved recognition for past acts of naval and military gallantry and valour*, the Tribunal considered that:

*..maladministration could occur not only if a commander failed to follow the required procedure, but also if a commander made a decision that could not be justified on the available evidence, if a commander did not show due diligence, or if a commander failed to make a decision when the evidence suggested that they should have made a decision.*⁴⁷

122. The Tribunal also considers that decisions, acts or omissions based on information that are factually in error or have been misinterpreted could also amount to maladministration. This would include high level policy documents concerning Defence Instructions made contrary to extant law, which were relied upon or could have been relied upon.

123. **Submission by the Applicant - maladministration.** Whilst Ms Treadwell did not make a formal case for maladministration, she referred to the dissension amongst Gull Force survivors. Delight in her father's fame was not shared by all. She believed

⁴⁷ Defence Honours and Awards Appeals Tribunal, *Report of the Inquiry into Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour*, 2013, p. 90.

those jealousies surrounding the ‘legend of Doolan’ after the war would have likely been present during the occupation and immediately following the end of the war. She contends that this would have counted against anyone in her father’s chain of command putting him forward for medallic recognition. She also asserted that an officer she named (of 2/21st Battalion) worked hard in later years to see that her father gained no recognition and made defamatory remarks about him and others. She did not elaborate on this contention and the Tribunal disregarded that part of her submission.⁴⁸

124. In her written response provided on 5 November 2019 after the hearing, Ms Treadwell believed it likely that Lieutenant Smith downplayed the actions of her father in the Australian report, relying for the personal view of Major Rutherford as expressed at the hearing, as set out below. She believed it conceivable that Lieutenant Smith minimised the significance of the actions of Driver Doolan to cast himself and his own actions in a better light, noting Driver Doolan was a ‘lowly Private who had shown immense bravery when others had deserted or surrendered’.⁴⁹

125. **Evidence of Major Rutherford - maladministration.** Major Rutherford in his oral evidence to the Tribunal said that he remained troubled, noting the ‘legend of Driver Doolan’ and the local respect for him, as to why his actions were never mentioned in the official history nor any recommendation made for an award.

126. He suggested that an explanation may be because Lieutenant Smith re-wrote ‘his section’ of the Australian Report, originally written by Major Macrae in captivity 10 months after the surrender, which Lieutenant Smith claimed was damaged. In that part of the report, Lieutenant Smith merely recorded that Driver Doolan ‘failed to return from the reconnaissance patrol’. Major Rutherford raised the possibility that Lieutenant Smith may have deliberately re-written that part of the report and in doing so, downplayed the actions of Driver Doolan in an attempt to imply that it was Lieutenant Smith’s troops who were responsible for disrupting the Japanese advance.

127. However, Major Rutherford also conceded in his evidence that it may have been possible that neither Lieutenant Smith nor Major Macrae, in his immediate chain of command, were sufficiently aware of Driver Doolan’s actions or the extent, to nominate him for a VC or a MID at the time.

128. **Submission by the Respondent - maladministration.** It was submitted there was no evidence suggesting any maladministration and it was the Defence position that the research conducted did not locate any substantiating evidence that maladministration had occurred prior to the cut-off date of awards for the Second World War, or at all.⁵⁰

⁴⁸ Ms Treadwell Application for Review of Decision to DHAAT dated 14 August 2018, attached notes p. 2.

⁴⁹ Ms Treadwell Email to DHAAT dated 9 November 2019.

⁵⁰ Chair HHRB Letter DH&A.OUT/2018/0023 to Ms Treadwell dated 18 April 2018.

129. The aforementioned part of Major Rutherford's evidence at hearing was strongly refuted by Defence representatives at the hearing. Major Rutherford's oral opinion was not set out in the Army Research report and had clearly not been adopted or endorsed by the Respondent.

130. It was submitted by the Respondent that there was simply no evidence capable of supporting the said speculation by Major Rutherford that Lieutenant Smith essentially re-wrote Driver Doolan out of history. Further, the Respondent claimed that the Army research indicated that the survivors of the action, namely Lieutenant Colonel Scott and Lieutenant Smith, in Driver Doolan's relevant chain of command, were capable of submitting formal recognition for him at the time, but they chose not to do so. There was no evidence of mal-intent as to why they did not.

131. **Tribunal finding – no evidence of *malafides*.** Ms Treadwell did not put forward any substantiated evidence of malice on the part of anyone in her father's chain of command. The Tribunal agreed with the Respondent's submission that there was no evidence on which to mount a case that Lieutenant Smith had deliberately or otherwise downplayed Driver Doolan's role. The Tribunal found that part of Major Rutherford's evidence to be speculative and did not provide a foundation for a case for any *malafides* on the part of Lieutenant Smith. Further, there was no evidence to suggest that any failure on behalf of Lieutenant Colonel Scott's, (or Major Macrae's) or anyone else to nominate Driver Doolan after the conclusion of the Second World War was as a result of any *malafides*.

132. **Lawfulness of the *Administrative Instruction*.** The Tribunal was, however, concerned by the wording of the *Administrative Instruction* and the effect this *Instruction* may have had on Driver Doolan's failure to be nominated.

133. At hearing, the Tribunal inquired as to whether the *Administrative Instruction* and addendum material provided shortly before hearing had altered the Defence view as to whether there had been any potential for maladministration to nominate Driver Doolan, even of an unintended kind. Air Vice-Marshal Evans responded that it could be surmised from the *Administrative Instruction* that the 'nomination process was functioning in accordance with policy'. In his submission, administration of honours and awards had been consistently applied across the 8th Division in this period.

134. The Tribunal disagreed with this submission and raised that the 'policy' was seemingly contrary to the law of the Sovereign, King George VI, given the *Administrative Instruction* stated that 'no deceased personnel will be recommended'.

135. Post hearing the Tribunal sought further guidance from the Respondent as to the *Administrative Instruction* and what impact, if any, it might have had on the nomination process in respect to deceased personnel, such as, Driver Doolan. The Tribunal formally requested that Defence respond to the following two questions:

- 1) Whether the Administrative Instruction was a lawful instruction, in light of the prerogative and authority of the Sovereign and the Governor-General in respect of granting of honours for gallantry and distinguished service during the Second World War; and
- 2) Paragraph 6-4 to 6-8 of the Report of the Tribunal's *Inquiry into unresolved recognition for past acts of naval and military gallantry and valour* discusses the Second World War end of war list and the timing of final awards for Second World War service. Does Defence agree with this timeline, and does Defence have any further evidence regarding the decision of King George VI to finalise awards for Second World War service?

136. **Respondent's submission.** On 9 September 2019, the Tribunal received a response from the Director of Honours and Awards. In relation to question 1, the response set out that a number of Instructions were made in relation to posthumous recommendations by higher level authorities and further that a number of posthumous awards were made for deceased Australian personnel of the various forces under the 8th Division. In relation to question 2, Defence did not raise any concern about the content of those aforementioned paragraphs of the Tribunal's *Valour Inquiry*.

137. The Directorate assessed that:

*the Headquarters 8th Division Administrative Instruction 2/45 was a lawful instruction as the Secretary of State for Dominion Affairs, London, cablegram 379 of 24 April 1942 was the authority above it.*⁵¹

138. The Tribunal maintains that there is a fundamental disparity between the 8th Division Administrative Instruction and the cablegram concerned, in that the latter specifies in paragraph 10:

*Posthumous recommendations may be made only for the V.C., G.C., Mentions and Commendations. For all other awards the person must have been known to be alive at the time the recommendation was initiated.*⁵² [underlining in original]

139. The Respondent provided considerable additional material purportedly in support of its position. The Tribunal found this material indicated otherwise. The documents suggested that in other lists developed for the 8th Division, the policy set out in the Cablegram was followed, rather than that of the 8th Division *Administrative Instruction*, with posthumous awards being limited to those described above, rather than being forbidden outright. The correct policy is in fact set out in detail (with Cablegram

⁵¹ Director of Honours and Awards Letter DH&A/OUT/2019/0039 dated 9 September 2019.

⁵² Secretary of State for Dominion Affairs to Prime Minister of Australia, cablegram 379 of 24 April 1942, received 25 April 1942.

379 cited as its authority) and confirmed in the decision note for recommendations for operational awards for service in Malaya, Timor, Ambon and Rabaul provided to the Acting Minister for Defence and the Prime Minister in June 1946. The list included explicitly refers to one of the Mentions in Despatches being posthumous.⁵³

140. **Tribunal finding: the *Administrative Instruction* was unlawful.** Although the *Instruction* was worded in such a way as to suggest that Headquarters 8th Division would not *endorse* any recommendations for deceased personnel rather than actually *forbidding* the submission of such recommendations, the intention was clearly to ensure that subordinate commanders did not put the names of deceased personnel forward for consideration. The Tribunal repeats that portion of Lieutenant Smith's letter of 16 May 1949 which illustrates the point:

*An Administrative Instruction was issued by this [8th Division] H.Q. which distinctly stated that no deceased personnel were to be recommended. I do not know what my C.O. had in mind about Doolan, but I knew he had intended to recommend the late Major Horton Newbury, O.C. defence Laha Aerodrome, Ambon, for a very high Honour. As a result this gallant officer received no recognition whatever.*⁵⁴

141. The Tribunal is of the view that the restriction of recommendations to living personnel exceeded the authority of 8th Division Headquarters and did not reflect the procedures approved and expected by the Sovereign to be applied for deceased personnel. Noting the letter of Lieutenant Smith, there may have been a failure in due process in Major Newbury not to have been nominated or recommended for recognition.

142. The Administrative Instruction had been considered by the Tribunal in its earlier decision of *Billett and the Department of Defence* [2016]⁵⁵. His case concerned Lieutenant Billett, Sparrow Force, 8th Division. As he was alive at the end of the War, the operation of the *Administrative Instruction* did not adversely affect him, per se. However, the Tribunal observed in those reasons the case of Corporal Armstrong, who by contrast did not survive the War and was initially recommended for a MID, but was likely removed from the final list.⁵⁶ The Tribunal noted that Corporal Armstrong was, as a result, not recognised for his actions.⁵⁷

⁵³ Note for Acting Minister for Defence and Prime Minister 'Recommendations for Periodical Operational Awards for services in Malaya, Timor, Ambon and Rabaul' dated 20 June 1946.

⁵⁴ Lieutenant D.W. Smith Letter to Military Secretary dated 16 May 1949. AWM 119/222.

⁵⁵ DHAAT 10 (24 March 2016).

⁵⁶ DHAAT 10 (24 March 2016), paragraph 51.

⁵⁷ The Tribunal in that case recommended to the Minister to direct Army to review his eligibility for an honour.

143. **Tribunal finding – maladministration.** The Tribunal considers that Driver Doolan should have thus been eligible for consideration in 1945-46 for the posthumous award of a Victoria Cross or a Mention in Despatches, but was not so considered. This timing proved critical. Soon afterwards, King George VI ‘decided there would be no further awards for service in the Second World War.’⁵⁸

144. Notably, in July 1949, when the Minister for the Army responded to the representations made earlier that year about Driver Doolan’s actions, there was no suggestion in any of the internal correspondence that a recommendation for an award should be generated *ab initio*. In the response, the Minister not only claimed that, ‘the evidence available does not reveal any action on the part of the late Driver Doolan other than that expected of a soldier in the ordinary course of his duty in operations’, but also, ‘*as no recommendation was submitted for an award* [italics supplied], further consideration cannot be given to the matter.’⁵⁹ The door for war awards had clearly already closed.

145. The Tribunal therefore firmly rejects the Respondent’s submission that there was no evidence of a failure to follow ‘due process’ by those in Driver Doolan’s chain of command and commanding officer, when that process itself, as it applied to deceased personnel of the 8th Division, was unduly prescriptive and contrary to the intent of the Sovereign.

146. There was potential for failure of due process in nominations as due process as intended by the Sovereign could not be followed. There was a process failure in administration, albeit likely non-intentional and a misinterpretation of Cablegram 379. Any decision, act or omission based on information that is factually in error, or unlawful will be maladministration.

147. In sum, although there is no evidence that a recommendation for an honour was ever considered in the case of Driver Doolan, the Tribunal assesses that the 8th Division *Administrative Instruction*’s effect was to prevent any chance of one being produced. In the circumstances, the Tribunal is of the view that this could easily lead to maladministration.

Determining the actions of Driver Doolan

148. Determining the action as to the involvement of Driver Doolan was the main focus of the hearing and of the Tribunal’s research.

⁵⁸ Defence Honours and Awards Appeals Tribunal, *The Report of the Inquiry into unresolved recognition for past acts of naval and military gallantry and valour*, Commonwealth of Australia, 2013, pp. 62-63.

⁵⁹ Minister for the Army Letter dated 1 July 1949 to G.J. Bowden Esq, MC, MP. AWM 119/222.

149. The Tribunal notes that it was an extremely difficult task to reconstruct events around Kudamati on 1 February 1942 and Driver Doolan's role in the action prior to his death. The narrative of events at Ambon between the Japanese landing and the final surrender remains confused and, in parts, contradictory. Records of the fighting nations are incomplete and leave out many details of what happened to the dispersed formations, particularly in the last hours before the surrender.

150. The Tribunal refers to Annexes B to K, namely maps and illustrations and a detailed timeline of 1 February 1942, included as **Annex L**, to assist in establishing the action of the relevant day.

151. **Introduction.** The death in action of Driver Doolan on 1 February 1942 was one incident during the short and ill-fated defence of the island of Ambon by Dutch and Australian forces against superior Japanese forces between 31 January and 3 February 1942.

152. Approximately 1100 Australian troops, designated 'Gull Force' had been despatched to Ambon after the outbreak of war with Japan to supplement the local Netherlands East Indies (NEI) forces, some 2600 strong, largely made up of Ambonese and other NEI soldiers led by Dutch officers.

153. Gull Force consisted of the 2/21st Battalion AIF, together with detachments of anti-tank artillery, engineers and supporting arms. While this force and the Dutch units lacked sufficient field artillery, mortars and anti-tank weapons, it was the absence of naval and air support and a shortage of efficient anti-aircraft weapons that meant the resistance of such an isolated outpost would be limited in duration and effect. This was recognised by higher command. It did not have the resources to provide such reinforcements and seems to have regarded the last-ditch defence of Ambon and the remaining Allied held areas of the Netherlands East Indies as a means to buy time for the defence of New Guinea and Australia.

The Historiography of the Fighting

Primary Sources

154. **The Australian official history**⁶⁰ relies substantially on documents compiled in secret in captivity by Gull Force officers. The first version, referred to in these reasons as the 'Australian Report', was produced by the second in command, Major Macrae, an account that had later to be broken up for concealment from the Japanese, copied onto other material and then reassembled (partly from memory) and edited by

⁶⁰ Lionel Wigmore, *The Japanese Thrust*, Australian War Memorial, Canberra, 1957. pp. 418-441.

Lieutenant Smith in late 1945.⁶¹ This record leaves out many details of what happened to the dispersed formations, particularly in the last hours before the surrender.

155. Another account, found during the Tribunal's research, also incomplete, was made by Captain C.F. Newnham in captivity in 1942 and successfully hidden until his return to Australia in 1945.⁶² A 1942 Court of Inquiry later made available to the Australian official historian utilised the testimony of a number of personnel who escaped shortly after the surrender (and whose recollections were thus relatively fresh), but its analysis was also inevitably incomplete,⁶³ as was an equivalent Dutch report of 1944.⁶⁴

156. **The Dutch official history**, published in 1959, two years after the Australian official history, is even more sketchy about the later events in the campaign.⁶⁵

157. **A short report of the Japanese operation** was prepared in 1947 by Japanese officers working for the Demobilization Bureau under the Allied occupation forces in Japan. (This is a different document to what the Tribunal has described in these reasons to the 'Japanese account' prepared much later). This short report was then translated and edited by the Japanese Research Division of the American Headquarters Army Forces Far East and issued by the US Army's Chief of Military History in 1953. An explanatory comment in this text about the state of the Japanese records is equally applicable to those of the Allies:

‘The paucity of original orders, plans and unit journals, which are normally essential in the preparation of this type of record, most of which were lost or destroyed during field operations or bombing raids rendered the task of compilation most difficult.’⁶⁶

159. **Accounts of the Japanese Army**. Only recently have the official accounts of the Japanese Army been translated into English,⁶⁷ along with records compiled by the

⁶¹ ‘Action of the Gull Force on AMBOINA December 1941 – 3 February 1942’ AWM54 573/6/1A Part 3.

⁶² Gavin Long Personal Records: Captain C.F. Newnham, AWM67 3/285

⁶³ Court of Inquiry with reference to landing of Japanese Forces in New Britain, Timor and Ambon, Vol. III, Evidence re Timor and Ambon, dated 8 July 1942. AWM54, 229/1/7 Part 5.

⁶⁴ Netherlands Forces Intelligence Service, *Battle for Ambon January/February 1942*, report dated 23 May 1944. NAA MP729/7 35/421/67.

⁶⁵ C. van Hoogenband & L. Schotborgh, *Nederlands Indie contra Japan*, Vol. VI, *De Strijd op Ambon, Timor en Sumatra*, Staatsdrukkerij, S-Gravenhage, 1959, pp. 1-23. Summary in English pp. 157-158. (The Tribunal made a translation of the key sections of the full Dutch text.)

⁶⁶ Military History Section, Headquarters Army Forces Far East, *Ambon and Timor Invasion Operations*, Japanese Monograph No. 16, Office of the Chief of Military History, Department of the Army, Washington DC, 1953, p. v.

⁶⁷ War History Office of the National Defense College of Japan, *The Invasion of the Dutch East Indies*, War History Series, Vol. 3, Edited and translated by Willem Rummelink, The Corts Foundation, Leiden University Press, Leiden, 2015. <https://openaccess.leidenuniv.nl/handle/1887/35184>

veterans' associations of some of the Japanese Army units involved, namely the Unit Association history referred to in these reasons as the 'Japanese account' as relied upon by Major Rutherford.⁶⁸

160. In summary, aside from Dr David Evans' work, the research conducted by the Respondent for this application and the subsequent work of the Tribunal, no previous Australian assessments have incorporated these Japanese accounts or fully attempted to align their various narratives, apart from Japanese wartime propaganda, the results of interrogations and some second and third-hand reports of interviews with Japanese personnel immediately after the end of the war.⁶⁹

161. The Japanese accounts help with understanding what happened, but do not provide all the answers. Notably, in all the Australian, Dutch and Japanese records, it is evident that some events and locations have been mixed up, while much activity went unreported.

162. Even with the best endeavours of historians, Army researcher Major Rutherford and the Tribunal, there remain discontinuities and uncertainties in the narrative of the few days between the landing of the invasion forces and the final surrender of the remaining elements of Gull Force. This problem extends to the maps used to record the events of the time.

Secondary Sources

163. **Australian works.** Most published works in Australia are based on the Australian official history, but also derive from a combination of the recollections of the survivors many years later and statements by Ambonese soldiers and villagers, collected informally just after the war or at a much later date. The Tribunal will refer to a book *Ambon, Island of Mist*,⁷⁰ written by Mr Courtney Harrison, a member of 2/21st Battalion who worked alongside Driver Doolan in the days before the Japanese surrender. Some Australian popular works which deal with the events at Ambon are remarkable for their inaccuracies and exaggerations and cannot be relied upon, even as background material.

164. **Authoritative scholarship** tends to deal with one of two issues. The first, such as Professor Joan Beaumont's *Gull Force: Survival and Leadership in Captivity 1941-1945* has as its principal focus the harrowing experience of the Australian troops in

⁶⁸ Hohei Dai 228 Rentai-shi Hensan Linkai (228th Infantry Regimental History Compilation Committee) Eds, *Hohei Dai 228 Rentai shi (History of the 228th Infantry Regiment)*, Hohei Dai 228 Rentai-shi Hensan Linkai, Nagoya, 1st ed. 1973 (2nd ed. 1978). Translated by Dr Steven Bullard 2007. AWM MSS1912.

⁶⁹ Narrative of Mr F.H. Waaldyk, as reported in *Australasian POST*, 21 November 1957, p. 17. #289.

⁷⁰ Courtney T. Harrison, *Ambon, Island of Mist: 2/21st Battalion AIF (Gull Force) Prisoners of War 1941-45*, Privately Published, North Geelong, 1988.

captivity rather than the invasion itself, although it includes a very useful summary of the campaign.⁷¹ The second, reflected in Professor Michael Evans' study, *Developing Australia's Maritime Concept of Strategy: Lessons from the Ambon Disaster of 1942* analyses the military strategy behind the despatch and eventual loss of Gull Force.⁷²

165. The only study so far produced which, although focused on strategic command, includes a detailed assessment of events at the tactical level is Dr David A. Evans' unpublished 2010 PhD Thesis '*The Ambon Forward Observation Line Strategy 1941-1942 A Lesson in Military Incompetence*' from Murdoch University.⁷³

166. **Maps.** Both Allied and Japanese battle maps are sketchy or, in the case of the Japanese unit histories, not always to scale or accurate in their identification of geographical features, and only careful comparison of this material with contemporary survey charts, as well as 2019 sources, gives a reasonable idea of the times and distances involved.

167. The best battle map, at least from the Japanese perspective, is that included in the 1947 study, although it is inaccurate in relation to the actual Australian positions in the Laitimoré Peninsula. This is attached at **Annex C**. US Army 1:50,000 topographical maps, based on a 1925 Dutch chart, proved particularly useful to the Tribunal, as did the 1943 study of Ambon produced by the Southwest Pacific Area Command's Allied Geographical Section.⁷⁴ The US Army maps are attached at **Annexes D** and **E** and the Allied Geographical Section map is at **Annex F**.

168. The human geography of Ambon in 2019 is much changed from 1942, but contemporary sources give some insights into the geography of 1942 for the Tribunal's purposes. The satellite map of Ambon in 2019 attached as **Annex G** has much more extensive built up areas around Ambon city than existed in 1942, but nevertheless shows jungle area in the south around Gunung Nona (Mount Nona or Peak 514 or Iron Hat Peak) that is unlikely to have changed much,⁷⁵ while the main roads (most notably the coastal road now known as Jalaan Nona Saar Sopacua) are in their original positions. The location of the memorial termed locally as 'Tugu Dolan' (the Doolan Monument) is also known.

⁷¹ Joan Beaumont, *Gull Force: Survival and Leadership in Captivity 1941-1945*, Allen & Unwin, Sydney, 1988.

⁷² Michael Evans, *Developing Australia's Maritime Concept of Strategy: Lessons from the Ambon Disaster of 1942*, Land Warfare Studies Centre, Study Paper No. 303, Duntroon, 2000.

⁷³ <https://researchrepository.murdoch.edu.au/id/eprint/10632/2/02Whole.pdf> It should be noted that the Tribunal has formed a different view to Dr Evans of some of the events on 1 February, although it found Dr Evans' tactical narrative extremely helpful.

⁷⁴ Allied Geographical Section Southwest Pacific Area, *Area Study of Ambon Island*, Terrain Study No. 45, 13 January 1943.

⁷⁵ https://satellites.pro/Ambon_map.Maluku_region.Indonesia#-3.691082,128.175130,15

See also: <https://www.google.com.au/maps/place/Gunung+Nona/@-3.7302777,128.1545785,15z/data=!3m1!4b1!4m5!3m4!1s0x2d6cc2bb7c42cf4f:0x67f6da45cea68597!8m2!3d-3.7302778!4d128.1633333>

170. **Time Zones.** Ambon in early 1942 was on Moluccan Time (GMT + 8½). It is believed that this is the time zone employed by the Dutch and Australian forces. The Japanese were operating on Japan Standard Time (GMT +9) (to which Ambon and most other parts of the Dutch East Indies were transferred shortly after the occupation). Times in this narrative have been adjusted to Time Zone GMT +9.

171. **The Japanese invasion.** This analysis will not examine in detail the complete Ambon campaign, but focus on the events in the southern areas of the Laitimore peninsula, where Driver Doolan was stationed, between 31 January 1942 and 1 February 1942.

172. The Japanese surprised the Allies by their choice of landing places. Critically, the 'Eastern Detachment', formed from the Imperial Japanese Army's 228th Infantry Regiment, went ashore in the early hours of 31 January 1942 in the vicinity of Hutumori and Rutung on the south-east coast of the Laitimore Peninsula. This meant that the Dutch and Australian preparations to meet a landing on the western coast of the peninsula in Ambon Bay itself were not only wasted, but the defences on the peninsula were also facing the wrong way. The Dutch forces which had been positioned to protect Paso from a landing in Baguala Bay on the north-east coast of the peninsula found themselves similarly discomfited, with the additional threat of troops advancing from a landing at Hitu-Lama on the northern coast of the main island.

173. The Eastern Detachment troops were divided into a northern 'right attack unit', the 2nd Battalion of the 228th Infantry Regiment, tasked with capturing Paso, linking up with the force from the north and cutting Allied communications between the Laitimore Peninsula and the remainder of the island, and a southern 'left attack unit' which had as its first goal the city of Ambon. The latter was further divided into a northern component, the 3rd Battalion, and a southern, the 1st Battalion.

174. What had been intended as the Australian administrative and support areas south of Ambon City became the front line, forcing hasty improvisation of defences, while the speed with which the Eastern Detachment moved westward through what had been assessed as difficult, if not impenetrable jungle also took both Dutch and Australians by surprise. There was a rapid and successful junction of the 'right attack unit' with the troops of the 1st Kure Special Naval Landing Force who had landed at Hitu-Lama. Their capturing the town of Paso cut off the Australian troops on the northern shore of Ambon Bay defending the Laha Aerodrome from those on Laitimore Peninsula. It also brought the surrender of the Dutch forces in the northern areas of the peninsula by the early hours of 1 February 1942. This included the Dutch Lieutenant Colonel J.L.R. Kapitz who had been in overall command of the Allied forces on Ambon.

174. A key requirement for the remaining Allied forces south of Ambon city was now to protect the northern and eastern approaches to Mount Nona (Peak 514), the plateau of which dominated the south-western areas of the peninsula and most of the

existing Allied defensive positions. Four 15cm coastal defence guns on the coast south of Ambon, known by the Dutch as the Nona Battery, were located in two batteries low on its western slopes. These positions were known to the Australians as the Benteng battery, although, as shown on the Dutch battle map (see **Annex H**), two of the guns seem to have been installed further south than Benteng itself.⁷⁶

175. The administrative and stores dumps established south of Ambon in the Kudamati area now became the front line. The potential need for a strong point in the heights to the south of Kudamati had been foreseen, although only limited preparations had been made. With the news of the Japanese landing, the transport and engineer detachments at Kudamati were deployed into these positions, the transport troops under Lieutenant D.W. Smith holding the western and southern fronts and the engineers under Lieutenant C. Campbell the north. In overall command was Captain J. Turner.⁷⁷ The latter had relieved the Quartermaster, Captain P. Miskin.⁷⁸ The formations south of Kudamati were designated 'B Echelon'.

176. There is a discrepancy between this summary and the sketch map produced by Lieutenant Smith supporting what the Tribunal refers to as the Australian report produced in 1945 that is attached at **Annex I**. While the map records that Dutch troops were positioned south of the Australians, other evidence suggests that the 2nd Company of NEI soldiers equipped with machine guns and under Dutch leadership was placed to the east, probably as far east as Peak 317. The 2nd Company, made up of troops from 'different lands' in the Netherlands East Indies,⁷⁹ had just been redeployed from Eri in the south-west and was in position only from 1630 on 31 January 1942, according to the Australian report. The Dutch history records that a reassignment to Ambon city was ordered at 1100, but explains that the 2nd Company was redeployed on Australian instructions not to Ambon city but 'on the heights of Koedemati (sic).'⁸⁰ The Dutch official history explicitly states that the NEI troops were stationed 'to prevent an enemy advance from [Mount] Urimesing in the direction of the Nona battery'⁸¹ and thus would have been stationed and would have looked east. The Australian report (in the section actually composed by Lieutenant Smith, rather than being a re-created version of Major Macrae's original report) confirms that the NEI troops were deployed on 'the east

⁷⁶ *De Strijd op Ambon, Timor en Sumatra*, Kaart No.1: Ambon.

⁷⁷ Based on Lieutenant Smith's narrative as provided to the AWM. Director AWM Letter 74/8/39 to Secretary Department of the Army dated 5 June 1949. Smith's narrative, cited by the Director (but not, significantly, by Smith himself) as 'a quotation from his personal diary' as presented in this letter is slightly more complete than that given in Lieutenant D.W. Smith Letter to Military Secretary dated 16 May 1949. AWM 119, 222.

⁷⁸ 'Action of the Gull Force on AMBOINA December 1941 – 3 February 1942', p. 10. AWM54 573/6/1A Part 3.

⁷⁹ *De Strijd op Ambon, Timor en Sumatra*, p. 3.

⁸⁰ *De Strijd op Ambon, Timor en Sumatra*, p. 19. Given as 1030 (Moluccan Time) in the original. The romanized rendering of Indonesian place names was not consistent in this period and generally differs from current practice.

⁸¹ *De Strijd op Ambon, Timor en Sumatra*, p. 19.

front.’⁸² This positioning most closely accords with the way that events unfolded on 1 February 1942.

177. At the same time, the Australian lines constructed between Amahasu town and the cliffs to the west of Mount Nona were turned around to face the threat from the north. Additional positions were established on the northern and eastern slopes of Mount Nona.

178. **Situation on the morning of 1 February 1942.** The Japanese ‘right attack unit’ had secured Paso and the isthmus connecting the Laitimore Peninsula with the main island by the end of 31 January 1942. The northern elements of the ‘left attack unit’ (the 3rd Battalion) had occupied Ambon city and the southern elements (the 1st Battalion) were assaulting positions around Mount Sirimau in the highlands to the east-south-east of Ambon City. The latter fell around 1900 on 31 January 1942.

179. The effect of these successes was to complete the separation of the Allied forces south of Ambon city from those on the main island. The Eastern Detachment’s commander, Major General Ito Takeo,⁸³ assessed that he could over-run the Allied southern positions on the peninsula by the end of Sunday 1 February 1942. He therefore ordered the ‘left attack unit’ to resume its advance that morning. The day started early and well for the Japanese with the capture of the Dutch camp at Sojadaitas west of Sirimau.⁸⁴ Following this, elements of the 1st Battalion appear to have entered the south-east corner of Ambon city at 0900⁸⁵ and turned south to resume their advance, which was ordered for 1100.⁸⁶

180. The 3rd Battalion, which had spent the night of 31 January/1 February 1942 in Ambon City, began an advance in the morning. This was described by Lieutenant W.A.M. Chapman, Assistant Intelligence Officer of 2/21st Battalion in his testimony to the 1942 Court of Inquiry after his escape from Ambon as:

On 1st February an attack was made, in the morning, by Japanese, on B Echelon, and down the line of the road on D Company in the AMAHOESE Line. Communication with B Echelon was severed during the morning.⁸⁷

⁸² ‘Action of the Gull Force on AMBOINA December 1941 – 3 February 1942’, p.12. AWM54 573/6/1A Part 3.

⁸³ This narrative respects the Japanese custom of giving the equivalent of the surname first and the individual’s given name second.

⁸⁴ *Ambon and Timor Invasion Operations*, Map No. 2, p. 9.

⁸⁵ *Ambon and Timor Invasion Operations*, Map No. 2, p. 9.

⁸⁶ *The Invasion of the Dutch East Indies*, p. 370.

⁸⁷ VX45199 Lieutenant W.A.M. Chapman: Testimony to Court of Inquiry with reference to landing of Japanese Forces in New Britain, Timor and Ambon, Vol. III, Evidence re Timor and Ambon, dated 26 May 1942. AWM54, 229/1/7 Part 5.

181. The attack ‘down the line of the road’, which started at 1000,⁸⁸ was led by the 4th Company of the 3rd Battalion and supported by the 11th Company of the 3rd Battalion, with the 9th Company of the 3rd Battalion in reserve. This was directed along the coast with the idea of first isolating the Dutch 15cm coastal batteries from the defenders further inland and then capturing them. The coastal batteries, despite being under increasing fire from Japanese artillery and mortars, were creating a serious problem for the Japanese attempts to sweep Ambon Bay for mines and provide naval gunfire support to the forces ashore.

182. However, the thrust was preceded by one led by the 4th Company of the 3rd Battalion that appears to have been aimed south at the B Echelon positions occupied by the Australian transport troops and the NEI company south of Kudamati. This advance probably began after 0830 but it is likely that the Japanese troops entered the Kudamati village area before this in order to prepare for the attack on the positions on the heights to the south.

183. It is in this period and against the 4th Company of the 3rd Battalion that Driver Doolan’s stand is most likely to have occurred.

184. Slides displaying the Japanese lines of advance on 1 February 1942 are attached at **Annex J**.

Events directly relating to Driver Doolan

Reconnaissance patrol led by Sergeant O’Brien

185. At 0430 on Sunday 1 February 1942, Lieutenant Smith despatched ‘a small reconnaissance patrol’ under Platoon Sergeant O’Brien ‘towards the enemy lines’⁸⁹ from the Australian position south of Kudamati. The relevant passage in Lieutenant Smith’s recollections as recorded in the Director of the AWM’s letter of 5 June 1949 to the Secretary of the Army is:

‘On Sunday Feb. 1st at 0400 hours, I sent a small reconnaissance Patrol under P1. Sgt. J. O’Brien towards the enemy lines. All patrols during this action were composed of volunteers, and on this occasion Doolan was one of the volunteers. It was essential that the patrol or some of its members return with the information required.’⁹⁰

⁸⁸ *History of the 228th Infantry Regiment*, p. 6.

⁸⁹ Director AWM Letter 74/8/39 to Secretary Department of the Army dated 5 June 1949. AWM 119, 222.

⁹⁰ Director AWM Letter 74/8/39 to Secretary Department of the Army dated 5 June 1949. AWM 119, 222.

186. The sortie appears to have been intended to find out whether the Japanese had fully occupied the town of Ambon and what were their dispositions. Lieutenant Smith confirmed on a number of occasions that ‘all patrols during this action were composed of volunteers, and on this occasion Driver Doolan was one of the volunteers.’⁹¹

187. The most direct road route from the Kudamati area to the central Merdeka Field in Ambon where the Dutch colonial government’s administrative offices were located is less than 3 kilometres. Thus, a reconnaissance by vehicle would have taken relatively little time, even if it encompassed the northern boundaries of the then built-up area of Ambon. In Time Zone GMT + 9, morning civil twilight began in Ambon on 1 February 1942 at 0612 and sunrise occurred at 0633.⁹² Given its use of the truck and the need to avoid itself being surprised in the dark, the patrol would have needed reasonable light to achieve its aim. It is therefore likely that the reconnaissance party left Australian lines no earlier than just before 0600 and possibly as late as 0620.

188. Although there are no official Australian after-action reports, it was later claimed by Gull Force survivors that the patrol encountered Japanese army units. This could have involved any of the 4th, 9th or 11th Companies of the 3rd Battalion. These would have been preparing to resume their advance, but had yet to start.

189. There are some later stories of the patrol attacking⁹³ and even entering buildings being used as headquarters by the Japanese, but other more credible accounts claim that the Australians attacked enemy troops and their vehicles with light weapons and grenades without disembarking from their truck – and almost certainly without stopping. Such an engagement is much more likely to have taken place in the south of Ambon city than in the north and was therefore probably no more than 2 kilometres from Kudamati – and in all likelihood less than that.

190. The Tribunal formed the view that the encounter most likely took place north of the hospital, in the southern limits of the main township but, as Japanese troops had been spotted in the hospital area late the previous afternoon, an encounter could well have been further south and in the hospital grounds.

191. The patrol under Sergeant O’Brien took advantage of the resulting confusion to withdraw along the road it had come. Perhaps significantly, the Japanese accounts make no mention of any encounter with a patrol, suggesting that the contact was much more fleeting and less effective than the patrol’s survivors thought. It is also not mentioned

⁹¹ Director AWM Letter 74/8/39 to Secretary Department of the Army dated 5 June 1949. AWM 119, 222.

⁹² Based on the tables for 1943 set out in *Area Study of Ambon Island*. The 2019 figures are 0610 for MCT and 0631 for sunrise.

⁹³ Shaun McIlraith, ‘Bill Doolan – Who Died Game’ *People*, 6 April 1955, p. 6. See also: Alec Hepburn, *True Australian War Tales*, Rigby, Adelaide, 1983, p. 127.

in the Australian report prepared by Major Macrae and edited by Lieutenant Smith, which includes Lieutenant Smith's personal recollections of the Kudamati actions. Smith recorded only that Sergeant 'O'Brien reported enemy troops in the town of Ambon'.⁹⁴ The Tribunal accepts Lieutenant Smith's account.

192. The Tribunal acknowledged it is also possible that some of the events described above, based as they were on the post-war recollections of Gull Force survivors, relate to a different reconnaissance patrol, one despatched from the Amahasu lines later in the morning on 1 February 1942 under the command of Warrant Officer Class One L.C. Warren, the Regimental Sergeant Major of 2/21st Battalion. One of the early escapers from Ambon, Regimental Sergeant Major Warren testified at the Court of Inquiry conducted into the campaign in May 1942. From his evidence, this patrol appears to have been undertaken at a time when B Echelon was under attack, but before the Benteng batteries were abandoned – probably around 0900. Before returning to Amahasu lines, Warren claimed that his patrol saw the Japanese using requisitioned civilian trucks, as well as bicycles in the vicinity of Ambon city. He went on to say:

‘We cut back through the town, having several skirmishes with the Japanese, and by BENTENG barracks we picked up two of the original men from B Echelon who were being pursued by about 40 Japanese.’⁹⁵

Driver Doolan elects to stay behind and fight, alone

193. Earlier in the morning, after breaking contact and returning to the village area of Kudamati, Sergeant O'Brien's patrol had abandoned their truck and started out on foot to return to Australian lines. This is likely to have been no later than 0645. The likely route of Sergeant O'Brien's patrol, the position of its interaction with the Japanese and Driver Doolan's location in Kudamati are shown on the sequence of slides prepared by the Tribunal at **Annex K**.

194. At this point, according to Lieutenant Smith, Driver Doolan 'elected to remain behind, to ensure the successful withdrawal [sic] of the party.' Smith based this statement on the report made to him shortly after by Sergeant O'Brien. The relevant passage in the letter of 16 May 1949 setting out Lieutenant Smith's recollections is:

‘O'Brien returned about 0700 [0730 +9] hrs. Gave me the information, and advised that Doolan had elected to remain behind, to ensure the successful withdrawal [sic] of the party. I could hear the S.A.A. & M.G. fire which ensued

⁹⁴ 'Action of the Gull Force on AMBOINA December 1941 – 3 February 1942' p. 12. AWM54 573/6/1A Part 3.

⁹⁵ W39687 WO1 L.C. Warren: Testimony to Court of Inquiry with reference to landing of Japanese Forces in New Britain, Timor and Ambon, Vol. III, Evidence re Timor and Ambon, dated 28 May 1942. AWM54, 229/1/7 Part 5.

during Doolan's engagement of the enemy, but could not see anything. The firing took place before O'Brien actually returned to my position.' ⁹⁶

195. Sergeant O'Brien reported back to Lieutenant Smith at 0730. Lieutenant Smith had heard small arms and machine gun fire from the direction of the village 'before Sergeant O'Brien actually returned to my position'.⁹⁷ This is the only direct evidence from Australian sources of the action in which Driver Doolan was involved.

196. Although as a driver, Doolan would have had only a rifle as his personal weapon, the Tribunal determines that it is possible that at this point he was given a Bren machine-gun and magazines as used by Australian troops and as considered by Major Rutherford. This would also accord with the Japanese account which stated a Bren machine-gun was in use and the recollection of Job Lekatompessy who claimed to have witnessed Driver Doolan with a Bren machine-gun.

197. The Tribunal believes that the 4th Company of the 3rd Battalion most likely came into contact with Driver Doolan in his defensive position before it began its main attack on the B Echelon positions. This probably occurred between 0715 and 0830 because, with an attack primarily aimed at the Benteng batteries scheduled for 1000, the troops needed to secure their flank at Kudamati before they began their advance further west and south.

198. Another aim of the Japanese Army is likely to have been to cut the Australian positions south of Kudamati off from the Benteng batteries, something which they seem to have achieved relatively quickly, partly because some of the troops in B Echelon's western entrenchments abandoned their positions.⁹⁸ The three companies earmarked for the advance along the coastal road to Benteng had no other compelling reason to enter the area concerned. In this regard, Lieutenant Chapman's statement that the attack was 'down the line of the road' is particularly significant.⁹⁹ It is likely, (supported by Regimental Sergeant Major Warren's evidence), that these troops moved into Kudamati in captured and commandeered trucks, although this is not certain.

199. **The location of Driver Doolan's body.** Where the body was found and the position in which he is claimed to have made a last stand are associated with the memorial to Gull Force in Kudamati which has come to be known as 'Tugu Dolan' (the 'Doolan Monument'). This is in the area known as Batu Gantung approximately 500

⁹⁶ Director AWM Letter 74/8/39 to Secretary Department of the Army dated 5 June 1949.

⁹⁷ Director AWM Letter 74/8/39 to Secretary Department of the Army dated 5 June 1949. AWM 119, 222.

⁹⁸ 'Action of the Gull Force on AMBOINA December 1941 – 3 February 1942' p. 12. AWM54 573/6/1A Part 3.

⁹⁹ VX45199 Lieutenant W.A.M. Chapman: Testimony to Court of Inquiry with reference to landing of Japanese Forces in New Britain, Timor and Ambon, Vol. III, Evidence re Timor and Ambon, dated 26 May 1942. AWM54, 229/1/7 Part 5.

metres north east of the Australian B Echelon positions which had been set up to protect the approaches to Mount Nona in the south.

200. Although there is clearly some uncertainty about the exact spot, such uncertainty does appear to be contained within a radius of no more than 150 metres – the difference being the belief of some of the local people that the location of Driver Doolan’s defensive stand was on a knoll further to the south and that ‘Tugu Dolan’ is the spot where Driver Doolan was buried a few days later.¹⁰⁰

201. Lieutenant Smith set out his recollections in his letter to the Military Secretary on 16 May 1949:

‘Some days later, when the action was over, and the surrender took effect, I observed Doolan’s body near a tree, at the side of the road in the village of Koedamati. His body was riddled with bullets, and his head practically severed by what appeared to be bursts of M.G. fire at short range.’¹⁰¹

202. The general location is consistent with the likely point at which the truck would have been abandoned by the patrol, with the time that would have been taken by Sergeant O’Brien to find Lieutenant Smith and the fact that the latter was in earshot of the firing which is believed to be associated with Driver Doolan’s action (vide Annex K).

203. **Heroic narratives.** There can be no doubt that there was a strong collective view which quickly developed amongst the local people that Driver Doolan staged a heroic last stand against the Japanese, that it was in Kudamati and that his gallantry deserved special recognition. Captain John Turner recorded in 1949 that he had been told by an Ambonese man during the Japanese occupation ‘of Driver Doolan’s exploit, although he did not mention his name but referred to him as an “Australian soldier”’.¹⁰²

204. The Allied occupation forces in 1945 appear to have been struck by the strength of the locals’ recognition of Doolan’s action.¹⁰³ Major Paul Rosenzweig’s thesis on the post-war ‘pilgrimages’ of Gull Force survivors to Ambon provides a good summary of the heroic narratives which ‘grew up’ around the incident.¹⁰⁴

205. An authoritative reconstruction of events around Kudamati for the remainder of 1 February 1942 is, however, extremely difficult.

¹⁰⁰ P.A. Rosenzweig, *ZIARAH: The Gull Force Association Pilgrimages to Ambon*, MA Thesis, Northern Territory University, 2000, pp. 110-111.

¹⁰¹ Lieutenant D.W. Smith Letter to Military Secretary dated 16 May 1949. AWM 119, 222.

¹⁰² Captain John M. Turner letter to Military Secretary dated 5 May 1949. AWM 119, 222.

¹⁰³ *ZIARAH: The Gull Force Association Pilgrimages to Ambon*, pp.112-113.

¹⁰⁴ *ZIARAH: The Gull Force Association Pilgrimages to Ambon*, pp.109-118.

206. **Local accounts. Eye-witness Job Lekatompessy.** The only known eye-witness to Driver Doolan's actions, Job Lekatompessy, was an eight year old boy at the time. Job already knew Driver Doolan 'because he would come to my house with one of his friends and drink coffee.' On 1 February 1942, Doolan,

'came that day with a bottle of soft drink and from my house he borrowed an opener. That day he had two other soldiers with him, two Australians...It was about noon when Doolan and the other two came. Later, we saw the Japanese coming. They were coming in long lines and in trucks. Doolan said to the other two. "You go!" And they left him and went up the hill...There was no one there at all then except us, and the Japanese spreading out and coming up the slope.'¹⁰⁵

207. Job admitted in one interview that he 'could not see much of the fight', but his story was that Driver Doolan had climbed a tree with a light machine gun, that the tree was on a slope and that the Japanese, who had arrived in the area in trucks, made repeated advances but were forced to fall back, while 'the dead lay like stones in a watercourse.'¹⁰⁶ The accounts of Driver Doolan's stand which exist make claims of Japanese casualties ranging from 80 to 200 and Job himself was not consistent in the figure he gave, nor in some of the details of the fighting.¹⁰⁷ Furthermore, it is not likely that a tree would support the weight of an adult male while providing stability for accurate firing of a Bren machine-gun or the launching of grenades or magazine reloading. It is possible that Driver Doolan used the tree concerned as cover while firing from the ground. The reality was summed up by one local, '...how many Japanese he [Doolan] has killed, nobody knows.'¹⁰⁸

208. Job stated that, after the engagement, Doolan 'came out of his tree and walked to a place in the village where there was a field telephone.' According to Job, Driver Doolan was trying to make contact with the Australian lines when he was attacked and killed by Japanese troops. Job reported that:

'He was wounded about five times. He fell down. But from where I watched none of his wounds seemed to be very bad. The Japanese pushed him over so he lay face down. Then they killed him by pushing a bayonet through the temple from side to side.'¹⁰⁹

209. There are no other eye-witness accounts, although the Tribunal notes that one local (Mr Bill Gazperz) believed that there was another eyewitness, Sergeant Major F.H. Waaldyk of the NEI Army (later the caretaker of the Ambon war cemetery).¹¹⁰

¹⁰⁵ Job as quoted directly by Pat Burgess, *The Ballad of Driver Doolan. Day 2: Doolan stays to fight!*

¹⁰⁶ Job as quoted directly by Pat Burgess, *The Ballad of Driver Doolan. Day 2: Doolan stays to fight!*

¹⁰⁷ Job is cited as claiming 200 dead by Pat Burgess, *The Ballad of Driver Doolan. Day 2: Doolan stays to fight!*

¹⁰⁸ ZIARAH: *The Gull Force Association Pilgrimages to Ambon*, p. 100.

¹⁰⁹ Pat Burgess, *The Ballad of Driver Doolan. Day 2: Doolan stays to fight!*

¹¹⁰ ZIARAH: *The Gull Force Association Pilgrimages to Ambon*, p. 111.

However, this was not the case, as Waaldyk made no claim to this. Rather, as explained in his 1957 letter to *Australasian Post*, Sergeant Major Waaldyk claimed to have spoken after the war to a Japanese officer who was held prisoner for war crimes and who claimed to have been an eyewitness:

‘He told me that Doolan killed in the fight 120 Japs. The Nips, however, went around him; killed him, and, already killed, stabbed him with their bayonets.’¹¹¹

Tribunal’s observations of Job’s accounts and Harrison’s account

210. It should be noted that the Japanese official history states that the *total* Japanese casualties in the Ambon campaign from 30 January to 3 February were 55 dead and 135 wounded.¹¹² Although Japanese records are not always reliable on this subject, these figures are consistent with the accounts of the Japanese unit association, which focus on both individual and group experiences – often listing dead personnel by name - and which, written by veterans for veterans and their families, had no interest in minimising their losses. They are also realistic given the scale and effectiveness of the Allied defence as a whole. By comparison, the best estimate of Australian deaths *in action* during the campaign is 54.¹¹³ Thus, if Driver Doolan did inflict any casualties on the Japanese, they could not have been on anything like the numbers claimed by many of the sources, including Job.

211. Job’s account of Doolan’s body as he found it accords with Lieutenant Smith’s recollection that Driver Doolan’s body when discovered a few days later had multiple bullet wounds and that his head was nearly severed.¹¹⁴ However, this does not prevent the possibility that Driver Doolan was neutralised by a grenade and killed close range with light weapons either in action or attempting to surrender. It also does not prevent the possibility that, in the immediate aftermath of the action, Driver Doolan’s body was subjected to further attacks by soldiers resentful of their losses.

212. Another version by Job, as retold by Captain Philip Miskin in 1955, specifically follows the comment that:

‘Some say he killed and wounded 80 Japanese’ with the statement that an ‘Ambonese wash-boy [who is believed to be Job Lekatompessy] told a different story...He [Doolan] turned on his pursuers and with rifle, bayonet and grenade

¹¹¹ ‘Don’t Forget Doolan of Ambon’, *Australasian POST*, 21 November 1957, p. 17.

¹¹² *The Invasion of the Dutch East Indies*, p. 372.

¹¹³ Courtney T. Harrison, *Ambon, Island of Mist: 2/21st Battalion AIF (Gull Force) Prisoners of War 1941-45*, Privately Published, North Geelong, 1988, p. 260. This figure does not include the massacres at or near Laha after the Australian surrender in that area.

¹¹⁴ Lieutenant D.W. Smith Letter to Military Secretary dated 16 May 1949. AWM119/222.

strewn the earth around him with two rings of Japanese dead, before falling dead himself.’

213. Miskin’s story of Doolan also stated that he was ‘perched in a tree.’¹¹⁵

214. The 1945 Allied Occupation Forces’ newspaper *Ambon News*, in giving the background to the ‘Song of Doolan’ that was circulating amongst the Ambonese, stated that the ‘story the Ambonese tell of him’ was:

‘He was alone when he made his last stand. High in a Gandaria tree near the Batoegantoeng River, he built a machine gun nest and waited in it with his gun aimed on the bend of the road.

Three trucks full of Japanese soldiers came roaring up the narrow track, and as they passed, Doolan poured the devastating fire at point blank range. The Japanese casualties were staggering. Doolan stayed where he was, waiting. Then some hours later, Japanese snipers who were sent out to pick him off, found his hiding place and he was shot through the back of the neck, crashing through the branches on to the ground, dead.’¹¹⁶

215. Mr Courtney T. Harrison, another member of 2/21st Battalion who worked alongside Driver Doolan in the days before the Japanese invasion, told a somewhat different story in his 1988 book, *Ambon Island of Mist*:

‘Doolan was stationed at a large food dump with ‘B’ Echelon at Kudamati on the outskirts of Ambon town...On receiving the order to move to action stations and learning that the change in command from Roach to Scott had thrown the Australian defence system into confusion and now placed ‘B’ Echelon in the forward position of the defence lines at Amahasu and Eri, Doolan refused to move with his mates and was heard to say,

‘Give me a yard of bike chain and I’ll do the bastards over myself’.

In fact two days previously he had been given a service revolver by [Captain W.] Aitken [a medical officer]. As the enemy approached Ambon, Doolan, armed with six hand grenades, his rifle and revolver, positioned himself in the thick undergrowth at the bottom of the native house yard, and is believed to have made his lone attack on the truckloads of Japanese troops as they left the main road and went towards where he lay waiting.’¹¹⁷

¹¹⁵ Shaun McIlraith, ‘Bill Doolan – Who Died Game’ *People*, 6 April 1955, p. 6.

¹¹⁶ ‘Song of Doolan’, *Ambon News*, Wednesday 7 November 1945.

¹¹⁷ *Ambon, Island of Mist*, p. 50.

216. Mr Harrison claimed that he found Doolan's body a week after the capitulation during a visit to the Kudamati locality to recover medical stores. Permission was given by the Japanese for a party to bury Doolan the following day, at a time when Mr Harrison claimed that,

‘The natives who had fled to the hills before the fighting had still not returned, and any Japanese bodies had been removed, consequently the result of Bill Doolan's lone attack was known only to the Japanese.’¹¹⁸

217. Mr Harrison repeated in an interview in 1993 that he had seen Doolan's body.¹¹⁹

218. There are conflicting accounts of who buried Driver Doolan. Both Lieutenant Smith and Mr Harrison stated that the burial party was made up of AIF personnel. The Ambonese locals insisted that they themselves had ‘buried him under the gandaria tree at Kudamati’. This claim was repeatedly made by both Mr Pete Papilaya and Mr Paul Kastanja.¹²⁰ The Tribunal does not determine it necessary for its purposes to resolve the inconsistencies as to who found and buried Driver Doolan's body.

The Japanese advance south from Ambon – forenoon of 1 February 1942

219. Before the Tribunal makes its final assessment, Driver Doolan's action needs to be considered in relation to the other events in the area that day.

220. While the Japanese accounts are not easy to follow, it is clear is the Japanese forces moved forward later than 0730 – as noted above. The Japanese records give 1100 for the easternmost attack towards Peak 317 and 1000 for the south-western attack on Benteng. The southern attack on B Echelon preceded that of Benteng and the Tribunal assesses that it was initiated around 0830, while the Japanese charts, both in the official history and the unit history, although not completely consistent, suggest that a renewed attack on B Echelon was taken up after the 3rd Battalion's earlier efforts by elements of the 1st Battalion.¹²¹ (Vide Annex J). However, any 1st Battalion attack on

¹¹⁸ *Ambon, Island of Mist*, pp. 50-51.

¹¹⁹ <https://cv.vic.gov.au/stories/a-diverse-state/geelong-voices/ambon-island-of-mist/>

¹²⁰ *ZIARAH: The Gull Force Association Pilgrimages to Ambon*, pp. 111-112. See also: Paul Kastanja letter to Wendy dated 11 August 1982.

¹²¹ Illustration No. 36, War History Office of the National Defense College of Japan, *The Invasion of the Dutch East Indies*, War History Series, Vol. 3, p. 372; Edited and translated by Willem Rummelink, The Corts Foundation, Leiden University Press, Leiden, 2015; *History of the 228th Infantry Regiment*,. The chart ‘3rd Battalion Battles’ suggests that the 4th Company of the 3rd Battalion staged an attack on B Echelon before heading for the Bentang batteries, but the following chart and in the official history suggest that the attack was conducted by elements of the 1st Battalion. The map ‘3rd Battalion Battles’ is extremely distorted and not to scale, to the point of being misleading, particularly in relation to the Amahasu positions. It also misidentifies Peak 317 as ‘Iron Hat Peak’, increasing the confusion about the location of this Peak reflected in the text. The translator, Dr Steven Bullard, confirmed that the English text copy of the map was an exact translation – with known errors in identification retained –

B Echelon would have been later in the forenoon and thus later than Driver Doolan's likely engagement.

221. **The eastern advance south.** As to the eastern wing: supported by the remainder of its companies which had moved directly west from Mount Sirimau, the 1st Battalion headed south from Ambon city and over-ran the defences around Peak 317. The NEI troops, tired by their repeated redeployments and short of food and water, had already suffered significant desertions. Although they held the Japanese off until about 1230, the survivors seem to have abandoned their positions after this. While the Ambonese in the 2nd Company would have made for their home villages, others (probably the majority) headed south-west to Amahasu,¹²² which is confirmed by the Dutch history¹²³ and in the Australian report.¹²⁴

222. The Japanese then continued south in attempt to envelop the defences around Peak 514 (Mount Nona). This proved more difficult than expected, and they 'had made little progress by the time night fell'.¹²⁵ Given the timings and the fact that their movements were up to a kilometre east of Driver Doolan's locality (Lieutenant Smith in the Australian account records seeing '300...moving up the east slopes of Nona' from the Kudamati position¹²⁶), it does not appear likely for these elements of the 1st Battalion to have been engaged in any action involving Driver Doolan.

223. **The southern advance from Kudamati.** The Tribunal acknowledges that Lieutenant Smith's narrative does not align with the Japanese accounts in its estimate of the time of the first morning assault on B Echelon. This has obvious significance in relation to Driver Doolan's actions. Lieutenant Smith recorded that:

'At about 0700 hrs (0730 +9) an enemy body were (sic) observed advancing toward the SW. The tps were hotly engaged by Tpt personnel (Lt. D.W. Smith) and casualties inflicted, the enemy facing a prepared position were unable to make any progress and withdrew.'¹²⁷

of the original Japanese map and provided the Tribunal with a copy of the latter as confirmation. Dr Steven Bullard Email dated 7 September 2019.

¹²² 'Action of the Gull Force on AMBOINA December 1941 – 3 February 1942', p. 12. AWM54 573/6/1A Part 3.

¹²³ *De Strijd op Ambon, Timor en Sumatra*, p. 19.

¹²⁴ 'Action of the Gull Force on AMBOINA December 1941 – 3 February 1942', p. 16. AWM54 573/6/1A Part 3.

¹²⁵ *The Invasion of the Dutch East Indies*, p. 370.

¹²⁶ 'Action of the Gull Force on AMBOINA December 1941 – 3 February 1942', p. 13. AWM54 573/6/1A Part 3.

¹²⁷ 'Action of the Gull Force on AMBOINA December 1941 – 3 February 1942' AWM54 573/6/1A Part 3.

224. Mr Harrison recorded in 1988 that:

‘Early on Sunday 1 February Japanese troops advanced along the road from Ambon towards Kudamati village in rough marching order, four abreast, only to receive severe punishment from machine guns, rifles and grenades, forcing them to withdraw rapidly.’¹²⁸

225. The Tribunal notes that Lieutenant Smith’s estimate of time was made nearly four years after the event, and Mr Harrison’s, many years later, while there is no confirmation that the narrative quoted above was based on Mr Harrison’s own eyewitness evidence (which is unlikely). Given that Lieutenant Smith recorded in other documents that Sergeant O’Brien reported to him at the same time (0730) but did not mention being simultaneously engaged with the enemy, the Tribunal believes Lieutenant Smith’s estimate is slightly flawed and that the action took place a little later in the forenoon (around 0830). This was after any encounter involving Driver Doolan, notwithstanding Mr Harrison’s recollection that the Japanese approach was ‘Early on Sunday’. The Tribunal does not, however, believe that Job’s recollection that Driver Doolan appeared ‘about noon’ is accurate. Notably, Lieutenant Smith reported in his 1945 record, following the entry about Sergeant O’Brien’s report:

‘Japanese Army vehicles were seen moving up the road to the Sanatorium. With these were 2 Aust Ambulances. Combatant troops were debussed from all these vehicles. The C.C.S [Casualty Clearing Station], had been captured with all personnel early in the morning and these were marched up to the Sanatorium as prisoners. We continued to engage this position but again poor results.’¹²⁹

226. Further confirmation that B Echelon’s engagements continued later in the forenoon than Lieutenant Smith’s recollection comes from the evidence of several of the witnesses at the 1942 Court of Inquiry.¹³⁰ While not specific about the time in ‘the morning’ that the attack on B Echelon was mounted, the context suggests that the 3rd Battalion attack was early in the forenoon, but did not continue for long. Given the rapid abandonment of the positions in the west of B Echelon as a result of Sergeant Major Ryan’s orders, the Kudamati position would no longer have presented an obstacle to the advance on the Dutch coastal batteries which were the 3rd Battalion’s primary objectives.

¹²⁸ *Ambon, Island of Mist*, p. 51.

¹²⁹ ‘Action of the Gull Force on AMBOINA December 1941 – 3 February 1942’, p. 13. AWM54 573/6/1A Part 3.

¹³⁰ See evidence of VX45199 Lieutenant W.A.M. Chapman, dated 26 May 1942; VX 44818 Lieutenant W.T. Jenkins, dated 26 May 1942; VX 44785 Lieutenant A.G. Jack, dated 27 May 1942; VX 39687 Warrant Officer Class One L.C. Warren, dated 28 May 1942. Testimony to Court of Inquiry with reference to landing of Japanese Forces in New Britain, Timor and Ambon, Vol. III, Evidence re Timor and Ambon AWM54, 229/1/7 Part 5.

227. The circumstantial evidence therefore suggests that there was an early forenoon encounter on 1 February 1942 between B Echelon of Gull Force and elements of the Japanese 3rd Battalion, probably spearheaded by the 4th Company, followed by engagements further to the east between the Allied troops in the position south of Kudamati and elements of the Japanese 1st Battalion as the forenoon progressed. During their southern advance, these elements of the 1st Battalion engaged both the Australian troops in the heights above Kudamati and the elements of the NEI company stationed nearby. The latter seem to have largely abandoned their positions by early afternoon.

228. The Tribunal assesses that there was a window of up to two hours for an engagement involving Doolan to have taken place within Kudamati village itself, although it remains of the view that the most likely time for such an encounter was between 0715 and 0830, with the first attack on B Echelon by the 4th Company 3rd Battalion following shortly after.

229. The NEI Army desertions and the capture of the Benteng/ Nona coastal batteries meant the Australian troops on the ridge above Kudamati, despite the ‘hot’ defence they had mounted, were soon cut off from the positions further south. Lieutenant Smith recorded that the Australians attempted to engage Japanese troops to the south-west and later to the east (the elements of the 1st Battalion who were advancing south to Mount Nona), but that the range was too great for effective results, while ‘there was no means of advising Bn HQ’.¹³¹ It had also proved impossible to provide any support to the coastal batteries because of a combination of the NEI Army desertions with the disappearance of some key Australian personnel.

230. The lack of further reference to the Australian position south of Kudamati in the Japanese accounts suggests that the latter recognised that it could be left alone while operations were mounted against Nona to the south and Amahasu to the south-west. This is consistent with the Japanese account of their later operations and with that provided eight years later, by Captain Turner, who reported:

‘My only other definite recollection which might assist is that for one day heavy firing proceeded from a point on an inside road running down from the town of Amboina (sic), towards + past the hill at KOEDIMATI (sic). Large parties of Japanese troops apparently detoured from this position and climbed behind our position out of range to attack Australian positions at NONA and AMAHOESOE.’¹³²

¹³¹ ‘Action of the Gull Force on AMBOINA December 1941 – 3 February 1942’, p. 13. AWM54 573/6/1A Part 3.

¹³² Captain John M. Turner letter to Military Secretary dated 5 May 1949. AWM119/222.

231. It is also consistent with Captain Miskin's 1963 recollection of what followed the successful repulse of the initial assault on Kudamati:

‘Miskin and his men, practically all of whom had been wounded by shellfire, remained in triumphant possession of their mountain. They were still there and unconquered five (sic) days after the invasion began.’¹³³

232. **The south-western advance along the coast road & the 9th Company of the 3rd Battalion action.** The Tribunal carefully considered the assessment made by Major Rutherford in the Army research report and repeated during his evidence before the Tribunal that the Japanese account in the 228th Infantry Regiment's Unit Association history of the 9th Company of the 3rd Battalion's encounter on 1 February 1942 was credible evidence in determining Driver Doolan's actions and his fate.¹³⁴

233. As previously stated, it is important to note, although Major Rutherford described the account as an ‘after action report’ by a Japanese officer, it is in fact one narrative in what is a pastiche constructed many years later by the authors of the Unit Association history. It is not certain how much of the text is directly derived from contemporary or near-contemporary material and how much from the collective recollections of the survivors of the 228th Infantry Regiment in later years. The explanatory comment about the lack of surviving Japanese battle records made in the 1947 history and quoted above (Paragraph 157) is relevant.

234. The description of the action suggests that the Japanese were advancing across a ‘slightly elevated grassy area’ when ‘they suddenly came under concentrated fire from a Bren machine-gun fired by a concealed enemy at fairly close range’. A platoon commander, Second Lieutenant Muto and a junior NCO were killed. The defender was invisible to the Japanese, suggesting effective concealment in heavier growth outside the plantation, and succeeded in keeping the Japanese troops pinned down for several hours. An attempt to outflank the enemy position resulted in three more dead before the grenade squad successfully eliminated the threat.

Analysis of the Japanese account

235. Although the numbers of the defenders are never specified in the Japanese account, the events detailed strongly suggest that they were facing only small numbers of personnel and possibly an individual. Notably, it was a single Japanese ‘grenade squad’ which achieved final success, without itself apparently sustaining any casualties. However, it is not certain from the account whether their adversaries were killed or successfully withdrew from the scene.

¹³³ ‘The Heroic Stand on Ambon’, June-July 1963, p. 43.

¹³⁴ *History of the 228th Infantry Regiment*, pp. 18-19.

236. Furthermore, the loss by the Japanese of two dead in the first phase of the action and three in the second represents a much more realistic kill ratio for an individual or a small patrol than a larger formation. It should also be noted that this casualty total (with the likely addition of two or three times the number of wounded – the Japanese account admits to casualties in addition to the dead) is a much more realistic figure than the numbers suggested after the war or by Job Lekatompessy who claimed to be an eyewitness to Driver Doolan's actions.

237. The Japanese account also makes it clear that the defender or defenders concerned remained in position for an extended and resisted a follow-up attack. Given the defence's success in the first phase, particularly in remaining concealed and the extent to which the Japanese were pinned down, this suggests that at least one opportunity to make a clean break and retreat to Australian lines was foregone by the soldier or soldiers concerned, even if a successful withdrawal may have ultimately been made.

238. It is true that there are elements of the Japanese account which accord with fragments of the recollections of Job concerning Driver Doolan's final action. This includes Job's report that, 'The fight lasted two hours' and 'Then...the Japanese fell back down the hill'.¹³⁵ However, the Tribunal does not consider that the episode, which was part of the advance south along the coast road, can be associated with Driver Doolan.

239. The key problem of correlation is that the Japanese account specifically states that 'The 9th Company, with Kawake's 1st Platoon left in Ambon City in reserve, headed south-west along the shoreline of the bay...' ¹³⁶ This movement would have been along the coastal road and in a direction away from Kudamati. (See Annex J).

240. Although there are examples of confusion in the location of key positions elsewhere in the Japanese account (notably the siting of the Dutch 15cm coastal defence guns which were in the Benteng/ Nona batteries, not Peak 317),¹³⁷ this description is specific and in context. The 9th Company was the reserve for the assault on the Benteng/ Nona batteries, which seem to have fallen soon after the Dutch gunners destroyed their weapons (around 0930) and the Japanese began their attack. The 1947 Japanese analysis shows a time of 1040.¹³⁸ The Dutch official history claims that the batteries fell 'on the evening of 1 February',¹³⁹ but the Tribunal considers the Japanese and Australian estimates of time are more credible, although it is possible that the capture of the southern position was considerably later than that of the northern battery.

¹³⁵ Pat Burgess, 'The Ballad of Driver Doolan. Day 2: Doolan stays to fight!',

¹³⁶ Unit Account, translated by Dr Steven Bullard, p. 18.

¹³⁷ Unit Account, translated by Dr Steven Bullard, p. 6.

¹³⁸ *Ambon and Timor Invasion Operations*, p. 9.

¹³⁹ *De Strijd op Ambon, Timor en Sumatra*, p. 19.

241. Notably, the 1944 Dutch report on the campaign gives 1100 as the time at which ‘it was decided to demolish the battery and withdraw to Amahoese’.¹⁴⁰ Captain Newnham, however, recorded in 1942 that ‘a Dutch officer and 41 OR’s from “Benteng” Arty’ retreated south to the Amahasu lines at this time,¹⁴¹ suggesting that the spiking of the guns had occurred earlier than 1100. The Japanese account indicates that the 9th Company’s action was after the capture of the coastal batteries and occurred further south along the road to Amahasu and Eri, the Company having been ‘deployed as reinforcements along the road with the aim of increasing gains in the area.’¹⁴² The 1947 Japanese map shows a time of 1235 for initiating this renewed advance.¹⁴³

242. Finally, the encounter with the concealed enemy required them to ‘cut through the plantation to the right of the road’ [i.e. to the north or west]. Even if the Japanese then turned back to the east to deal with the threat, this places the action at least two kilometres west-south-west of where Driver Doolan’s body was found. This assessment approximately accords with the location of Second Lieutenant Muto’s death as shown in the distorted Japanese sketch map entitled ‘3rd Battalion Battles’.¹⁴⁴ (See Annex B)

243. There is one possible association with a reported Australian action. This concerns a patrol sent north along the coastal road from Amahasu during the afternoon of 1 February 1942 in an attempt to re-establish contact with Kudamati:

‘...as it set out its forward elements contacted those of the Japanese who had moved on after Benteng Battery had been taken. Several casualties were sustained and as progress along the defile appeared impossible the platoon fell back and took up its position on the left facing Ambon.’¹⁴⁵

244. Further details of the action were recorded by Captain Newnham in his 1942 report.¹⁴⁶ What is clear is that it was sustained and that the Japanese were held back for some hours.

245. Notably, this incident aligns with the Japanese account in time. It also aligns in place, as far as can be determined from the Japanese unit association history’s battle map. While this is not to scale and is significantly distorted, particularly in locating the Amahasu lines further north than they actually were, it shows Lieutenant Muto’s death

¹⁴⁰ Netherlands Forces Intelligence Service, *Battle for Ambon January/February 1942*, report dated 23 May 1944, p. 10. NAA MP729/7 35/421/67. The original cites 1030 (+8½).

¹⁴¹ Gavin Long Personal Records: Captain C.F. Newnham, ‘Report by Capt. C.F. Newnham re Amahoese and Erie’, p. 5. AWM67 3/285. The original cites 1030 (+8½).

¹⁴² *History of the 228th Infantry Regiment*, p. 6.

¹⁴³ *Ambon and Timor Invasion Operations*, p. 9.

¹⁴⁴ *History of the 228th Infantry Regiment*, p. 18.

¹⁴⁵ Action of the Gull Force on AMBOINA December 1941 – 3 February 1942’ p. 15. AWM54 573/6/1A Part 3.

¹⁴⁶ Gavin Long Personal Records: Captain C.F. Newnham, ‘Report by Capt. C.F. Newnham re Amahoese and Erie’, p. 5. AWM67 3/285.

as having occurred close to the coastal road as it ran towards Amahasu and well away from the Australian positions south of Kudamati.

246. The Tribunal was unable to find records of any other incident on 1 February 1942 which could be ascribed to Driver Doolan.

Tribunal's assessment of the evidence

247. The Tribunal gives limited weight only to Job Lekatompessy, whose eyewitness recollections, recorded second-hand, partially align with the other evidence and whose conviction of the truth of his story seems to have been compelling to those who heard it. However, ultimately the Tribunal had difficulty relying upon those hearsay accounts noting his young age at the time, particularly given that the accounts differed and the number of Japanese casualties was grossly exaggerated.

248. While other second and even third hand reports of Driver Doolan's actions recorded in the immediate aftermath of war are confused, sometimes contradictory and verge on hagiography, if not outright myth, it is clear that there was a belief in many quarters – according to one source, even amongst the Japanese – that Driver Doolan had made a stand against the invaders. This view was current amongst the Kudamati villagers from the outset of the Japanese occupation. The Tribunal considers in total that this is evidence, even if circumstantial, of Driver Doolan's conduct. The Tribunal, however, emphasises that there seem to have been no other actual eye-witnesses to Driver Doolan's actions than Job Lekatompessy. (The accounts of Ambonese adults were all hearsay.)

249. The Tribunal gave careful consideration to the Japanese account of the extended encounter of Japan's 9th Company of the 3rd Battalion with a concealed individual defender or small group. The Tribunal believes that the Japanese account is credible and accurately describes an action in which an effective defence was mounted from a concealed position. However, the timing as well as the distance of this action from where Driver Doolan's body was found and where he was most likely to have made a stand indicate that the concealed defender (or defenders) could not have been Driver Doolan. It is more likely to have been a reconnaissance patrol sent north in the early afternoon from Amahasu as set out at paragraph 192.

Tribunal Finding as to the actions of Driver Doolan

250. **Reconnaissance patrol.** The Tribunal is satisfied that Driver William Thomas Doolan VX35406, already a volunteer for a reconnaissance patrol in Ambon on 1 February 1942, further volunteered to remain behind in Kudamati to cover the retreat of troops from the expected advancing enemy. This finding is based on Lieutenant Smith's evidence, repeated in two separate documents in recollections as set out in the

letters of 1949 and publicly in *Reveille* in 1962,¹⁴⁷ all of which is derived from the report made to him at the time by Sergeant O'Brien.

251. **Electing to stay and fight, alone.** The circumstantial evidence from Australian sources, namely Lieutenant Smith's hearing of small arms and machine gun fire shortly before O'Brien's arrival and his later observation of Driver Doolan's body with its multiple bullet wounds and mutilation, strongly suggests that Driver Doolan conducted at least one engagement with the enemy. The Tribunal believes that the forces which he engaged were likely elements of the 4th Company of the 3rd Battalion of the 228th Infantry Regiment of the Imperial Japanese Army. This force advanced from Kudamati to attack the Allied positions in B Echelon to the south of the village shortly after on the same morning before proceeding west and south to capture the Dutch coastal batteries at Benteng.

252. The Tribunal is, however, unable to confirm with any confidence the precise details of Doolan's last stand, the number of casualties – if any – he inflicted on the Japanese, or the exact circumstances of his death, other than it was violent.

Whether Driver Doolan performed an act or acts of gallantry

253. Having determined the actions of Driver Doolan to its reasonable satisfaction, the Tribunal then turned to consider whether or not he had performed an act, or acts, of gallantry. If this was determined to be the case, the Tribunal would then proceed to consider Driver Doolan's actions against, and in relation to, the eligibility criteria for the available gallantry awards.

Eligibility Criteria for Gallantry Awards

254. **Contemporary Gallantry Awards.** Australian service personnel received honours and awards under the Imperial system until February 1975 when the Government introduced the Australian system. The two systems – the Imperial and the Australian; then operated in parallel until October 1992 when the Government announced that Australia would no longer make recommendations for Imperial awards.¹⁴⁸ This means that an Imperial award cannot be awarded for this action and only contemporary decorations may be considered. The eligibility criteria for gallantry awards in the Australian system are governed by Gallantry Decorations Regulations.¹⁴⁹

¹⁴⁷ C.F. Coady, "'Gull' Force, Ambon: A History of the 2/21st Battalion' *Reveille*, July 1, 1962. pp. 5 & 34.

¹⁴⁸ Prime Minister of Australia Media Release 111/92 dated 5 October 1992.

¹⁴⁹ *Commonwealth of Australia Gazette No. S25 – Gallantry Decorations Regulations* - dated 4 February 1991.

255. **The Victoria Cross for Australia.** The VC was established by Letters Patent on 15 January 1991 to be:

‘The highest decoration for affording recognition to persons who, in the presence of the enemy, perform acts of the most conspicuous gallantry, or daring or pre-eminent acts of valour or self-sacrifice or display extreme devotion to duty’.¹⁵⁰

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

Conditions for the award of the decoration

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

257. **Gallantry Decorations.** The Star of Gallantry, the Medal for Gallantry and the Commendation for Gallantry were established as Gallantry Decorations by Letters Patent on 15 January 1991 for the purpose of:

‘according recognition to members of the Defence Force and certain other persons who perform acts of gallantry in action.’

258. The honours are governed by Regulations set out in the Schedule, as amended in 1996:

...

Conditions for award of the decorations

3. (1) The Star of Gallantry shall be awarded only for acts of great heroism or conspicuous gallantry in action in circumstances of great peril.

(2) The Medal for Gallantry shall be awarded only for acts of gallantry in action in hazardous circumstances.

(3) The Commendation for Gallantry may be awarded for other acts of gallantry in action which are considered worthy of recognition.

3A. A decoration referred to in regulation 3 may be awarded for an act of a kind mentioned in relation to the particular decoration, although the act did not occur in action, if it occurred in circumstances similar to armed combat or actual operations and those concerned were deployed under military command.

...

¹⁵⁰ Commonwealth of Australia Gazette No. S25 – Victoria Cross – dated 4 February 1991.

Making of awards

7. *Awards of a decoration shall be made by the Governor-General on the recommendation of the Minister.*¹⁵¹

259. **What is Gallantry?** The Tribunal noted that all the gallantry decorations accord recognition for individuals ‘who perform acts of gallantry in action’. Whilst ‘in action’ is a relatively straightforward concept, ‘gallantry’ is an abstract term, which is not defined in the Regulations. Various dictionary definitions such as ‘dashing courage; heroic bravery’,¹⁵² and ‘courageous behaviour, especially in battle’,¹⁵³ are largely circuitous and unhelpful. Some countries have attempted to differentiate between ‘bravery’ and ‘gallantry’; defining the later as recognition of military personnel who carry out acts which put their lives at risk while involved in operational service; whilst ‘bravery’ is defined as saving or attempting to save the life of another person in the course of which they place their own life at risk.¹⁵⁴ Again this is largely unhelpful in defining gallantry in the context of the Australian Honours and Awards system.

260. The Tribunal considered that there is an expectation that soldiers in battle conducting themselves in accordance with their training, will be acting bravely. The Tribunal considered that gallantry requires a higher standard of conduct than bravery and usually a special and additional element of courage, fearlessness, daring or heroism will have been demonstrated. What amounts to an ‘act of gallantry’ necessarily varies according to the individual circumstances of each action, and depending on many factors, including the level of threat, the person’s training, role and responsibility, the risk to the individual and/or the group, and the consequences of undertaking, or not undertaking, the particular act.

261. The Tribunal considered that the concept of gallantry is greater than collective or individual acts of bravery and above and beyond what was expected of an individual or group who were bravely doing what they were trained to do or expected to do as part of a role, rank or responsibility.

Was Driver Doolan gallant?

262. As stated, the Tribunal has made findings concerning the actions of Driver Doolan on 1 February 1942 based on Lieutenant Smith’s recollections, which the Tribunal accepts as being accurate. On the basis of these findings, as well as the Tribunal’s research concerning the events around Kudamati on 1 February 1942, the Tribunal went on to consider whether Driver Doolan was gallant on this day. The Tribunal considered that in volunteering to accept additional risk on two occasions:

¹⁵¹ *Commonwealth of Australia Gazette No. S420 – Amendment of the Gallantry Decorations Regulations* - dated 6 November 1996.

¹⁵² The Macquarie Dictionary on-line accessed 20 October 2017.

¹⁵³ The Oxford Dictionary on-line accessed 20 October 2017.

¹⁵⁴ <http://medals.nzdf.mil.nz/category/d/index.html>.

being a volunteer member of the morning reconnaissance patrol and in later staying behind, alone, to cover the retreat from the expected enemy advance, Driver Doolan demonstrated an additional element of courage and daring over and above other Australian soldiers with him.

263. **First act.** The Tribunal considered it relevant that Lieutenant Smith, Transport Platoon Commander made a point that the members of the reconnaissance patrol were all ‘volunteers’. To the Tribunal, this indicated that Command thought volunteering for such a dangerous activity was significant. To volunteer in this context meant to offer one’s services for the benefit of the formation. Driver Doolan and the others were clearly not ordered to patrol. In accepting to go on the patrol, Driver Doolan and the others put themselves into a position of increased risk, compared to their fellow troops.

264. The Tribunal inferred from its research that it would have become plain to Driver Doolan and those in the reconnaissance mission that the enemy were in location at Kudamati and the surrounds. It would have been clear that the enemy probably outnumbered the Australian troops in the area. Driver Doolan was a volunteer member of the reconnaissance patrol, whose purpose was gather information and intelligence. Noting the small numbers in the group, it can be inferred that Driver Doolan was privy to the information gathering by the group, as well as his own observations.

265. **Second act.** In further volunteering to stay behind and alone, Driver Doolan consciously agreed to face additional danger. This danger was a far greater risk to him than members of his platoon generally and those members of the reconnaissance patrol. No members of the earlier patrol elected to stay behind and fight with Driver Doolan, or alone. Only Driver Doolan elected to remain behind and cover the retreat from an advancing Japanese force.

266. The Tribunal determined that Driver Doolan in electing to remain behind sacrificed his own safety to successfully cover the withdrawal of members of the patrol so the intelligence could be conveyed.

267. When he remained behind, Driver Doolan was on foot somewhere outside the rural village of Kudamati. He did not have the advantage of the cover of darkness. He was likely armed with a weapon of some kind that he could personally manage. Although the evidence is unclear as to the length of time Driver Doolan was alone or for how long he was exposed to fire or the precise danger he faced, the Tribunal determined that by placing himself alone in this situation, he was in a position of grave risk and almost certain death with an outnumbered enemy.

268. The Tribunal considered that it had sufficient reliable evidence at its disposal to determine these two acts, undisputed by the Respondent, were performed by Driver Doolan. The Tribunal determines that the cumulative effect of the two acts of volunteering and particularly the second act when he volunteered to fight alone,

demonstrated an additional element of courage and daring. In volunteering on both occasions, he consciously assumed that additional risk. Noting the concept of gallantry as determined by the Tribunal above and taking into account of the circumstances as found by the Tribunal, the Tribunal finds Driver Doolan was gallant on the morning of 1 February 1942.

Was Driver Doolan ‘in action’?

269. A criterion for each of the Gallantry Awards requires the person under consideration to be ‘*in action*’. It was not refuted by the Respondent that Driver Doolan was ‘*in action*’ on 1 February 1942 and, noting the findings set out above, the Tribunal, determined that Driver Doolan was indeed ‘*in action*’ on 1 February 1942 whilst engaged with the enemy.

270. With these criteria established, the Tribunal decided to assess the actions of Driver Doolan against each gallantry award, in ascending order.

The Commendation for Gallantry may be awarded for other acts of gallantry considered worthy of recognition.

271. The Tribunal concluded that this criterion could have been met by Driver Doolan’s participation, as a volunteer, for the reconnaissance patrol early on the morning of 1 February 1942. The Tribunal again notes that the Respondent did not dispute Driver Doolan’s participation, as a volunteer, in this dangerous patrol. Importantly, Driver Doolan later also volunteered to remain behind, alone, in Kudamati to cover the retreat from the expected enemy advance. The Tribunal therefore considered that the award of the Commendation for Gallantry would not appropriately recognise Driver Doolan’s actions. The Tribunal considered that this award was insufficient because not only did he volunteer for the patrol but in addition he later volunteered to remain behind, alone, to fight the enemy.

The Medal for Gallantry shall be awarded only for acts of gallantry in action in hazardous circumstances

272. The Tribunal was satisfied that Driver Doolan volunteered to remain behind in Kudamati to cover the retreat from the expected advance from the enemy. This fact was also not disputed by the Respondent. To the Tribunal, this was then the second act of gallantry displayed by Driver Doolan. As stated the Tribunal considered that a safer alternative was available to him, namely remaining with the other members of the patrol and returning to the Australian lines. Further, Driver Doolan would have likely been aware of the additional risk he was bringing upon himself by volunteering to remain behind, especially alone.

273. Hazardous circumstances are not defined in the gallantry regulations. The Tribunal in *P and the Department of Defence*¹⁵⁵ concluded that the term ‘hazardous circumstances’ was intended to take into account the particular circumstances of a soldier in action and requires that the hazardous circumstances be relevant to a combat situation. The Tribunal agrees with this interpretation. The Tribunal determines that this requires an objective view of the facts as opposed to the subjective perception of the individual in the circumstances.

274. It is clear that Driver Doolan in accepting to volunteer on the two occasions placed himself in hazardous circumstances, in action, noting that he placed himself at greater risk than other members of his platoon especially considering the enemy’s numbers and likely advance.

275. Having been a member of the early reconnaissance patrol, which was sent out to gather information about the Japanese troops in the area, to the Tribunal it was very probable that Driver Doolan knew of the Japanese troops in the area and that he would be grossly outnumbered by the enemy. Given the Japanese had assembled at Kudamati in large numbers, the circumstances were hazardous for any Australian or Dutch troops in the area, particularly any who happened to be alone.

276. The Tribunal determines that there is sufficient evidence in support of gallantry as evidenced by Driver Doolan’s decision to choose to remain behind to engage Japanese troops and that by doing so he was likely to be outnumbered and lose his life. It was further accepted by the Respondent that in choosing to remain behind in these circumstances Driver Doolan acted gallantly. For these reasons, the Tribunal concluded that Driver Doolan meets the criteria to be eligible for the award of the Medal for Gallantry.

The Star of Gallantry shall be awarded only for acts of great heroism or conspicuous gallantry in action in circumstances of great peril

277. For the reasons given above, the Tribunal could not further establish what happened to Driver Doolan and did not assess that the Japanese account of an extended engagement with a concealed shooter referred to him. The Tribunal could only place very limited weight on the evidence of Job Lekatompessy to the extent it was supported by the evidence of Lieutenant Smith. As such the Tribunal was not reasonably satisfied on the evidence before it that Driver Doolan performed acts of great heroism or conspicuous gallantry in action in circumstances of great peril. The Tribunal notes the heroic ‘legend of Doolan’, however, the Tribunal must be reasonably satisfied on evidence before it and not rely upon heroic myth and legend as a basis for any award.

¹⁵⁵ *P and the Department of Defence* [2014] DHAAT 27, 4 July 2014.

278. Therefore, the Tribunal assessed that Driver Doolan did not meet the criteria to be eligible for the award of the Star of Gallantry.

279. As the Tribunal concluded Driver Doolan was not eligible for the Star of Gallantry, it decided it was not necessary to consider the higher criteria for the Victoria Cross for Australia.

Conclusion

280. The Tribunal determined that the actions of Driver William Doolan at Kudamati, Ambon, on 1 February 1942 meet the criteria for the award of a posthumous Medal for Gallantry.

TRIBUNAL DECISION

281. The Tribunal decided to recommend to the Minister that:

- a. that the decision by the Chair of the Historical Honours Review Board of 18 April 2018 to refuse to recommend a gallantry award for Driver William Doolan for his actions with 2/21st Battalion attached to the Gull Force during the Japanese invasion of Ambon Island on 1 February 1942 be set aside;
- b. the Minister recommend to the Governor-General that Driver William Doolan be posthumously awarded the Medal for Gallantry for acts of gallantry in action in hazardous circumstances as a volunteer on a reconnaissance patrol and then further volunteering to fight off advancing Japanese forces, alone, with little chance of survival on 1 February 1942 at Kudamati village, during the Japanese invasion of Ambon Island; and
- c. the Minister direct Army to review the eligibility of Major Mark William Horton Newbury, the Officer Commanding Laha Aerodrome, Ambon, for a defence honour.

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Annex A - Excerpts from the translated Japanese Unit Association History account of the 9th Company action on 1 February 1942

Annex B – Map from the translated Japanese Unit Association History account of operations in Ambon.

Annex C - ‘Progress of Japanese Operations on Ambon – Map no 2’, Japanese Account prepared in 1947 and issued by Military History Section, Headquarters Army Forces Far East, *Ambon and Timor Invasion Operations*, Japanese Monograph No. 16, Office of the Chief of Military History, Department of the Army, Washington DC, 1953 (Time Zone Japan - +9)

Annex D - US Army 1:50,000 topographical map ‘Amboina Archipelago’ – Sheet No. 3, based on a 1925 Dutch chart

Annex E – US Army 1:50,000 topographical map ‘Amboina Archipelago’ – Sheet No. 4, based on a 1925 Dutch chart

Annex F - 1943 map of Ambon City produced by the Southwest Pacific Area Command’s Allied Geographical Section

Annex G – Contemporary Satellite photograph map of Ambon and southern environs

Annex H - Dutch battle map of Ambon Campaign - Dutch Official History

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Annex J – Slides prepared by Tribunal showing Japanese advances from Ambon City and action involving death of IJA Lieutenant Muto

Annex K – slides prepared by Tribunal displaying likely route of Sergeant O’Brien’s patrol, the position of its interaction with the Japanese and Driver Doolan’s location in Kudamati

Annex L – Timeline of events of 1 February 1942 prepared by the Tribunal

ANNEX A – Relevant excerpts from the Japanese Unit Association Account of the 9th Company on 1 February 1942 translated by Dr Steven Bullard (emphasis added in bold)

1 February¹⁵⁶

*Battalion commander Nishiyama advanced the front line to the coastal road, and deployed the 9th Company as reinforcements along the road with the aim of increasing gains in the area. **However, the prepared enemy mortar and heavy arms fire was accurate and pervasive.** The commander of the 3rd Platoon, 2nd Lt Muto achieved death in battle at the edge of the opening into the coconut plantation. Casualties mounted and the advance was held.*

The battalion commander, judging that conditions for a daytime attack were unfavourable, began to prepare for a night attack. All companies began a simultaneous advance on the front line at 2000 hrs, engaging the enemy covertly.....

9th Co - 'Clearing operations of Ambon'¹⁵⁷

The 9th Company with Kawake's 1st Platoon left in Ambon City in reserve, headed south-west along the shoreline of the bay in the following order: Koseki's 2nd Platoon, Muto's 3rd Platoon, then Shirai's Command Squad. During this time they found some remaining enemy troops.

*In order to attack this enemy, the Company cut through the plantation to the right of the road and reached a slightly elevated grassy area. With the command squad deployed to the centre, the 3rd Platoon to the right, and the 2nd Platoon to the left, the unit advanced on the high ground. **When they were 200 – 300 meters away, they suddenly came under concentrated fire from a Bren machine-gun fired by a concealed enemy at fairly close range.** At the head of the unit, Platoon commander Muto and Lance Corporal Kondo were killed in an instant, and the advance was halted. The enemy was nowhere to be seen, so there was not even a faint movement to aim at. The unit was pinned down for several hours in the open field, with absolutely no cover. It was not even possible to get aid to the casualties.*

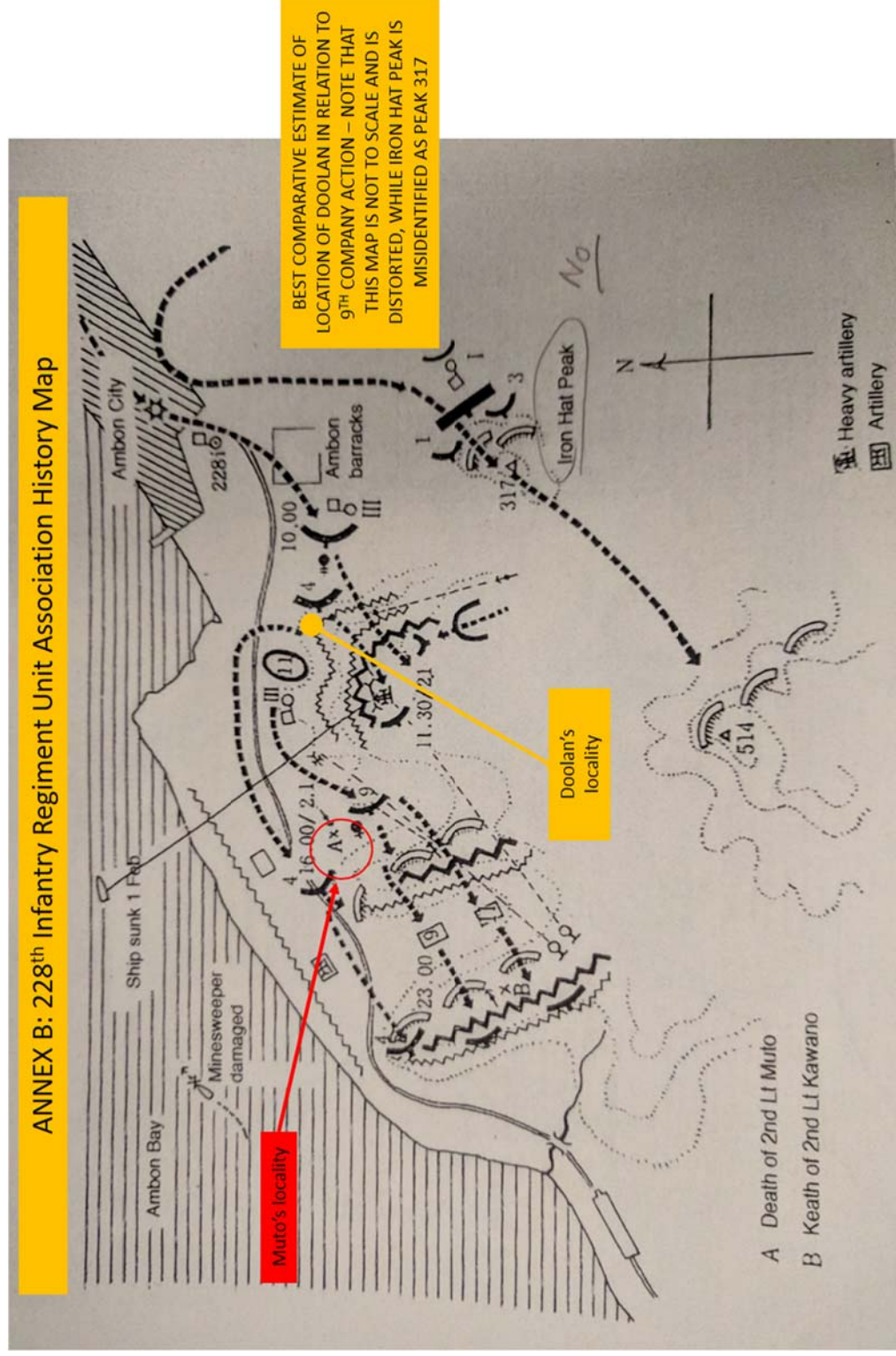
Platoon leader Koseki on the left finally managed to move to the trees on the left, then advanced quickly to the flanks of the enemy to try and destroy them in one fell swoop. Just as the Kamiya Squad were positioning a light machine gun at the edge of the trees, they were subjected to heavy fire from the enemy waiting for them, immediately killing rifleman Sugiyama Kyoichi, and superior privates Ando Hisayoshi, and Handa Goichi. The platoon commander immediately ordered Isaji of the grenade-launcher squad to attack. The enemy camp was finally silenced with the strength of this attack.

However, the sacrifices of the unit during the attack under the bright sun in this field were in vain. As a result, the unit changed its attack to a night assault

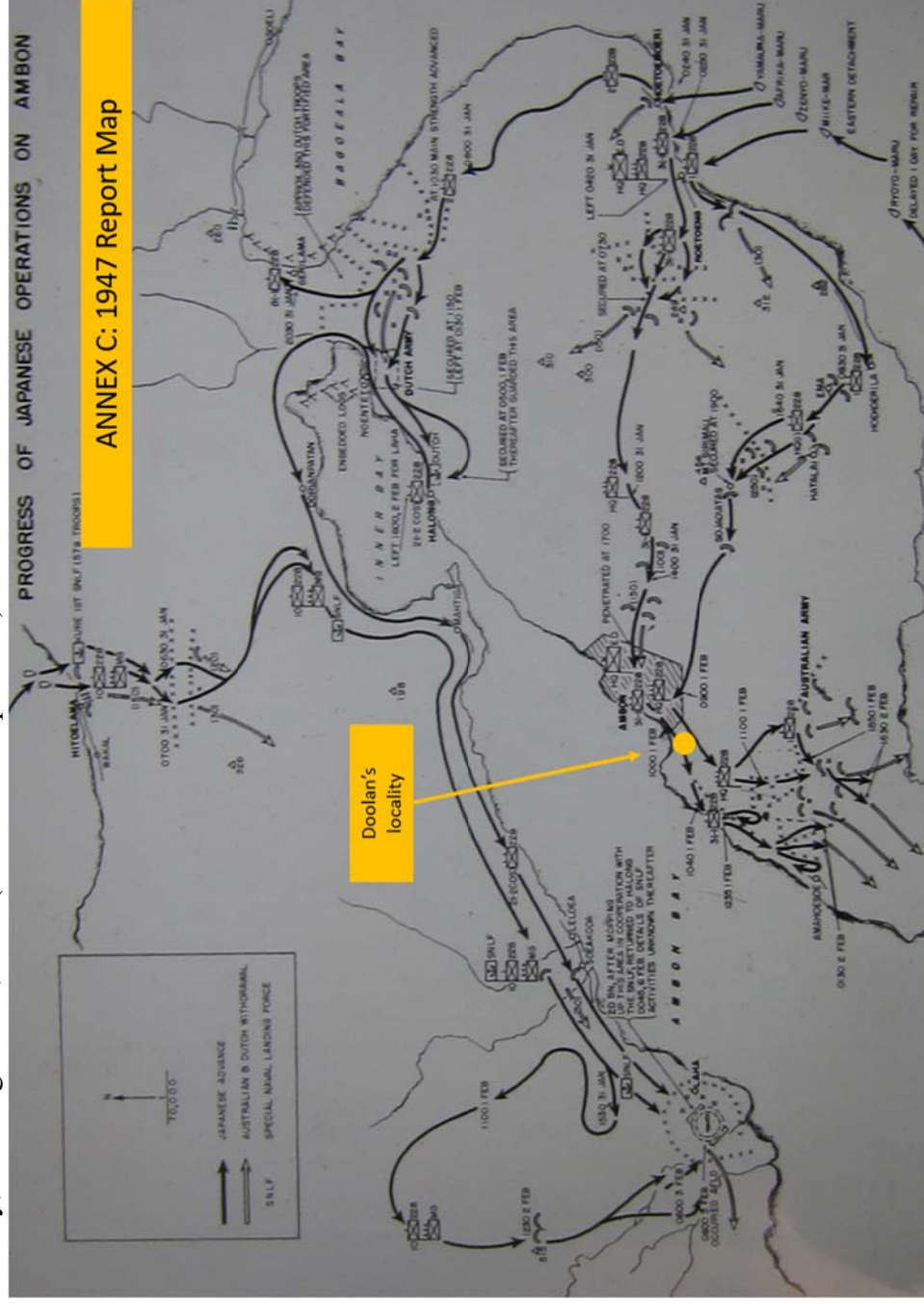
¹⁵⁶ History of the 228th Infantry Regiment, p. 6.

¹⁵⁷ History of the 228th Infantry Regiment, pp. 18-19.

ANNEX B - Map from the translated Japanese Unit Association History account of operations in Ambon.



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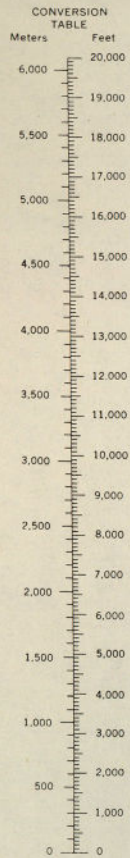
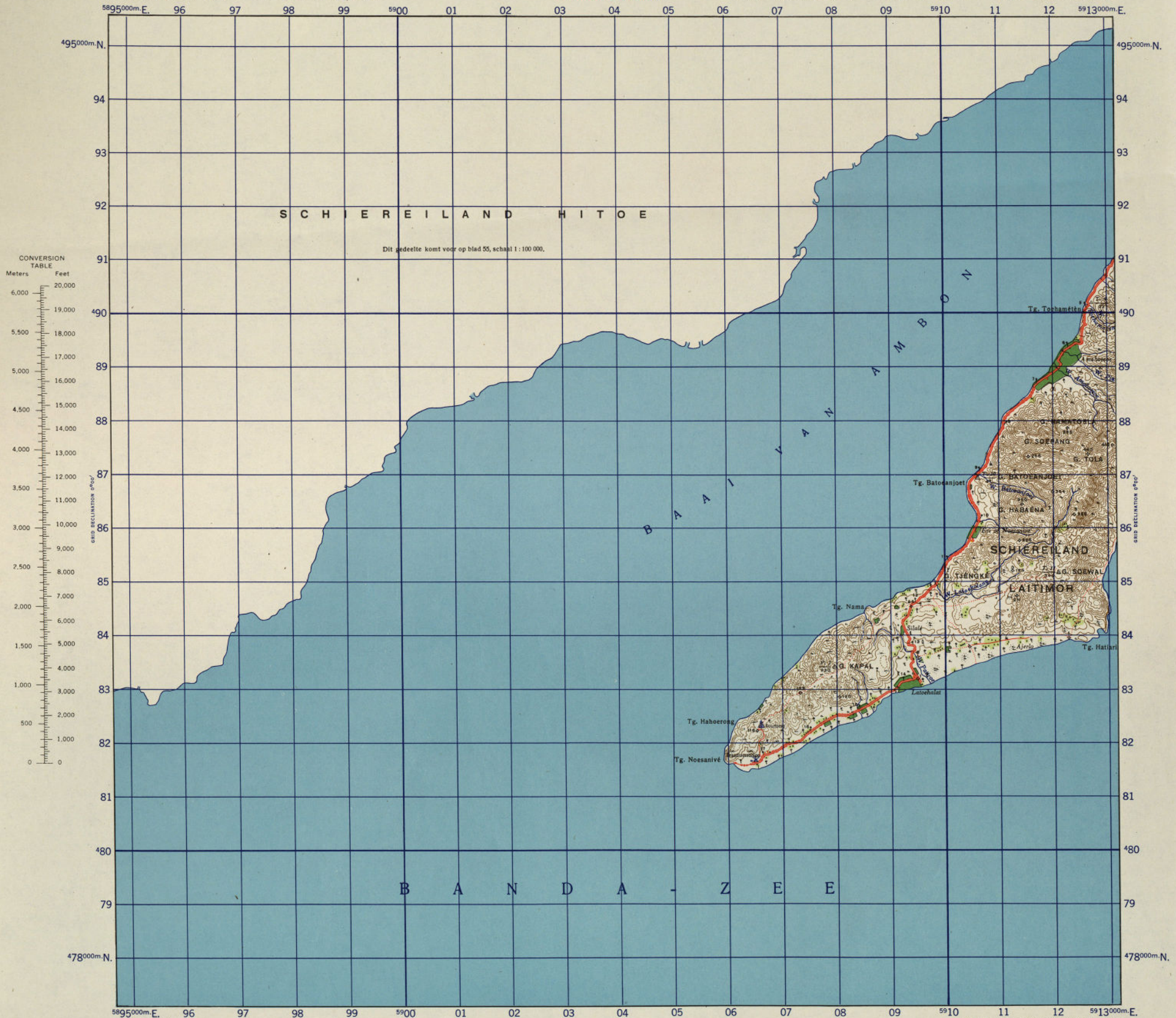
ANNEX D - US Army 1:50,000 topographical map 'Amboina Archipelago' - Sheet
No. 3, based on a 1925 Dutch chart

AMBOINA ARCHIPELAGO 1:50,000

For use by War and Navy Department Agencies only
Not for sale or distribution

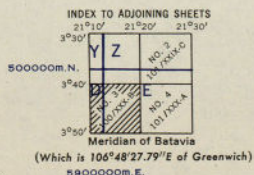
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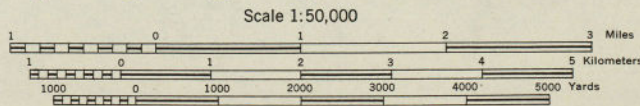
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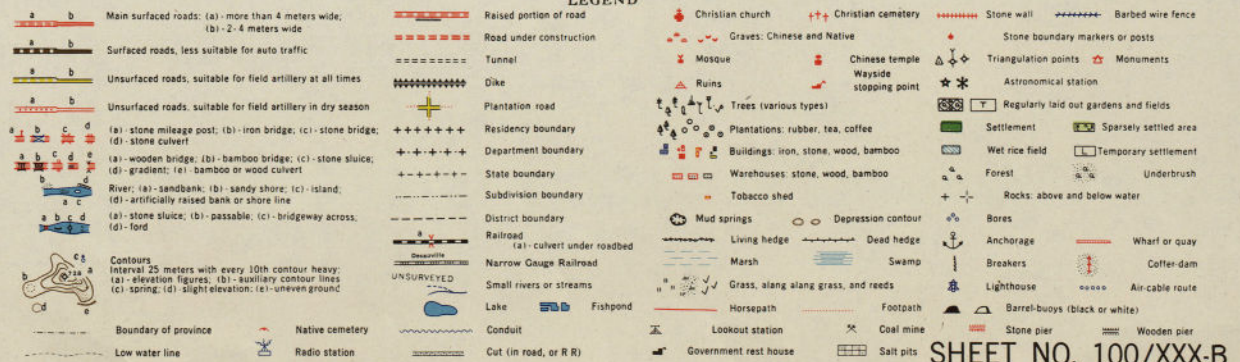
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Spheroid: Bessel
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False Co-ordinates of Origin: 3,900,000 meters East, 900,000 meters North
Scale Factor: .997



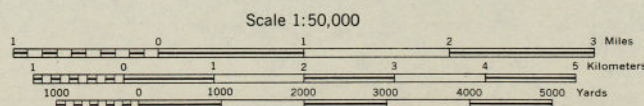
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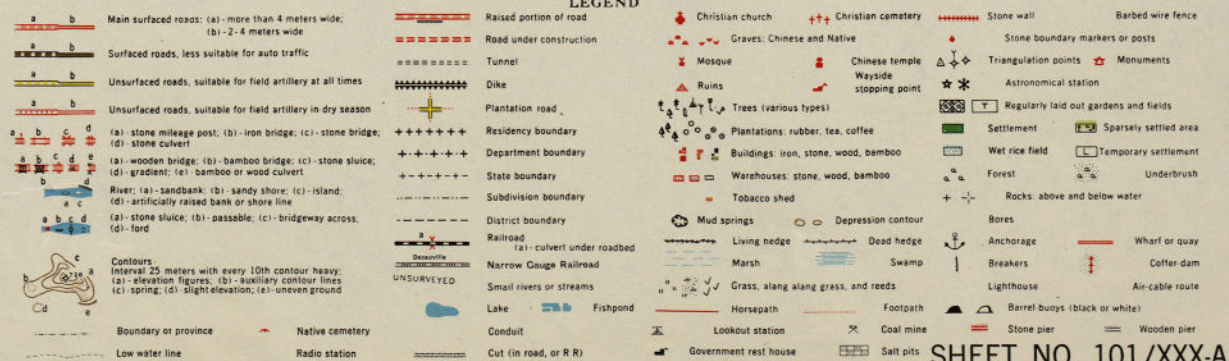


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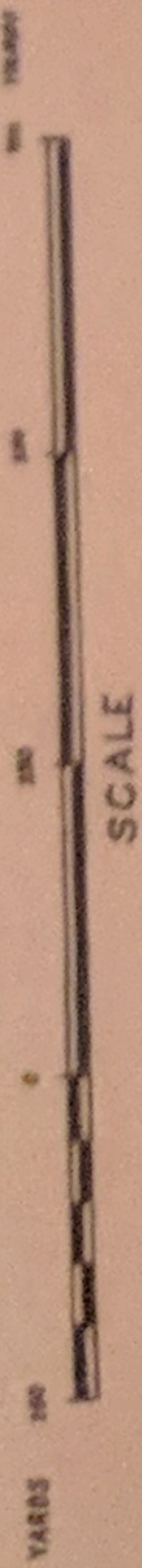
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AMBON EN OMSTREKEN



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LEGENDA

- 1. Gemeente
- 2. Kerkgebouw
- 3. Kerk
- 4. Kerkgebouw met klooster
- 5. Kerkgebouw met klooster en school
- 6. Kerkgebouw met klooster en school en ziekenhuis
- 7. Kerkgebouw met klooster en school en ziekenhuis en hospitaal
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- 17. Kerkgebouw met klooster en school en ziekenhuis en hospitaal en postkantoor en telegraaf en telefoon en waterleiding en elektriciteit en gas en tram en bus en auto en vrachtwagen
- 18. Kerkgebouw met klooster en school en ziekenhuis en hospitaal en postkantoor en telegraaf en telefoon en waterleiding en elektriciteit en gas en tram en bus en auto en vrachtwagen en trein
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Opgegeven door de Topografische Dienst in 1932

Aangesteld by NUTS, Jan. 32.

REFERENCE AMBON TOWN

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NUTS
(Netherlands Forces Intelligence Service)
No. 109, C. Date DEC. 1942.
Date of Revision

Annex G – Contemporary satellite photograph map of Ambon and southern environs

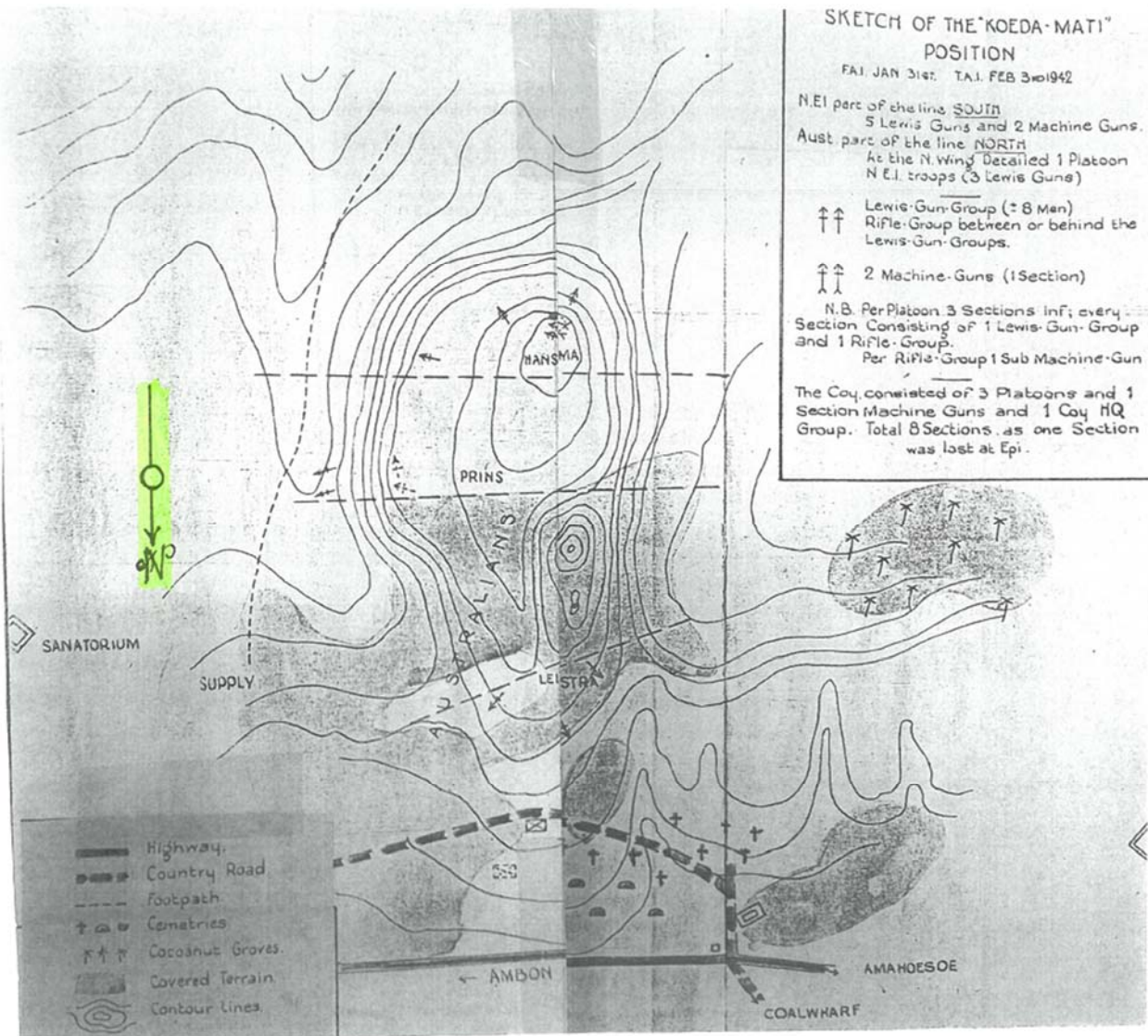


Annex H - Dutch battle maps of Ambon Campaign - Dutch Official History



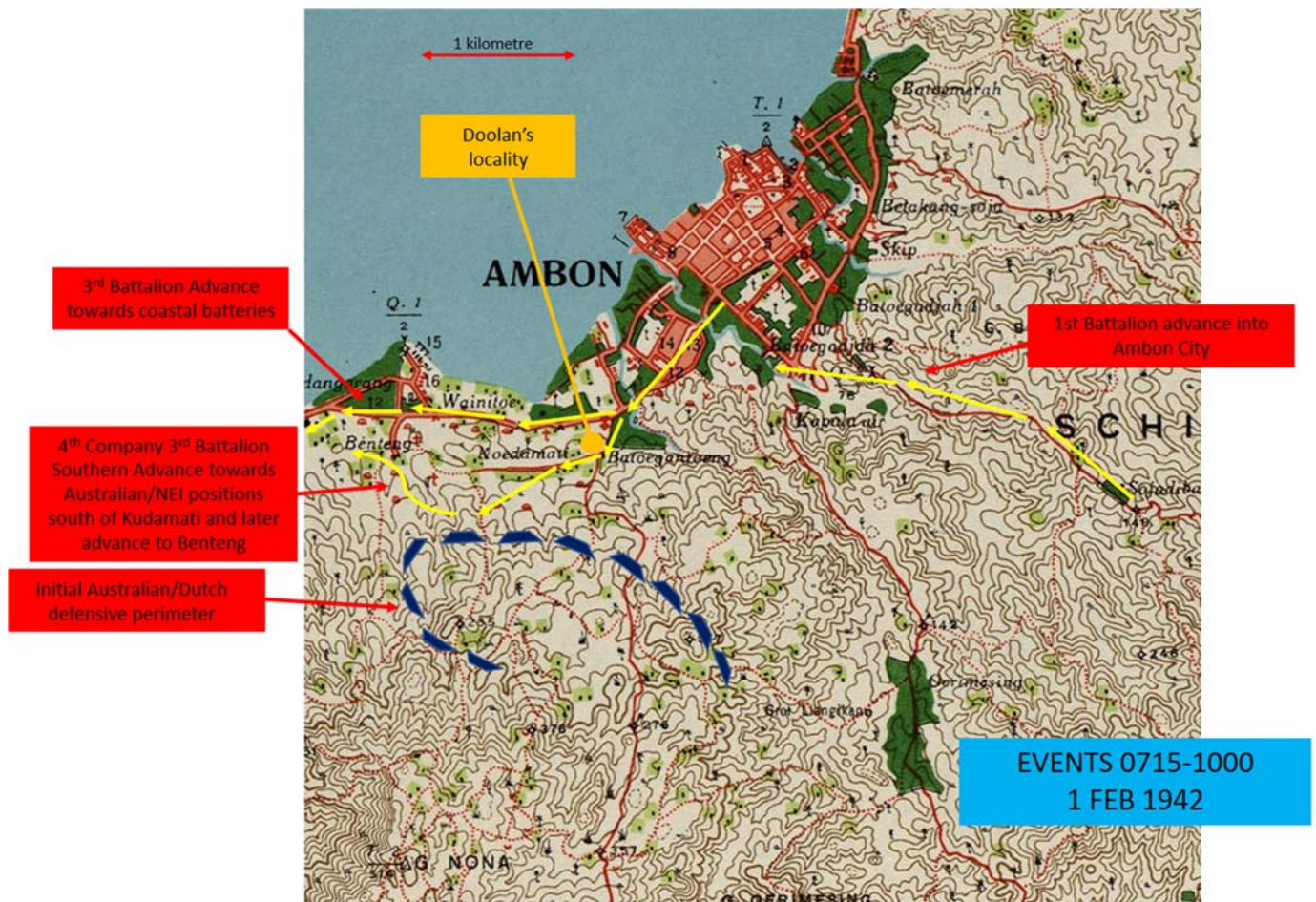


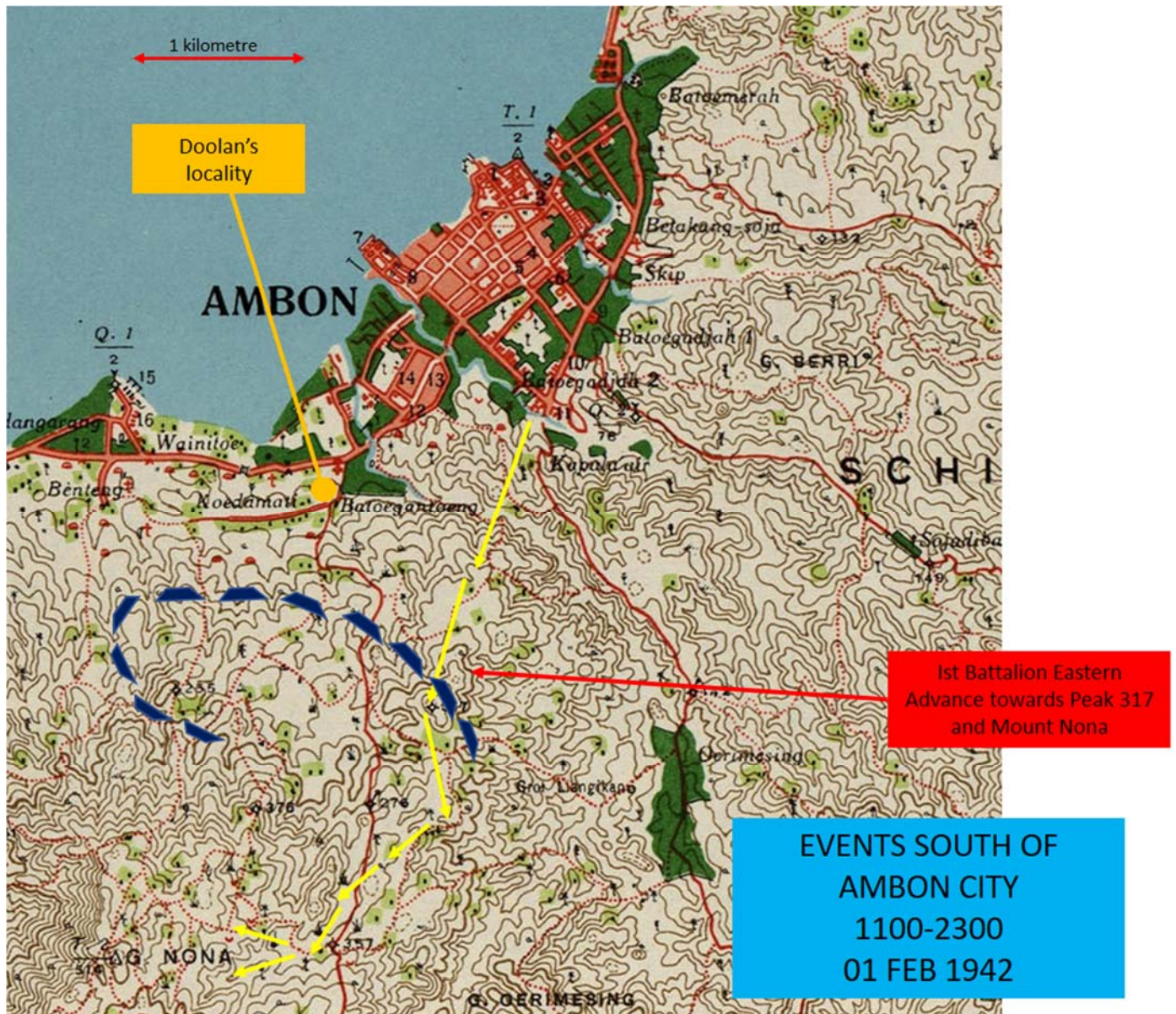
Annex I - Sketch map produced by Lieutenant Smith in support of the Australian account 1945, titled 'Dispositions on Ambon Island 17 December 1941 – 31 January 1942, Scale: 1:100,000 (Time Zone Molucca - +8½) *

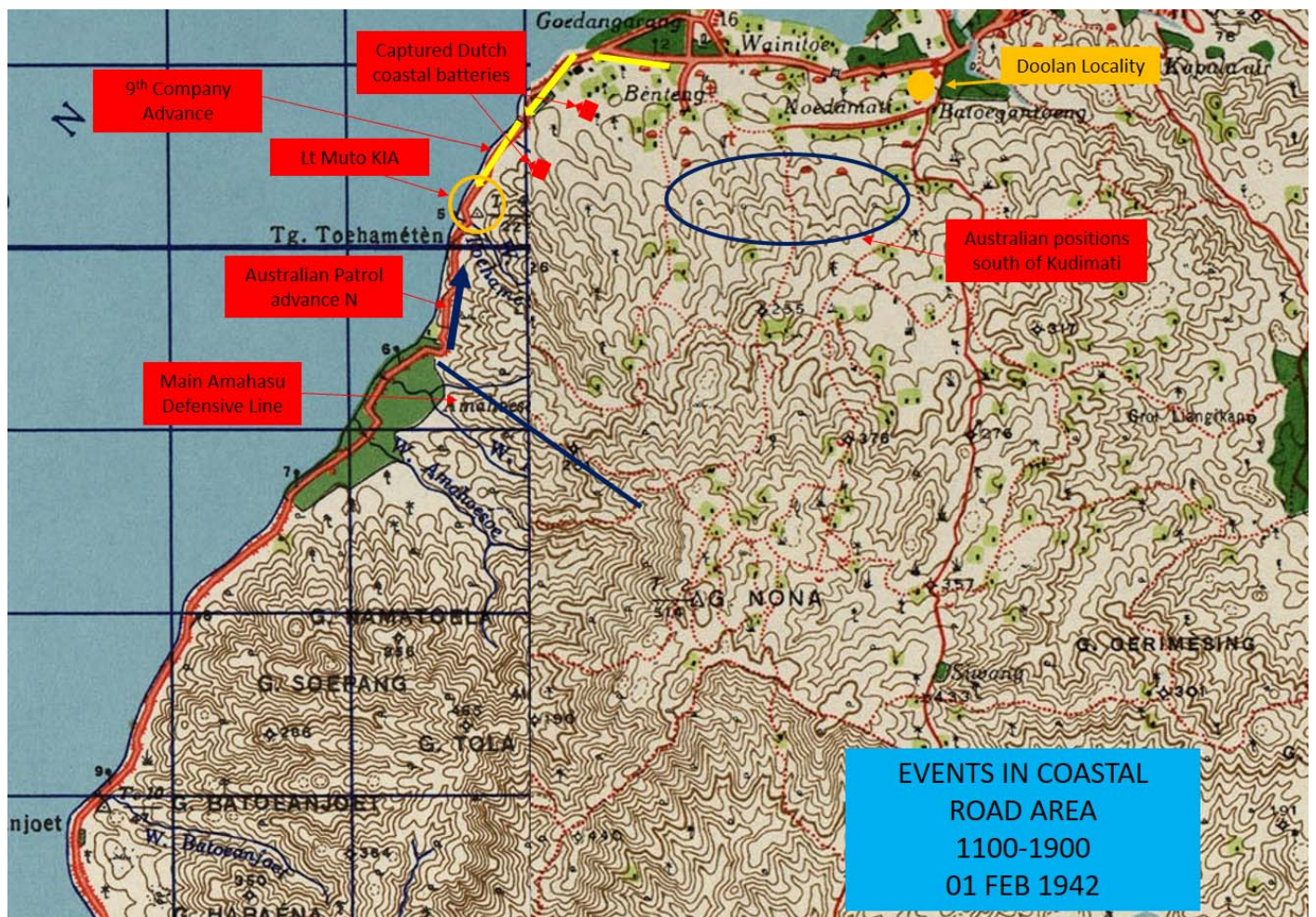


*Please note that this map is aligned with North towards the bottom of the page

Annex J – Slides prepared by Tribunal showing Japanese advances from Ambon City and action involving death of IJA Lieutenant Muto

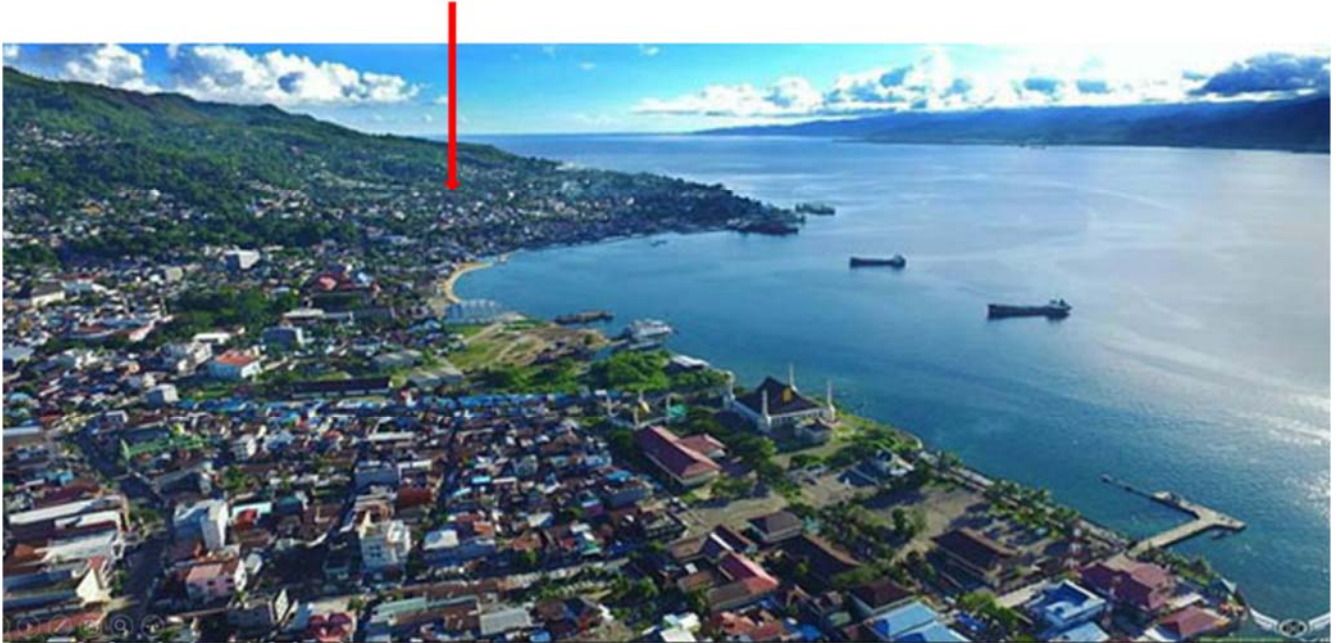




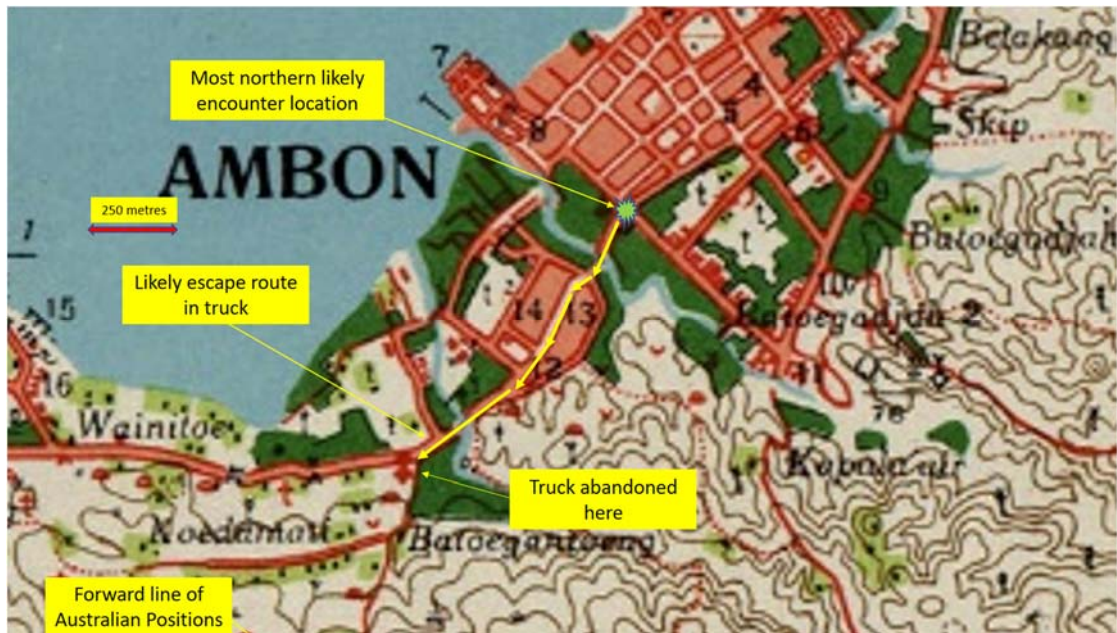


Annex K – slides prepared by Tribunal displaying likely route of Sergeant O’Brien’s patrol, the position of its interaction with the Japanese and Driver Doolan’s location in Kudamati

KUDAMATI IN 2019







ANNEX L

TIMELINE: EVENTS OF 1 FEBRUARY 1942

(All times adjusted to GMT +9)

0430	Lieutenant Smith orders formation and despatch of a reconnaissance patrol into Ambon City led by Sergeant O'Brien. Volunteers for the patrol include Driver Doolan
0612	<i>Local time of morning civil twilight</i>
0600-0620	Probable time of departure of Sergeant O'Brien's patrol
0633	<i>Local time of sunrise</i>
0630-0640	Probable time of Sergeant O'Brien's patrol's encounters with Japanese troops and withdrawal to Kudamati area
0645	Truck abandoned. Driver Doolan volunteers to remain behind
0715-0830	Probable period in which Driver Doolan engaged 4 th Company 3 rd Battalion Japanese troops and was killed
0730	Sergeant O'Brien reports to Lieutenant Smith. This officer recalled hearing machine gun fire from the vicinity of Kudamati village shortly before Sergeant O'Brien's report
0830	Japanese 3 rd Battalion begins advance on Australian positions
0830-0900	Probable period in which 4 th Company 3 rd Battalion engaged Kudamati position and achieved its isolation from Benteng coastal batteries and their defences
0830-0900	Likely time of abandonment of western B Echelon entrenchments by detachments under Sergeant Major Ryan
0900	Leading elements of Japanese 1 st Battalion enter Ambon City
0900	RSM Warren's patrol reconnoitres from Amahasu to south of Ambon City and observes Kudamati positions under attack
0930-1000	Dutch artillery troops disable Benteng coastal battery guns
1000	4 th Company 3 rd Battalion launches main attack on Benteng
1047	Benteng batteries captured
1100	1 st Battalion begins advance south from Ambon City
1200	Engagements between 1 st Battalion and Kudamati positions – Japanese forces eventually leave the Kudamati area and move further south to Mount Nona
1230	Effective abandonment of eastern Kudamati positions by NEI 2 nd Company troops
1235	9 th Company 3 rd Battalion begins southward advance from Benteng along coastal road
1300	Earliest time for start of 9 th Company encounter with concealed shooter(s)
1300-1900	Period within which 9 th Company were pinned down
1846	<i>Local time of sunset</i>

1907	<i>Local time of evening civil twilight</i>
2000	Japanese night assault on Amahasu lines
2300	Japanese penetrate Amahasu lines. Australian troops withdraw to Eri