



- Police policy and practice should require a shift supervisor to coordinate and have oversight of the frequency and purpose of bail checks on individual offenders.
- The unreasonable and oppressive frequency of bail checking may have contributed to Mr Stephens' views of Police and the actions he took on 14 July 2016.
- Officer A acted appropriately to the direct threat posed by Mr Stephens and ensured that responding officers received detailed updates about Mr Stephens' appearance, actions and direction of travel.
- Police responded swiftly to Officer A's emergency call and responding officers were justified in arming themselves.
- Officers B, C and H were justified in using Tasers to try to incapacitate Mr Stephens in Marino Road and the workshop.
- Officer B was justified in using pepper spray to try to stop Mr Stephens.
- Officers E and F did not have a reasonable opportunity to effectively and safely deploy their Police dogs to incapacitate Mr Stephens.
- Mr Stephens was not bitten by a Police dog at any point during the incident.
- Police exercised good command and control during this short, fast-paced incident.
- All reasonable assistance was provided to Mr Stephens after he was shot.
- Police did not deliberately remove a vital section of footage from Officer K's Taser.
- There is no missing footage. There are seven seconds which are not captured by Officer K's Taser camera, likely due to a technical fault.

## BACKGROUND

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### Index of officers

Field Staff	Roles/Comment
Officer A	Senior Constable. Was driving a red marked Police car that was attacked by Mr Stephens. Twenty-two years' Police service. Current in all relevant certifications.
Officer B	Constable. Partnered with Officer C. Armed with an X26 Taser. Attempted to discharge Taser, then sprayed Mr Stephens with pepper spray. <sup>2</sup> Two years' service. Current in all relevant certifications.
Officer C	Constable. Partnered with Officer B. First officer to confront Mr Stephens. Armed with an X2 Taser. Discharged Taser twice. Nine years' Police service.
Officer D	Sergeant and Police dog handler without an operational Police dog. Nineteen years' Police service. Current in all relevant certifications.
Officer E	Constable and Police dog handler, with an operational Police dog. Seven years' Police service.
Officer F	Senior Constable and Police dog handler, with an operational Police dog. Seventeen years' Police service. Current in all relevant certifications.
Officer G	Constable. Partnered with Officer H. Armed with an X2 Taser and a Bushmaster M4 rifle. Shot Mr Stephens twice. One years' Police service. Current in all relevant certifications.
Officer H	Constable. Partnered with Officer G. Armed with an X26 Taser and a Glock pistol. Discharged Taser. Twelve years' Police service. Current in all relevant certifications.
Officer I	Senior Sergeant. Unarmed. Twenty years' Police service. Current in all relevant certifications.
Officer J	Acting Sergeant. Armed with a Glock pistol. Nineteen years' Police service. Current in all relevant certifications.
Officer K	Sergeant. Armed with a X26 Taser which he obtained en-route from Officer L. Twenty-five years' service. Current in all relevant certifications.
Officer L	Sergeant. Armed with a Glock pistol and Taser. Gave his Taser to Officer K en-route. Seventeen years' service. Current in all relevant certifications.
Officer M	Constable. Working alone with access to Police firearms. Had no active part in events. Nine years' service. Current in all relevant certifications.

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<sup>2</sup> Oleoresin Capsicum spray.

## Index of civilians

Reference	Roles/Comment
Mr V	Front passenger in a vehicle stopped initially on the corner of Marino and Te Ngae roads. Witnessed and recorded events on his cell phone, later posting the footage onto a social media site.
Ms W	Partner of Mr Stephens.
Mr X	Friend and colleague of Mr Stephens.
Ms Y	Registered nurse with specialist training in mental health and addiction care. Witnessed the shooting of Mr Stephens and provided first aid.
Mr Z	Front passenger in a vehicle stopped in the southbound right lane on Te Ngae Road. Witnessed the shooting of Mr Stephens and recorded events on his cell phone.

## Events preceding the shooting

6. Shargin Stephens was a 35-year-old man who lived with his partner, Ms W, in Rotorua. Two dogs were kept in the front yard of their property.
7. At the time of this incident, Mr Stephens was facing charges on a number of matters including drug and firearm related offences, and was on electronically-monitored (EM) bail at his home.<sup>3</sup>
8. As part of his bail conditions, Mr Stephens was not allowed to take drugs or drink alcohol, and was required to present himself to Police when they conducted bail checks at his home.
9. Mr Stephens' family and friends said that he smoked methamphetamine but was not a heavy user. Mr Stephens' friend, Mr X, told the Authority that Mr Stephens *"liked his alcohol a lot"* because it *"made him feel like he was invincible."* Alcohol was his *"major downfall"* and often *"why he got into trouble with the law."*
10. Mr Stephens had a very negative opinion of Police. He was particularly angry and frustrated about the frequency with which Police officers conducted bail checks on him. His family said that these checks were unnecessary and disruptive, sometimes occurring 30 minutes apart, and in the early hours of the morning.
11. Two days before this incident, on 12 July 2016, Mr Stephens' bail conditions were changed to allow him to leave his home to work on an orchard in Maketu on weekdays between 7am and 6pm. Mr X, who lived nearby and worked at the same orchard, drove him there and back.
12. On 13 July 2016, the day before the incident, Mr Stephens was bail checked three times, initially at 12:23am and then at 8am. After work that day, Mr Stephens bought a six-pack of Cody's Bourbon and Cola and drank them that evening. He also shared *"a point"* of methamphetamine

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<sup>3</sup> Electronically-monitored (EM) bail is granted to defendants who would otherwise be held in custody or prison while they wait for a court hearing. Mr Stephens was initially on a 24-hour curfew at his home address but was later permitted to leave the house to work (see paragraph 11).

with three other people.<sup>4</sup> Mr Stephens was bail checked, although not breath alcohol tested, for the third time at 7:21pm, approximately 17 hours before this incident took place.

13. Ms W told the Authority that Mr Stephens didn't sleep that night. Mr X told Police that, at approximately 2am, he received a text message from Mr Stephens complaining, "*fuck this brother they won't let me sleep fuck.*"
14. On the morning of 14 July 2016, the weather conditions delayed the start of work on the orchard. Ms W said Mr Stephens seemed "*spaced out*" but normal when she left for work at 9:45am.
15. Mr X did not see Mr Stephens until approximately midday, when he called in briefly to say he would be back soon to pick up Mr Stephens for work. He said Mr Stephens seemed tired, angry and was "*sulking a bit*".
16. At a time after 12:12pm and before the events set out below at approximately 12:45pm, Mr Stephens cut off his electronic monitoring bracelet.<sup>5</sup>

### Officers involved

17. Thirteen officers were directly involved in the events set out below, up to and including the shooting of Mr Stephens. Their knowledge and involvement with Mr Stephens is set out below:
  - Only one of the officers (Officer D) recognised Mr Stephens during these events as he had had prior dealings with him. He did not share this information over the radio or directly with any colleagues due to the fast-paced nature of the incident. He did not conduct any bail checks on Mr Stephens in 2015 or 2016.
  - Four officers (Officers B, C, G and J) did not recognise Mr Stephens during the incident but later recalled having had dealings with him once they became aware of his identity. Officers B, C and G had conducted bail checks on Mr Stephens in 2016 (two checks, one check and two checks respectively). Officer J did not conduct bail checks on Mr Stephens.
  - One officer (Officer H) did not recognise Mr Stephens but knew his name when later advised of it. Officer H did not conduct bail checks on Mr Stephens.
  - The remaining seven officers (Officers A, E, F, I, K, L and M) did not know Mr Stephens and did not recall having had any dealings with him. None of these officers conducted bail checks on Mr Stephens.

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<sup>4</sup> A 'point' is 0.1 grams.

<sup>5</sup> The electronic monitoring bracelet last communicated to Corrections at 12.12pm. Corrections received an alert at 1.14pm. Corrections told Police that a tamper alert was not received from Mr Stephens' bracelet when cut and removed, which is unusual, but can occur. The EM bracelet was later found on Mr Stephens lawn. It had been cut and the battery and internal components were dismantled and also on the lawn.

## Mr Stephens attacks Officer A's Police car

18. At approximately 12:45pm, Officer A was driving a red marked Police car northwards along Vaughan Road, when he heard an object hit the rear left-hand side of his Police car.
19. Officer A pulled over to the side of the road and got out to inspect the Police car. He left the Police car running, with the keys in the ignition and the driver's door closed. His Taser and Glock pistol ('Glock') were secured in the lockbox in the front passenger footwell.
20. As Officer A looked back down the road, he saw Mr Stephens (who he did not know and had no prior dealings with) pick up an object from the middle of the road and calmly walk towards him along the footpath. As Mr Stephens got closer, Officer A saw that he was holding a round weight<sup>6</sup> in his right hand.
21. Officer A walked towards Mr Stephens and spoke to him, but Mr Stephens walked past Officer A without replying and threw the weight at the rear window of the patrol car. At this point, Officer A saw that Mr Stephens was carrying a slasher in his left hand and appeared to be in a "trance-like state".
22. CCTV footage from nearby security cameras captured the next sequence of events. The footage shows Mr Stephens position himself next to the front passenger door of the Police car, grasp the slasher with both hands, swing it back, and forcefully strike the front passenger and rear passenger windows four times, smashing the rear passenger window.
23. Officer A told the Authority that he feared for his safety because he had no immediate means to defend himself from Mr Stephens. He decided that the best course of action was to get away.
24. The CCTV footage shows Officer A move quickly from his position at the rear of the Police car, get into the driver's seat, and start to pull away. As he does so, Mr Stephens raises the slasher above his head and strikes the windscreen twice, smashing the glass. Mr Stephens then strikes the back of the Police car as it moves past him.
25. Officer A drove approximately 20 metres up the road to the intersection with Allen Mills Road, and conducted a U-turn. At 12:52pm, Officer A made a radio call for urgent assistance to the Police Northern Communications Centre ('NorthComms'):

*"10/10, 10/10,<sup>7</sup> Vaughan Road, just had my vehicle damaged by a guy with a slasher."*
26. NorthComms directed available Police units to immediately go to assist Officer A.
27. Meanwhile, Mr Stephens had crossed Vaughan Road and was walking along the footpath in the opposite direction, still holding the slasher. Officer A followed Mr Stephens, maintaining a distance of approximately fifty metres. Officer A told the Authority that Mr Stephens appeared

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<sup>6</sup> A blue 2.5kg dumbbell weight as used for weightlifting.

<sup>7</sup> Police radio code conveying that an officer is in an emergency situation and requires immediate assistance.

to be “*a man on a mission*” and he was concerned about Mr Stephens coming into contact with members of the public.

28. Officer A continued to provide radio updates, advising that Mr Stephens was:

- a Māori male;
- wearing a black puffer jacket, fawn-coloured shorts and light-coloured work boots;
- walking back towards Te Ngae Road;<sup>8</sup> and
- still holding the slasher.

### Officers respond from Rotorua Police Station

29. Officers B, C, D, E, F, G, H, I, J, K, L and M (six general duties officers, three dog handlers, a traffic sergeant, a community sergeant, and a senior sergeant) were at Rotorua Police Station when they heard Officer A’s emergency radio call. They immediately ran to their vehicles,<sup>9</sup> put on emergency lights and sirens, and started driving through heavy traffic towards Vaughan Road, a distance of approximately three kilometres.

30. All officers, apart from two dog handlers (Officers D and F), were wearing stab-resistant body armour (SRBA). None of the officers stopped to put on ballistic body armour, as their priority was to reach Officer A as soon as possible.

31. While driving towards Vaughan Road, Officer D (a dog handler with the rank of sergeant) assessed the information provided by Officer A: a man armed with a dangerous weapon had attacked an officer’s vehicle and was now moving through a populated industrial area.

32. Officer D decided that the man posed an extremely serious threat to the public and to responding Police officers. He told the Authority that he radioed the other responding officers, directing them to arm themselves and to remind themselves of Police fire orders.<sup>10</sup> However, he did not realise at the time that this message did not get through because the radio channel was busy. Officer D couldn’t immediately get his own Glock from the front passenger lock box because he was driving and was not carrying a passenger.

33. Officer B was driving the lead Police car along Te Ngae Road, with Officer C in the front passenger seat. Both officers were armed with Tasers and did not consider arming themselves with firearms. Officer C removed his Taser from the holster on his hip and held it on his lap so he would be ready to act immediately.

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<sup>8</sup> A busy main road on the eastern shore of Lake Rotorua, which connects the city to the airport. There are a number of shops, restaurants, and businesses along this section of Te Ngae Road and on the connecting streets.

<sup>9</sup> Officers B and C, G and H, J, K and L, and M drove five marked Police cars respectively. Officer D drove his unmarked Police dog van. Officers E and F each drove a marked Police dog van containing an operational Police dog. Officer I travelled with Officer F.

<sup>10</sup> Fire orders instruct officers to always be aware of their personal responsibilities in the use of firearms. The fire orders remind officers of relevant sections of the Crimes Act 1961 and set out the circumstances in which the use of lethal force is justified. See paragraphs 124 and 125 for more detail.

34. Less than a minute behind, Officers G and H were following Officers B and C and the Police dog vans. Officers G and H discussed the high level of threat posed by the unknown offender armed with a slasher, and decided that Officer H should arm himself with the Glock from the front passenger lock box. They discussed Police fire orders and Officer H advised NorthComms that he was armed.
35. Meanwhile, Officer A radioed that Mr Stephens had now turned left into Marino Road and was still armed with the slasher.
36. Officers B and C in their patrol car and Officer D in the first Police dog van turned off Te Ngae Road onto Vaughan Road. Officers E and F, each driving a dog van and followed by Officer G, continued along Te Ngae Road, and turned directly into Marino Road.
37. Officer M drove straight through on Te Ngae Road and approached the workshop from an accessway. He had no interaction with Mr Stephens.
38. Officers K and L were about a minute behind and turned left into Vaughan Road, drove past the intersection with Marino Road, and arrived at the workshop after Mr Stephens had left. As Officer K was unarmed, the two officers decided that he would take Officer L's Taser, while Officer L armed himself with the Glock pistol in the car.

#### **Police confront Mr Stephens on Marino Road**

39. Officers B and C drove along Vaughan Road, turned right into Marino Road and saw Mr Stephens approximately 50 metres from the intersection. Officer B said that Mr Stephens was yelling, waving his arms, and looked *"really angry and wound up like he wanted to fight"*. Officer C got on the radio and warned other arriving Police units, *"He's amped!"*
40. Officer B parked the Police car and both officers got out and confronted Mr Stephens. Officer C said that Mr Stephens turned to face them with both arms raised above his head in an *"aggressive stance"*. Both officers saw that he had a long spanner in his right hand and the slasher in his left hand. Officer C aimed his Taser at Mr Stephens and yelled, *"Put it down!"*
41. Officer C said that Mr Stephens lunged at him then half-turned with his right arm raised and poised to throw the spanner. Officer C switched his Taser on, and repeatedly commanded Mr Stephens to drop his weapons.
42. Mr Stephens backed away from the officers, waving his weapons, and then turned and ran down a driveway towards a mechanic's workshop. Officer C and Officer B (who had also turned her Taser on) chased after Mr Stephens.
43. Footage from both officers' Taser cameras and nearby CCTV cameras recorded what happened next. The Taser cameras also recorded Officers B and C yelling at Mr Stephens to drop the slasher.
44. Mr Stephens ran a short distance down the driveway before again turning to confront the officers. He raised his right arm as if to throw the spanner at Officer C. In response, Officer C



fired his Taser at Mr Stephens.<sup>11</sup> Both probes made contact but only delivered a limited electrical charge, which was not enough to incapacitate Mr Stephens.<sup>12</sup> At almost the same second, Mr Stephens threw the spanner at Officer C. The spanner went down towards Officer C's legs but missed him.

45. Realising that Officer C's Taser discharge had been ineffective, Officer B attempted to fire her Taser at Mr Stephens. However, the mechanism jammed and she was unable to fire it.
46. Meanwhile, Officer D, who had stopped his unmarked Police dog van next to Officers B and C's Police car, got out and witnessed the confrontation between the officers and Mr Stephens.
47. When Mr Stephens ran down the driveway, Officer D immediately got back into his Police dog van and drove after him. As he turned into the driveway, Officer D could see several people standing at the roller-door entrance to the workshop. Officer D briefly considered driving straight into Mr Stephens in order to protect those people from him, but decided instead to use his Police dog van to try to pin Mr Stephens against the fence.
48. As Officer D drove towards Mr Stephens, Mr Stephens side-stepped, raised the slasher above his head, and swung it at the passenger-side wing mirror of the Police dog van, breaking it.
49. Mr Stephens then turned back to face Officer C, who was standing approximately three metres in front of him, and brought the slasher up above his head with both hands, poised to strike.
50. At this moment, Officer C fired his second Taser cartridge towards Mr Stephens, causing Mr Stephens to turn away to his left. One probe became lodged in his forehead, but the other probe did not connect. Officer C had now used his two available Taser cartridges and could not fire his Taser again.
51. Officer B manually loaded a new cartridge<sup>13</sup> and again tried to discharge her Taser, but it still would not work.<sup>14</sup>
52. Mr Stephens ran around the back of the Police dog van and towards a group of cars parked against the side of the workshop. Officer B chased after Mr Stephens and sprayed a full canister of pepper spray towards him with no effect. Mr Stephens then ran into the workshop, still holding the slasher.
53. Meanwhile, Officer E and Officer F had driven their Police dog vans into Marino Road. Officer E said that after he had turned left into Marino Road, he saw the deployment of a Taser and then

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<sup>11</sup> Officer C was armed with an X2 Taser, a semi-automatic two shot device. This meant that Officer C did not need to manually reload a second cartridge onto his Taser in order to fire it a second time.

<sup>12</sup> Both probes fired from a Taser cartridge must hit the target to allow the electrical current to be delivered to the subject. Baggy clothing, such as a puffer jacket, can hold probes away from the subject's skin, preventing the discharge from being effective. Taser probes were later found in the feather lining of Mr Stephens' puffer jacket.

<sup>13</sup> Officer B was armed with an X26 Taser, which requires the operator to manually reload a new cartridge in order to fire it a second time.

<sup>14</sup> Officer B's Taser was examined by the Police armourer after the incident and found to have a mechanical fault which prevented it from firing.

pepper spray. The two dog handlers parked their Police dog vans near the entrance of the driveway on Marino Road and got their Police dogs out.

54. Officers G and H had also arrived from the same direction and parked adjacent to the driveway. Both believed there had been unsuccessful attempts to stop Mr Stephens with Tasers and pepper spray in the driveway. Officer H got out of the Police car and told the Authority that he heard an officer call for a Taser. He reasoned that none of the other officers must have a Taser available, so got his Taser out and ran towards the workshop with his Taser ready in his hand.
55. Officer G assessed the situation and decided that, as Tasers seemed ineffective against Mr Stephens, he required a firearm. He opened the boot of the Police car, removed a Bushmaster M4 rifle ('rifle') from the rear lock box and racked it to make it ready to fire. Officer G, Officers E and F and their Police dogs ran into the workshop.

### Police confront Mr Stephens in the workshop

56. As above, this phase of events was captured on a combination of Taser camera footage, CCTV and cell phone footage.
57. At least four mechanics were in the workshop when Mr Stephens entered. Mr Stephens ran towards the right of the workshop, and through a doorway leading to a small hallway and office area. He then turned to face the pursuing Police officers, holding the slasher horizontally in front of him.
58. Officer H turned his Taser on as he ran into the workshop. He confronted Mr Stephens from a distance of six metres, with his Taser drawn, and yelled, "*Put it down, put it down!*" Officer H said he received no acknowledgment from Mr Stephens.
59. Officer H went on to say that Mr Stephens made "*jabbing motions*" with the slasher towards him, then raised his arms and took a "*big swing*" while moving to his left behind the semi-closed door. Mr Stephens' actions were captured on the Taser camera footage, which does not show a big swinging motion; rather Mr Stephens had the slasher out in front of him at head height, circling it around in front of him.
60. Officer H told the Authority he had no option other than to fire his Taser at Mr Stephens, however the probes hit the door. Officer H manually loaded a new cartridge on to his Taser.<sup>15</sup> By the time he had done so, Mr Stephens had disappeared from view.
61. While Officer H was confronting Mr Stephens, Officers B, C, D, G and I were positioned in the workshop, just behind Officer H's right shoulder, to prevent Mr Stephens from escaping back through the roller-door. Officer F had positioned himself and his Police dog at the roller-door to guard the exit.
62. Officer E had positioned himself and his Police dog inside the workshop to the right of the office doorway. He told the Authority that he heard (but did not see) Officer H fire his Taser at Mr

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<sup>15</sup> Officer H was armed with an X26 Taser. See footnote 13.

Stephens, followed by a thud, which he assumed was Mr Stephens falling over. Officer E brought his Police dog towards the office doorway but Mr Stephens had gone. Officer E heard an officer shout, *"He's run off!"*

63. The officers searched the hallway and realised that Mr Stephens had run through the reception area and back outside onto Marino Road. Officer A, who had parked his Police car on Marino Road and was standing in the driveway, saw Mr Stephens running towards Te Ngae Road and advised NorthComms.

### Police confront Mr Stephens on Te Ngae Road

64. Rather than follow Mr Stephens through reception, the majority of the officers ran out the roller-door and back down the driveway towards Marino Road.
65. Officers D, E and F ran towards their Police dog vans with the intention of driving after Mr Stephens.<sup>16</sup>
66. Officer G (still armed with a rifle) and Officer I sprinted out of the roller door, down the driveway (overtaking Officers B and C), and back out onto Marino Road. When Officer G reached the end of the driveway, he looked to his left and saw Mr Stephens approximately 20 metres ahead of him, near the intersection of Marino Road and Te Ngae Road. This intersection was controlled by a roundabout, with the Redwoods Centre on the opposite side.
67. Officer G saw other officers getting into their vehicles behind him and decided that he would pursue Mr Stephens on foot. He told the Authority that he believed that he had to stop Mr Stephens from reaching the Redwoods Centre, and he knew that, other than Officer H, he was the only armed officer at the scene. At this stage, Officer G didn't know where Officer H was.
68. Mr Stephens ran across the corner of the intersection and onto the two northbound lanes of Te Ngae Road, chased by Officers G and I. Officer G said that he saw Mr Stephens cross directly in front of a dark coloured vehicle and a white SUV that had stopped beside each other in the two northbound lanes before the roundabout. A line of traffic had built up behind these two vehicles.
69. As Mr Stephens ran in front of these vehicles, Officer G yelled, *"Stop, armed Police!"* Officer G said that Mr Stephens looked behind him then stopped beside the bonnet of the white SUV and turned to face him.
70. Officer G again challenged him to drop his weapon. Officer G said that Mr Stephens looked back at him, then looked at the driver of the white SUV and raised the slasher as if to strike. Officer G said he saw the terrified look on the driver's face and felt *"helpless"*. The drivers of the white SUV and the dark coloured vehicle both sped forward through the roundabout.

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<sup>16</sup> Officer E had loaded his Police dog into his Police dog van and had reached the roundabout (where traffic was heavy) when he heard an officer announce *"shots fired"* over the radio (see paragraph 100). Officer F was still loading his Police dog into the Police dog van when he heard two shots ring out.

71. Mr Z, a witness in a vehicle positioned behind these two vehicles, also saw Mr Stephens threaten these motorists. A short while later, Mr Z got out his cell phone and started filming.<sup>17</sup>
72. Mr V, a passenger in a vehicle stopped on Marino Road at the Te Ngae Road roundabout, also saw Mr Stephens on the road with a slasher and officers approaching him. Mr V got out his cell phone and started filming.
73. Officer G signalled to the other traffic to stay back and continued to chase after Mr Stephens, who was now running along the raised grassed median strip ('median strip') towards the Redwoods Centre. Officer G could see lots of people standing in Redwoods Centre carpark watching what was happening. He told the Authority that he thought, *"If I don't stop him... someone's gonna die"*. He continued to call out to Mr Stephens, desperately trying to draw his attention away from where people had congregated.
74. Officer G said that he considered shooting Mr Stephens at this point but decided not to because people at the Redwoods Centre were also in his line of fire. As he continued to chase, Officer G told the Authority that he deliberately adjusted his track so that trees formed the background behind Mr Stephens, minimising the risk that a bystander would be accidentally shot. The traffic on the southbound lanes had stopped near the roundabout.
75. At this point, Officer J, the acting sergeant, arrived at the scene and parked his patrol car on the median strip, several metres south of Mr Stephens' position. Officer J moved around the front of his Police car with his Glock drawn and aimed it at Mr Stephens. Officer J said that the situation was *"escalating"* as Mr Stephens moved towards the Redwoods Centre.

### Recordings of events

76. At this stage there are various recordings of what occurred from different angles:
  - Mr Z's footage from his cell phone
  - Officer K's Taser footage
  - Mr V's footage from his cell phone<sup>18</sup> (1 minute 37 seconds was posted on social media)
77. Mr Z's footage shows Mr Stephens walking backwards at an angle across the inside southbound lane of Te Ngae Road, holding the slasher upright in both hands across his body. A dark coloured vehicle is behind Mr Stephens driving away in a southerly direction.
78. Officer G, with his rifle in the standing aim position,<sup>19</sup> advances across the median strip towards Mr Stephens. Officer I, who is unarmed, is to the left and behind Officer G. Officer J, armed and presenting his Glock, is ahead and to the right of Officer G and behind Mr Stephens.

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<sup>17</sup> The footage is described from paragraph 76.

<sup>18</sup> Police were initially unable to identify the person when they retrieved the footage from a Facebook site, until Mr V came forward two weeks later.

<sup>19</sup> The standing aim position is where an officer stands with no form of support other than his arms and legs with the rifle pointed at the intended target.

79. Not captured in Mr Z's video is Officer K, armed with a Taser, who is on the left side of Te Ngae Road. Officer K is slightly behind and to the left of Officer G.
80. Mr Z's recording shows Mr Stephens walk backwards until he is about to cross the centreline into the outside southbound lane. He takes a couple of steps into the outside lane and starts to raise the slasher above his head in a striking position. Mr Stephens takes several steps towards Officer G, who has stepped from the median strip onto the road. Officer G takes a step backwards.
81. The final frames of this footage show Mr Stephens holding the slasher in his right hand above his head, about four to five metres away from Officer G.
82. Mr V was a passenger in the front of a car initially stopped at the roundabout on Marino Road. He started filming on a cell phone about four seconds after Mr Z's footage ends. He was about 70 metres away, and the camera quickly zooms in. The first few seconds show Mr Stephens advancing towards Officer G with the slasher raised in his right hand above his head. Officer G has his rifle aimed at Mr Stephens.
83. Officer K, standing on the left of Te Ngae Road with a Taser, turns on the device which starts the video recording. Two seconds of footage record a dark coloured vehicle driving south, as seen in Mr Z's recording. Probably due to a technical fault, the recording then turns off and restarts 7 seconds later (this aspect is addressed in more detail at paragraph 197 onwards). However, the Taser is pointed at the ground and no visual record is obtained. The recording does capture audio commands.
84. In Mr V's video, Officer K can be seen on the side of Te Ngae Road, to the left of Officer G, with the Taser pointed at the ground.

### The shooting

85. Officer G said that Mr Stephens stepped off the median strip onto the inside southbound lane of Te Ngae Road and turned around to face him. He told the Authority that Mr Stephens looked him directly in the eye from a distance of approximately six metres, and "licked his lips" like he was "on something". Officer G said that he thought to himself, "Holy Jesus, this guy's, it's real now, he's focused on me".
86. Officer G explained his thought process at this point:

*"If he turns left, goes into the shopping centre where it is, we're screwed. What we can do is limited...If he turns right he's gonna jack a car and I couldn't let that happen. So I confronted him, told him, "Put your weapon down." I brought my rifle up. "Put your weapon down." He didn't listen. "Put your weapon down." He didn't listen and then it was like slow motion."*
87. Officer G told the Authority that he saw Mr Stephens start to move purposefully towards him while raising the slasher above his head, and he feared Mr Stephens would "take my head off". Officer G said he thought about retreating but believed that he could not as Mr Stephens was

probably already close enough to strike him down with the slasher and, regardless, he could not leave the people in the Redwoods Centre exposed and unprotected.

88. When Mr Stephens took a third step forward and was approximately five metres away, Officer G said he aimed the rifle at Mr Stephens, flicked the safety catch off, and shot Mr Stephens twice. Mr Stephens dropped to the ground onto the edge of the median strip.
89. Officer G's account is corroborated by footage on Mr V's phone, which captures Mr Stephens walking directly towards Officer G with the slasher in his right hand raised above his head.
90. The Taser footage of Officer K also corroborates Officer G's account. While the camera is pointed at the ground, the captured audio has clear commands to Mr Stephens of, *"Put it down. Put it down or you'll get..."*. Two rifle shots are recorded. The Taser camera is then lifted and shows Mr Stephens lying face forward on the edge of the median strip.

#### *Ms Y's account*

91. Ms Y is a registered nurse who specialises in mental health and addiction care. She was driving southwards along Te Ngae Road when the car ahead of her was stopped by a Police officer just past the roundabout. She saw Mr Stephens run onto the road approximately 20 metres ahead. He was yelling and *"violently"* swinging a weapon with a long silver blade.
92. Ms Y also saw people, including teenagers and young children, gathering on the footpath outside the Redwoods Centre. Mr Stephens was heading towards them and Ms Y thought, *"Oh gosh, this isn't going to end nicely"*.
93. Ms Y told the Authority that, based on her experience, Mr Stephens looked like he was under the influence of an *"illicit substance"*:

*"I could just tell, just by his behaviour and his absolutely [sic] lack of insight, like he wasn't aware that there was traffic pulling up behind him. He wasn't, you could just see he wasn't aware."*
94. Ms Y said that Mr Stephens *"upped the ante as far as violence went"*. He was close to the middle of the southbound lanes, swinging his weapon and yelling, *"I'm gonna fucking kill you!"* Police officers shouted at him repeatedly to drop his weapon and get on the ground.
95. Ms Y said that, by this point, she had got out of her car as she believed that either Mr Stephens was going to hurt or kill someone, or he would be shot by Police. She intended to provide first aid.
96. Ms Y was at the front of the queue of vehicles when a Police officer shot Mr Stephens. She estimated that the officer was approximately two and a half metres away from Mr Stephens when he fired. Ms Y then went forward to assist Mr Stephens.

## Other civilian witnesses

97. The Police investigation team spoke to over 100 witnesses and others involved. Statements from 23 eyewitnesses to the shooting outlined similar accounts to Ms Y. Five examples of this include:

- *“He was surrounded by Police, the officer carrying the AR15 (rifle) had his aim on him and was calling out, ‘drop your weapon, drop your weapon.’ He was really yelling it out loud, it was serious. The officer held that pose for quite a while. I would say about 20 seconds, then the guy brought the weapon down like he was going to attack, and he moved towards the officer with the gun and was shot.”*
- *“... the Police had him surrounded he, he had it up above his head like this, like he was ready to have a go and then yeah, when they shot him, before they shot him, he sort of started to, to come forward at them and that’s when they, they shot him.”*
- *“But the guy put the weapon up above his head and went for the cop and they shot him.”*
- *“The male was looking at the officer, he had lifted the machete up over his right shoulder in his right hand. The blade of the machete was rearward, he had his left foot forward and it looked to me with his body stance that he was about to throw the machete at the officer.”*
- *“He then lurched towards the Police Officer with the weapon raised above his head. I saw the angle of the weapon change as it went into a sort of striking mode instead of a threatening mode, and the male was then shot twice by Police. I remember hearing two quick shots.”*

98. Within the statements taken by Police, five provided slightly different accounts of the shooting. Two examples of this include:

- *“Um, and he sort of, he didn’t rush them, he edged closer to them you know. Um, much like this, took a step, took a step and then that’s when they shot him... I think he wasn’t out to hurt civilians, I think he was out to hurt Police officers though.”*
- *“And, um, next minute the Police officer were yelling, screaming at him saying, ‘put your weapon down, put your weapon down’, just like that, and then there was just bang, bang and everyone just went, ‘oh my God, he shot him’, and it was that quick, there was, um, there was like, we, we got emotionally, we got a hell of a fright, because there wasn’t, after when you think about it, there was at that point in time, there was no time or Police didn’t surround him, they’re all in front of him, and they were like, pushing him towards, you know, towards the shopping centre, which to me, was wrong.”*

## After the shooting

99. Immediately after Mr Stephens was shot, Officers H and J ran forward to secure him with handcuffs. Officer H said that Mr Stephens continued to struggle, despite his injuries. Officer G kicked the slasher away from Mr Stephens’ reach and directed another officer to remove a

kitchen knife from Mr Stephens' back pocket. Officer E and his Police dog arrived and remained close by until Mr Stephens was brought under control and handcuffed.

100. At 12:55pm, Officer D radioed NorthComms about the shooting and requested an ambulance.
101. Officers then started to give first aid, assisted by Ms Y and several other medical professionals who were in the vicinity. Ms Y told the Authority that Mr Stephens spoke to her while she was tending him, and he told her that he had taken methamphetamine and cannabis, as well as alcohol (she could smell this on him). He also told her that he was *"sick of Police"* and *"wanted to teach them a lesson"*.
102. Ms Y advised Police to keep Mr Stephens handcuffed. She explained to the Authority this was because *"he was still really threatening and just the risk that you run with people like that is that he would, even if he's been shot, if he's wasted, he'll just get up and hurt someone again"*. At 1:14pm the ambulance arrived, having been held up by the heavy traffic.
103. Officer D briefly took command of the scene and co-ordinated officers who were providing first aid, controlling the traffic, identifying exhibits, and managing witnesses, before he handed command to Officer I. At 1:23pm, NorthComms formally handed incident control to another senior sergeant.
104. Mr Stephens was taken to Rotorua Hospital but was transferred to Waikato Hospital that evening. On 26 July 2016, Mr Stephens died as a result of his gunshot injuries.
105. Following the shooting, all officers directly involved with the incident underwent testing for the presence of alcohol and returned negative results. They were formally interviewed about their part in the incident and were stood down from work in accordance with the Police trauma policy.
106. On 25 July 2016, Police carried out an operational debrief.

### Police investigation

107. Police carried out a criminal investigation into the use of force against Mr Stephens and determined that the officers' actions were justified.
108. Police also conducted a review of their handling of this incident. It found that, in general and given the circumstances, the Police response was well-handled.
109. The Institute of Environmental Science and Research (ESR) analysed samples of Mr Stephens' blood and urine, and found evidence of alcohol, methamphetamine, and methadone.



### Bail

110. Police policy on bail provides guidance for officers to decide whether to grant Police bail and determine appropriate bail conditions. It also outlines the police role in responding to electronically monitored bail (EM bail) alarm activations, noting that the primary responsibility lies with Corrections, and how to respond to breaches of EM bail.
111. Policy explains that EM bail involves a court releasing on bail a defendant who has been remanded in custody, on the condition that they are electronically monitored by the Department of Corrections and a monitoring company.
112. EM bail enables a defendant to reside at an approved specified address. They can only leave if the court approves through a notice of bail, and this can include for attending scheduled court appearances, surrendering to police custody, or in an emergency. An emergency is defined in section 30L(1) Bail Act 2000 as:
  - to seek urgent medical or dental treatment, or
  - to avoid or minimise a serious risk of death or injury to the defendant or any other person.
113. In EM bail situations, Police retain responsibility for responding to alarm notifications and instances of breach, as directed by the Police Communications Centre, and undertaking all enforcement action in relation to EM bail, including breach of bail hearings.
114. Police may also visit or respond to tasks at an EM address (apart from responding to EM bail breaches), for example to conduct routine bail checks or general policing inquiries, or in response to a crime reported at the address.
115. Policy does not set out any information or guidance on the frequency of bail checks.

### Law on the use of force

116. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties, such as arrests and enforcement of warrants. Specifically, it provides that officers may use *“such force as may be necessary”* to overcome any force used in resisting the law enforcement process unless the process *“can be carried out by reasonable means in a less violent manner”*.
117. Section 48 of the Crimes Act states: *“Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use”*.
118. Section 62 of the Act says anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

### *Police policy on the use of force*

119. The Police Use of Force policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest, or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers, and firearms.
120. Police policy provides a framework for officers to assess, reassess, manage, and respond to use of force situations, and ensure the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.
121. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved, and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force) given all the circumstances known to them at the time. This may include information on
- the incident type, location, and time;
  - the officer and subject's abilities;
  - the subject's emotional state;
  - the influence of drugs and alcohol and the presence or proximity of weapons;
  - similar previous experiences with the subject; and
  - environmental conditions.

Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).

122. A key part of an officer's decision about when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are:
- cooperative;
  - passively resisting (refuses verbally or with physical inactivity);
  - actively resisting (pulls, pushes or runs away);
  - assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action);
  - or presenting a threat of grievous bodily harm or death to any person.

Ultimately, the legal authority to use force is derived from the law and not from Police policy.

123. The policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public, and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

## Firearms

### Use of firearms

124. The Crimes Act provisions are mirrored in Police General Instruction F061 (Fire Orders) in the 'Police Firearms' chapter of the Police Manual. F061 instructs members of the Police to always be aware of their personal responsibilities in the use of firearms, reminds them of the relevant sections of the Crimes Act, and also sets out the circumstances in which the use of lethal force is justified.
125. General Instruction F061 provides for the use of firearms by Police officers to defend themselves or others if they fear death or grievous bodily harm, and if they cannot reasonably protect themselves or in a less violent manner. An offender is not to be shot until all the following conditions have been satisfied:
- they have first been asked to surrender (unless it is impractical and unsafe to ask them)";
  - "it is clear that cannot be disarmed or arrested without first being shot"; and
  - "further delay in apprehending the offender would be dangerous or impractical.

### Use of Taser

126. Police policy states that a Taser may only be used to arrest an offender if the officer believes the offender poses a risk of physical injury and the arrest cannot be effected less forcefully. A Taser must only be used on a person who is assaultive and cannot be used on a person who uses passive resistance in relation to Police.
127. To encourage de-escalation and to warn others nearby, officers must give a verbal warning in conjunction with the deployment of a Taser, unless it is impractical or unsafe to do so.

### Oleoresin Capsicum (Pepper) spray

128. Pepper spray is used by Police to subdue people. It causes a stinging sensation and generally makes people very compliant so as to avoid further aggressive behaviour.
129. Police policy states that pepper spray may only be used on someone who is actively resisting, and then only when the situation cannot be resolved by less forceful means. Active resistance includes physical actions such as pulling, pushing or running away – that is, "*more than verbal defiance*".

## THE AUTHORITY'S ANALYSIS AND FINDINGS

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130. In 2016 and 2017, the Authority visited the scene of the shooting and interviewed Mr Stephens' family and friends. The Authority also interviewed Mr Z and Ms Y, and Officers A, B, C, D, E, G, H and J, as well as monitoring the Police investigation throughout and reviewing all the documentation produced by the Police investigation team.

### **Issue 1: Was the frequency of the bail checking reasonable and did it contribute to Mr Stephens' actions on 14 July 2016?**

131. Mr Stephens was required to stay at his home. This was monitored through the electronic monitoring bracelet that he wore as it would alert authorities if he left his home without permission. The primary purpose of the Police bail checks was to ensure that Mr Stephens adhered to the court-imposed conditions not to consume alcohol or drugs.<sup>20</sup> Police also generally use bail checks as a crime prevention tool.

132. Mr Stephens' family complained about the frequency with which Police conducted bail checks while he was on electronically monitored bail.<sup>21</sup> They say that Mr Stephens was very frustrated with Police about these bail checks and found them very disruptive. When Police officers conducted a bail check this would require Mr Stephens to meet with the officers at the door or gate on each occasion.

133. From receiving bail on 7 June 2016 until 14 July 2016 (38 days), Police officers checked Mr Stephens 70 times. Apart from 14 July 2016 when Mr Stephens was shot, there was not a day without a bail check. Our analysis of the Police records shows the 70 checks occurred as follows:

- Five checks on one day (8 June).
- Four checks on one other day.
- Three checks on eight separate days.
- Two checks on 10 separate days.
- One check on 17 separate days.

134. Across the 70 times Police conducted bail checks on Mr Stephens, six times were within two hours of a previous check, 15 times were within six hours, and 23 times were within 12 hours. For the 38 days, the average time between bail checks was eleven hours and nine minutes.

135. Eighteen of the 70 bail checks (26%) were made between the hours of 11pm and 6am, when Mr Stephens could reasonably be expected to be sleeping. On one of these nights, he was checked twice (overnight on 10/11 July at 11.52pm and 1.31am).

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<sup>20</sup> See paragraphs 7 and 8

<sup>21</sup> See paragraph 10.

136. Police records show that 29 different officers did these 70 bail checks. A table setting out the details is below.

No.	Number officers doing checks	Total
11	Officers who did 1 check	11
9	Officers who did 2 checks	18
5	Officers who did 3 checks	15
0	Officers who did 4 checks	0
4	Officers who did 5 or more checks	26
<b>29</b>	<b>Total</b>	<b>70</b>

Of these officers, three were involved in the incident on 14 July 2016 (Officers B, C and G). The records do not show anything of note occurring during these checks:

- Officer B checked Mr Stephens twice – at 2222 hours on 8 June 2016 and 1634 hours on 16 June 2016.
- Officer C checked Mr Stephens once – at 1339 hours on 24 June 2016.
- Officer G checked Mr Stephens twice – at 0412 hours on 8 June 2016 and at 2358 Hours on 8 July 2016.

137. Several Police officers who conducted bail checks on Mr Stephens told Police and the Authority that the presence of the dogs in the front yard prevented them from safely approaching the house to talk to Mr Stephens and assess his condition. The officers repeatedly told Mr Stephens to lock the dogs away, but he did not.

138. In comparison, Mr Stephens was also on bail (not EM bail) between 19 March 2015 and 16 June 2015 (90 days). During that time, there were requirements for him to be at home between 7.00pm to 7.00am, to present at the door if Police called, and not to consume drugs or alcohol. During that period, he was checked 61 times:

- Three checks on one day (2 April).
- Two checks on 12 days.
- One check on 34 days.
- There were 43 days where no bail checks were recorded as taking place.

139. Across the 61 times Police conducted bail checks, four times were within two hours of a previous check, eight times were within six hours, and 15 times were within 12 hours. For the 61 days, the average time between bail checks was one day, eleven hours and thirty-seven minutes.

140. Forty four of the 61 bail checks (72%) were made between the hours of 11pm and 6am, when Mr Stephens could reasonably be expected to be sleeping. On one night, he was checked twice (overnight on 27/28 March 2015 at 11.08pm and 12.57am).
141. When Mr Stephens was on bail in 2015, he was checked 61 times over 90 days, compared to 70 bail checks over 38 days in 2016. We find it difficult to reconcile the frequency of checks undertaken by Police during 2016 compared with 2015, given that Mr Stephens was on EM bail in 2016 which meant Police should not have been checking his residence requirement. We would have expected the reverse – for more bail checks to have been undertaken in 2015 when Mr Stephens was not on EM bail and there were residence and curfew requirements for Police to check.
142. There are no Police records indicating that Mr Stephens breached his bail conditions during either of these periods in 2015 or 2016 when he was on bail. His last recorded breach of bail was in August 2012. Despite this, Mr Stephens was considered by Police to be a high-risk offender and as such Police officers were expected to regularly conduct bail checks on him.
143. At the time of this incident there were no guidelines or expectations in Police policy or practice setting out the expected or reasonable frequency of bail checks. Crucially, there was (and still is) no oversight or supervision of the frequency or reasonableness of conducting bail checks. Officers on each shift are made aware of offenders subject to bail in their area and given details of the high-risk offenders. When they can, the officers are expected to undertake bail checks and record those on their mobility devices. They can see on their mobility devices when bail checks have been done by other officers but there is nothing to stop them doing a further check. There is no requirement for shift supervisors to co-ordinate or oversee the timing or frequency of bail checks.
144. We note that Mr Stephens' bail conditions changed to enable him to go to work. On the first time this occurred (13 July 2016), he stopped on the way home with a friend and purchased alcohol and drugs. Later in the evening, when Police did a bail check on Mr Stephens at 7.21pm, he was not tested for breath alcohol. Police do not have a standard testing procedure for checking a person for drugs.
145. Bail policy has changed, and officers can now only request a breath screening test once per day, unless the officer has reasonable grounds to believe that the person has consumed alcohol since they were last tested. In addition, when a person is on EM bail, policy now specifically states that Police are not to conduct checks of residential or curfew conditions unless there is good cause to suspect that a breach has occurred that has not been detected or advised by the EM monitor. However, there is still no guidance about the frequency of checks nor any requirement for shift supervisors to coordinate and oversee bail checks to ensure that these are not excessive and unreasonable.
146. The Authority accepts that it is likely Mr Stephens was angry with the frequency of the bail checks, and with Police in general. This is because
- a) The amount and frequency of the checks in 2016 was substantially increased compared to when Mr Stephens had been on bail in 2015.

- b) Mr Stephens expressed his anger and frustration about the bail checks and Police actions to his family, which they have reported.
- c) Mr Stephens told Ms Y after he had been shot that he was sick of Police and wanted to teach them a lesson.

147. Mr X says he received a text from Mr Stephens on the night before the shooting outlining his frustration with Police. However, no such text was on Mr Stephens' phone when Police obtained relevant information from it after the shooting. We have therefore not taken this into account in our assessment.

148. We find that the number and frequency of bail checks of Mr Stephens was excessive and unreasonable in the circumstances. Police records do not always record exactly why officers were attending and what condition they were monitoring. As Mr Stephens was on EM bail, there was no reason for Police to be checking residence. We accept Mr Stephens had two conditions not to consume alcohol or take drugs. Police were entitled to monitor those conditions but to check him 70 times over 38 days, sometimes multiple times at night, was oppressive. This is especially as Police found no evidence of Mr Stephens not complying with these conditions. Mr Stephens' frustrations and anger over Police bail checks were understandable and justified.

149. The issue is whether the unreasonable frequency of the bail checks made Mr Stephens angry, and whether this in turn contributed to Mr Stephens' actions on 14 July 2016. We note that Mr Stephens consumed alcohol and methamphetamine from the previous evening, which was likely to have impaired his decision-making and judgment. We find that it is probable that the unreasonable frequency of the bail checks did contribute towards Mr Stephens' views of Police and the actions that he took, for the reasons outlined in paragraph 146.

150. However, the fact that prior Police actions were unreasonable and probably contributed to events does not justify Mr Stephens' actions at the time, nor does it in any way bear upon whether Police were justifiably acting in self-defence when responding to Mr Stephens. Our findings on those aspects are set out in the Issues below.

## FINDINGS

Police checked Mr Stephens' compliance with his bail conditions on 70 occasions over 38 days in 2016, often on multiple occasions each day and overnight. Given Mr Stephens was being electronically monitored, this frequency of bail checking was excessive and unreasonable.

Police policy and practice should require a shift supervisor to coordinate and have oversight of the frequency and purpose of bail checks on individual offenders.

The unreasonable and oppressive frequency of bail checking may have contributed to Mr Stephens' views of Police and the actions he took on 14 July 2016.

## Issue 2: Was the initial tactical response to Mr Stephens' actions properly considered and appropriate in the circumstances?

151. From the start of this incident, Mr Stephens behaved in an extremely aggressive and irrational manner towards Police. He attacked Officer A's Police car without provocation and would not respond to Officer A when he tried to speak to him.<sup>22</sup>
152. Officer A feared that Mr Stephens intended to attack him with the slasher. This was a reasonable belief based on what he witnessed. Officer A's Taser and firearm were locked away in his Police car,<sup>23</sup> meaning he was not equipped to effectively defend himself from attack or disarm Mr Stephens. Consequently, Officer A had no choice but to try to get away from Mr Stephens and make a '10/10' radio call requesting urgent back-up.<sup>24</sup>
153. Officer A managed to get into his Police car and trail Mr Stephens, while providing detailed updates to responding officers.<sup>25</sup> This information allowed officers to prepare appropriate tactical options as they travelled to the scene.
154. A '10/10' emergency radio call is rare and triggers an urgent response from other officers. Officers at Rotorua Police Station could hear Officer A's call for urgent back up and, justifiably, did not wait for direction from NorthComms to go to his immediate assistance. Officers travelled to the scene quickly, mindful that it was important to stop Mr Stephens from reaching shops and cafes on Te Ngae Road.
155. Police may carry firearms when they perceive that a situation involves, or is likely to escalate to involve, a risk of death or grievous bodily harm.<sup>26</sup> It was apparent from Officer A's radio transmissions that the unknown offender was aggressive, armed with a dangerous weapon, and on the move in a busy area, and therefore presented an extreme risk to those he came across.
156. Consequently, Officer D, a sergeant, tried to transmit a direction to responding officers to arm themselves and consider Police fire orders while travelling to the scene.<sup>27</sup> Several officers carried out their own risk assessment and armed themselves with Tasers and Glocks. The Authority finds that the officers were justified in doing so given the level of threat posed by Mr Stephens.

### FINDINGS

Officer A acted appropriately to the direct threat posed by Mr Stephens and ensured that responding officers received detailed updates about Mr Stephens' appearance, actions, and direction of travel.

Police responded swiftly to Officer A's emergency call and were justified in arming themselves.

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<sup>22</sup> See paragraph 21 and 22.

<sup>23</sup> See paragraph 19.

<sup>24</sup> See paragraph 25.

<sup>25</sup> See paragraphs 25-28.

<sup>26</sup> See paragraphs 124-125.

<sup>27</sup> See paragraph 32.



### Issue 3: Were officers justified in using force to try and stop Mr Stephens in Marino Road and at the workshop?

157. Law and Police policy states that Police officers may use reasonable force in the execution of their duties, and that they are criminally responsible for any excessive use of force. Section 48 of the Crimes Act 1961 also provides that everyone is justified in using force which, in the circumstances as they believe them to be, it is reasonable to use in defence of themselves or in defence of another person.<sup>28</sup>
158. Police may use a Taser to arrest an offender if they reasonably believe the offender poses a threat of physical injury and they cannot be arrested in a less forceful way.<sup>29</sup>
159. Police made several attempts to incapacitate and disarm Mr Stephens using Tasers throughout this incident, none of which were successful. Mr Stephens continued to evade and threaten Police. Footage and audio recorded by the Taser cameras of Officers B, C and H show the high level of aggression that Mr Stephens directed at the officers confronting him, and how close those officers came to receiving serious injuries.

#### *Officers B and C*

160. Officers B and C were the first officers to arrive at the scene and confront Mr Stephens. They had armed themselves with Tasers because information communicated by Officer A indicated Mr Stephens was clearly assaultive and willing to attack Police.
161. As soon as Officer C confronted Mr Stephens with his Taser drawn, Mr Stephens threatened both officers with the slasher and the spanner.<sup>30</sup> Mr Stephens ignored Officer C's repeated instructions to drop his weapons (which were recorded on the Taser camera's audio), before running down the driveway towards the workshop.
162. Officer C fired his Taser in response to Mr Stephens' feigned attempt to throw the spanner at him, but the discharge had no effect on Mr Stephens.<sup>31</sup>
163. Officer C fired his Taser a second time when Mr Stephens' aggressive and violent behaviour had escalated to the point where he struck out at the Police dog van with the slasher and was poised to strike Officer C, who was within range of the slasher's blade.<sup>32</sup>
164. Officer B also attempted, unsuccessfully, to fire her Taser twice to incapacitate Mr Stephens, having seen that Officer C's discharges had not worked.<sup>33</sup> Finally, she tried to pepper spray Mr Stephens when he started running from her, having no other tactical options left to stop him.<sup>34</sup>

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<sup>28</sup> See paragraphs 116-123 for a full explanation of relevant law and policy.

<sup>29</sup> See paragraphs 126-127.

<sup>30</sup> See paragraphs 40-41.

<sup>31</sup> See paragraph 44.

<sup>32</sup> See paragraph 50.

<sup>33</sup> See paragraphs 44, 45, 50, and 51.

<sup>34</sup> See paragraph 52, and paragraphs 128 and 129 for an explanation of the relevant policy.

165. Officer C fired his Taser to defend himself on both occasions, and Officer B also tried to fire her Taser to protect herself and Officer C from Mr Stephens' actions. However, both officers told the Authority that they also acted to try and stop Mr Stephens from reaching, and potentially hurting, members of the public. It was apparent to both officers that Mr Stephens was drug-affected and unpredictable.
166. For these reasons, the Authority finds that both officers were justified in using Tasers against Mr Stephens, who posed an immediate and significant threat and would not comply with Police instructions.
167. Officer B was justified in spraying Mr Stephens in a last-ditch attempt to stop Mr Stephens from running away from them.

#### *Officer H*

168. When Mr Stephens ran into the workshop, it became even more urgent for Police to stop him as he had become a direct threat to the people working in the workshop.<sup>35</sup> Mr Stephens had entered an office area, and Police did not know if these offices were occupied or what Mr Stephens intended to do.
169. Officer H was armed with a Glock, but confronted Mr Stephens with a Taser in the doorway to the office area. At the time, Mr Stephens was using his slasher to prevent the officers from getting close to him. Officer H was the only officer in a position to use his Taser.<sup>36</sup> It was a further few seconds before Officer G arrived at the workshop, armed with a Taser and a rifle.
170. Officer H told the Authority that he fired his Taser when Mr Stephens swung the slasher at him. Mr Stephens' actions, and Officer H's challenges to drop the slasher, were recorded by the Taser camera.
171. Officer H was justified in firing the Taser at Mr Stephens in order to defend himself from serious injury, and to try to incapacitate Mr Stephens so he could be disarmed and apprehended. Officer H missed and had to manually re-load his Taser, and Mr Stephens took the opportunity to escape out onto Marino Road.

#### FINDINGS

Officers B, C, and H were justified in using Tasers to attempt to incapacitate Mr Stephens on Marino Road and in the workshop.

Officer B was justified in using pepper spray to try to stop Mr Stephens.

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<sup>35</sup> See paragraph 57.

<sup>36</sup> See paragraphs 50 and 51.

#### Issue 4: Should Police have deployed Police dogs to incapacitate Mr Stephens?

172. Police may use Police dogs as a means of force to apprehend offenders who cannot themselves be apprehended by a less violent means. The Police dog must remain under the dog handler's control at all times.
173. Officers E and F each responded with an operational Police dog. By the time both officers arrived at the workshop with their Police dogs, Mr Stephens had run into the doorway to the office area and was being challenged by Officer H.<sup>37</sup>
174. Officer E and his Police dog went towards the doorway as Officer H fired his Taser. However, when Officer E moved around to look through the doorway, it was empty. It was not immediately apparent where Mr Stephens was, and Officer E explained to the Authority that he could not safely release his Police dog at a target that it could not see.
175. Officer F and his Police dog had positioned themselves behind Officer E near the roller door, and he also could not see Mr Stephens.<sup>38</sup> Officer F could not release his Police dog for the reason explained by Officer E above.
176. When it became apparent that Mr Stephens had run through reception and back onto Marino Road, both dog handlers decided to run back to their Police dog vans, reload their Police dogs, and drive in the general direction towards where Mr Stephens was heading.<sup>39</sup> Officer E told the Authority that he thought it would be quicker to try to find Mr Stephens using his van.
177. However, Officer E became caught in traffic and was at the roundabout on Te Ngae Road when he heard over the radio that shots had been fired. Officer F was still loading his Police dog when Mr Stephens was shot.<sup>40</sup>
178. Officer E parked and brought his Police dog over to where Mr Stephens was being secured by other officers. Once Mr Stephens was under control, Officer E put his Police dog away. The Police dog did not bite Mr Stephens at any point during the incident.

#### FINDINGS

Officers E and F did not have a reasonable opportunity to effectively and safely deploy their Police dogs to incapacitate Mr Stephens.

Mr Stephens was not bitten by a Police dog at any point during the incident.

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<sup>37</sup> See paragraphs 61-62.

<sup>38</sup> See paragraph 61.

<sup>39</sup> See paragraph 65.

<sup>40</sup> See the footnote in paragraph 65.

## Issue 5: Was Officer G justified in shooting Mr Stephens?

179. Police policy provides that potentially lethal force may be used when an offender presents a threat of death or grievous bodily harm. Officers must give an offender the opportunity to surrender if practicable, and must employ less lethal tactical options to effect an arrest or disarm an offender if they are available. However, if further delay in apprehending the offender would be dangerous or impractical, officers are justified in firing at an offender.
180. Officer G had decided to arm himself with a rifle prior to entering the workshop, having seen that other tactical options (Tasers and pepper spray) were proving to be ineffective against Mr Stephens. Officer G had considered Police fire orders when driving towards Marino Road with Officer H.<sup>41</sup>
181. When Officer G chased Mr Stephens across the median strip of Te Ngae Road,<sup>42</sup> he knew that Mr Stephens:
- was acting in an extremely unpredictable and aggressive manner;
  - was potentially under the influence of drugs;<sup>43</sup>
  - was armed with a slasher, which he had repeatedly brandished against Police;
  - had threatened a motorist in their vehicle with the slasher;<sup>44</sup>
  - had been called on by multiple officers to drop the slasher but had failed to comply; and
  - had been tasered and pepper sprayed with no effect.
182. Mr Stephens was now heading towards a busy shopping centre, where members of the public would almost certainly be exposed to the threat of grievous bodily harm or death.<sup>45</sup> Officer G told the Authority that he tried to stop Mr Stephens by chasing after him and yelling to attract his attention.
183. As well as fearing that Mr Stephens might attack and potentially kill any members of the public that he came into contact with,<sup>46</sup> Officer G also realised that there was a risk that Mr Stephens might try to steal a car.<sup>47</sup> Mr Stephens had already approached and threatened one motorist.<sup>48</sup>
184. The incident had reached a critical point. Other tactical options, including verbal instructions, pepper spray, and Tasers, had failed to stop Mr Stephens. The Police dog handlers had not yet reached the scene,<sup>49</sup> so there was no opportunity to use a Police dog to incapacitate Mr

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<sup>41</sup> See paragraphs 34 and 55.

<sup>42</sup> As described in paragraphs 73 and 74.

<sup>43</sup> See paragraph 85.

<sup>44</sup> See paragraph 70.

<sup>45</sup> See paragraph 73.

<sup>46</sup> See paragraph 73.

<sup>47</sup> See paragraph 86.

<sup>48</sup> See paragraph 70.

<sup>49</sup> See paragraph 65.

Stephens. As far as Officer G was aware, he was the only armed officer in close proximity to Mr Stephens (Officer G was unaware that Officer J had arrived and was armed with a Glock).<sup>50</sup>

185. Once Officer G had succeeded in stopping Mr Stephens and drawing his focus, he realised that he was now in serious danger and feared for his own life.<sup>51</sup> Despite Officer G's continued challenges to drop the slasher, Mr Stephens advanced towards Officer G with the slasher raised.<sup>52</sup>
186. Officer G told the Authority that he could not retreat and allow Mr Stephens to resume his progress towards innocent bystanders. In any case, Officer G believed that Mr Stephens was now close enough to strike him down with the slasher and that Mr Stephens' actions clearly indicated to Officer G that this was what he intended to do.<sup>53</sup>
187. Footage taken by Mr Z and Mr V, as well as eyewitness accounts,<sup>54</sup> corroborate Officer G's recall of the moments before and when the shooting occurred. Mr Stephens started to advance towards Officer G with the slasher raised and poised to strike. The Authority accepts that Officer G believed that Mr Stephens was about to seriously hurt or kill him, and that he needed to fire at Mr Stephens to prevent that from happening. Officer G was justified in defending himself and others as allowed under section 48 of the Crimes Act 1961.<sup>55</sup>
188. The Authority finds that Officer G was justified in acting in defence of himself by shooting Mr Stephens. Mr Stephens posed an immediate threat of grievous bodily harm or death, and it was reasonable for Officer G to use his firearm in the circumstances.

## FINDING

Officer G was justified in shooting Mr Stephens.

### Issue 6: Did Police exercise good command and control?

189. This incident arose without warning and was extremely quick (approximately six minutes from the time that Mr Stephens attacked Officer A's Police car until he was shot). There was no time for a planned Police response.
190. Police policy on command and control of incidents provides that the shift commander of the communications centre (in this case, NorthComms), retains responsibility for the initial incident control, until control is formally passed to a suitable officer in the field. This officer is designated the 'Incident Controller' and assumes control once they have been fully briefed about the incident and have formed a response plan.
191. While NorthComms was nominally in command and control of this incident, the incident's brevity meant there was little that NorthComms could do other than direct officers to go to

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<sup>50</sup> As described in paragraph 75.

<sup>51</sup> See paragraph 87.

<sup>52</sup> See paragraphs 86-87.

<sup>53</sup> See paragraphs 86-88.

<sup>54</sup> Outlined in paragraphs 76-84, and paragraphs 97-98 respectively.

<sup>55</sup> See law in paragraph 117.

Officer A's assistance, before Mr Stephens was shot. For the most part, the officers on the ground had to think on their feet and make their own tactical decisions as events unfolded.

192. Senior responding officers took command at the scene to the extent that circumstances permitted.
193. Officer D, a sergeant, recognised the severity of the potential threat presented by Mr Stephens, and directed the responding officers to arm themselves and consider fire orders.<sup>56</sup>
194. Officers D and I took command of the incident for a short period of time after the shooting until an incident controller was appointed at the scene approximately 28 minutes after Mr Stephens was shot.<sup>57</sup>

## FINDING

Police exercised good command and control during this short, fast-paced incident.

### Issue 7: Was all reasonable assistance provided to Mr Stephens after he was shot?

195. After the shooting, Police quickly called an ambulance to come to the scene, but it took some time to arrive due to heavy traffic.<sup>58</sup>
196. Meanwhile, Mr Stephens was brought under control and provided with first aid by officers and medical professionals who offered to assist.<sup>59</sup> It was necessary to keep Mr Stephens handcuffed while he was given medical treatment as his behaviour remained aggressive and unpredictable.<sup>60</sup>

## FINDING

All reasonable assistance was provided to Mr Stephens after he was shot.

### Issue 8: Was Officer K's Taser footage manipulated by Police to remove a vital section covering the shooting?

197. This new issue was raised by Mr Stephens' family and the media, and has been considered by the Authority. The allegation is that seven seconds are missing from the Taser footage and that this has been deliberately removed by Police as it contained vital footage of the shooting incident.

#### *Officer K's actions on 14 July 2016*

198. As outlined in paragraph 38 when Officers K and L were responding to the urgent call for assistance the officers decided that Officer K would take Officer L's Taser. Officer K did not

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<sup>56</sup> See paragraph 32.

<sup>57</sup> See paragraph 103.

<sup>58</sup> See paragraphs 100 and 102.

<sup>59</sup> See paragraphs 99 and 101.

<sup>60</sup> See paragraphs 99 and 102.

discharge his Taser at Mr Stephens but he did turn it on, and it recorded part of the incident, specifically capturing audio.

199. Officers K and L arrived at the scene of the eventual shooting. Officer L saw Mr Stephens walking down Marino Road towards Te Ngae Road. Following a short distance behind, Officer L parked the patrol car on a wide grass verge on the intersection of those two roads. Officer K, with the Taser, got out of the vehicle and ran forward to the south bound lanes of Te Ngae Road. He could see other officers and Mr Stephens. Officer L removed his Glock from the secure weapon locker in the patrol car.
200. Officer K ran across Te Ngae Road to be on the far left of Officers G and I (who were close to each other), and he could see Officer J directly opposite him. In the middle of this semi-circle of officers was Mr Stephens who had the slasher in his right hand.
201. Officer K held the Taser in his right hand and turned it on, but he did not fire the weapon. He thought he was presenting the Taser at Mr Stephens, thereby filming the incident.<sup>61</sup>
202. Officer L, now armed with a Glock, approached the semi-circle of officers from behind Officers G and I.
203. It was later established that Officer K was mostly pointing the Taser at the ground until after the shooting, although it did capture audio of commands being made to Mr Stephens and two shots being fired.
204. After the incident Officer K returned the Taser to Officer L, who was initially unaware the Taser had been turned on and contained video footage. When Officer L checked the device and viewed the footage, he handed the Taser into the Police investigating team the following morning, 15 July 2016.

#### *Taser and footage specifics*

205. This Taser was a model X26, which is an older model Taser.
206. The video Officer K recorded was 11.581 seconds in total. The footage consists of two separate segments that have been spliced together when the recording was uploaded from the Taser. This is the common practice for this model. When the device is turned on, the camera is activated and starts recording. There can be various reasons for the camera not working for the whole duration or working intermittently (explained in paragraph 210 below). When the information from the Taser is downloaded, the software will “splice” individual video files (segments) which are recorded within 1 minute of each other into a single “event”. When the “event” was downloaded from this Taser camera on 15 July 2016, it was made up of two video segments that have been seamlessly “spliced” together into a single video file.
207. The first segment of footage is 18 frames and 1.694 seconds in duration. It is watermarked at commencement with date and time metadata that indicates 14 July 2016, 12:55:50 pm.

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<sup>61</sup> See paragraph 83.

208. The Taser camera has then stopped recording due to a power loss. The reason for this is described below.

209. The second segment is 105 frames and 9.887 seconds in duration. It is watermarked at commencement with date and time metadata with 14 July 2016, 12:55:58 pm.

### *Our enquiries and analysis*

210. We spoke to the national New Zealand Police expert on Tasers, an external independent technology consultant sourced by the Authority and the USA based manufacturer of the Tasers used by New Zealand Police. Those enquiries determined the following:

- It is important to understand and analyse the watermark system of this X26 Taser camera. Each segment starts with a one second watermark of date and time and, after a second, the watermark changes to only show seconds. After ten seconds, the full watermark returns to the video, then cuts back to showing seconds only. This is repeated every ten seconds.
- Officer K's Taser footage has the full watermark at the start, which changes to just seconds quickly. Then, the full watermark re-appears, before changing again to just seconds. Therefore, if Officer K's Taser video had had seven seconds removed, the watermark would have appeared a short time later.
- It is likely that there has been a power loss to this Taser during its deployment which could be due to one of the following:
  - ❖ operator error where the Taser has been inadvertently turned off, then back on;
  - ❖ a depleted or faulty battery; or
  - ❖ a power disconnect between the Taser and the Taser camera.

211. In 2016, the Police armourer provided a statement after testing this Taser, outlining "*the camera was not always recording the spark test, missing some parts of the footage*". The armourer detailed that this was a common experience with older technology in instances where the battery has degraded, and that during discharge the camera would stop recording.

212. The expert from the USA manufacturer outlined having witnessed the above issues occurring in other field deployment situations as well as when they tested the scenario.

213. On balance, we consider the Taser turned itself off, then back on, due to one of the technical faults outlined in paragraph 210. We accept that we cannot establish the exact fault that occurred.

214. The Authority has established there is no missing footage, rather that seven seconds were not captured in a period where the device powered off and then back on. This is supported by understanding how the software works to create a single event from individual segments within a specified time period of each other, and understanding the watermark system.



## FINDINGS

Police did not deliberately remove a vital section of footage from Officer K's Taser.


There is no missing footage. There are seven seconds which are not captured by Officer K's Taser camera likely due to a technical fault.

## RECOMMENDATION

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215. Police policy on bail has been amended since this incident. If Police are checking for compliance with a condition not to consume alcohol, an officer may require a breath screening test, but such a request can only be made once per day unless the officer has reasonable grounds to believe that the person has consumed alcohol since they were last tested.
216. In addition, when a person is on EM bail, the policy relating to bail checks of non-EM conditions specifically states that Police are not to conduct checks of residential or curfew conditions unless there is good cause to suspect that a breach has occurred that has not been detected or advised by the EM monitors. However, the policy still provides for Police to check and monitor compliance with other bail conditions such as drug or alcohol conditions (subject to the limitation in paragraph 215 above).
217. We consider that these changes to the Bail policy do not sufficiently address the issues raised by this case. There needs to be a fundamental review of policy, practice, and procedure relating to how Police undertake bail checks.
218. We therefore recommend pursuant to section 27(1) of the Independent Police Conduct Authority Act 1988 that the Commissioner of Police ensures that a fundamental review of all aspects of bail checking is undertaken, including making specific provisions for:
- Clear ownership of bail policy, practice, and procedure within Police, both at district and national levels, including the development of a deployment model for bail checks.
  - Guidance to officers about what constitutes reasonable bail checks (in terms of content, timing, and frequency).
  - An appropriate mechanism for oversight of bail checks being undertaken, at a frontline, district, and national level.

- Clarity of purpose of Police bail checks when there is EM Bail.
- Criteria set out for how offenders are prioritised for checking.

A handwritten signature in black ink, appearing to read 'C. Doherty'.

Judge Colin Doherty  
Chair  
Independent Police Conduct Authority  
**IPCA: 16-0086**

**17 March 2022**

# About the Authority

## WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

We are not part of the Police – the law requires us to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Colin Doherty.

Being independent means that the Authority makes its own findings based on the facts and the law. We do not answer to the Police, the Government or anyone else over those findings. In this way, our independence is similar to that of a Court.

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

## WHAT ARE THE AUTHORITY'S FUNCTIONS?

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Under the Independent Police Conduct Authority Act 1988, the Authority receives and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

On completion of an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

## THIS REPORT

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This report is the result of the work of a multi-disciplinary team of investigators, report writers and managers. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.

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