

# Non-fatal Police shooting of Mr X in Kerepehi

## INTRODUCTION

1. At 10.51pm on Tuesday 21 October 2014, on State Highway 2 just outside of Kerepehi, Waikato, two Police officers shot and wounded Mr X. Mr X survived, but suffered several serious injuries as a result.
2. The Police notified the Independent Police Conduct Authority of the incident, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings and recommendations.
3. The Authority concluded its investigation in October 2015, but delayed the release of its public report due to ongoing court proceedings.

## BACKGROUND

### Events leading up to the shooting

4. At 9.49pm on Tuesday 21 October 2014, the Police Southern Communications Centre (SouthComms) received a 111 phone call about a domestic incident involving Mr X and his partner, Ms Z. After stating her address, Ms Z told the SouthComms communicator: *"We've had a domestic, my partner's had too much to drink ... He's got a firearm in there and he put it to my head."* She also advised that she was standing outside her house and could see Mr X inside.
5. Ms Z described the firearm as a .308 *"sawn-off shotgun"*, and said that she could see Mr X loading the firearm. She also stated that she was concerned about the safety of her son-in-law (aged 21) who was sleeping inside the house.
6. During the call Ms Z told the SouthComms communicator that Mr X was walking around the house looking for her, and that he had 17 rounds of ammunition for the firearm and a bulletproof vest. When asked about what Mr X would do if he saw Police, she said: *"He's gonna kill him. Um he's gonna - he's he's going for a shoot out."* Ms Z said her phone was running out of battery and, at 9.53pm, the telephone call cut off.

7. This call originated from Kerepehi, a small town approximately eight kilometres from Ngatea and 84 kilometres northeast of Hamilton. The address fell within the dispatch boundaries of the Police Northern Communications Centre (NorthComms). The event was recorded in the Police dispatch system, and was immediately referred to a NorthComms dispatcher.
8. At about 9.50pm, NorthComms dispatched Officer A, who was at the Ngatea Police Station, to a safe forward point (SFP)<sup>1</sup> which was established approximately one kilometre from Ms Z's address, at the old Kerepehi hotel at the corner of State Highway 2 and Wharepoa Road.
9. Over the next six minutes, NorthComms also dispatched General Duties Branch (GDB) Officers B, C, D and E to the SFP. These officers began driving towards the scene from their various locations in Ngatea (8 kilometres away), Morrinsville (54 kilometres away), Thames (25 kilometres away), Te Aroha (36 kilometres away), and Hamilton (84 kilometres away).
10. NorthComms advised the attending officers that a woman (Ms Z) had called Police stating that her partner (Mr X):
  - a) had a *"sawn-off shotgun"* and was going to shoot her;
  - b) had threatened Ms Z by putting the gun to her head earlier that night;
  - c) had said he would shoot Police; and
  - d) was wearing a bulletproof vest.
11. NorthComms identified the man involved as Mr X, and broadcast that he had a history of assaulting Police, drug use, carrying a knife, and unlawfully carrying firearms.
12. At 9.53pm, NorthComms paged the Waikato Armed Offenders Squad (AOS). Shortly after, four members of the Police Negotiating Team (PNT) were also deployed to the SFP.
13. At 9.56pm, Officer A arrived at the SFP where he put on ballistic body armour over his Stab Resistant Body Armour (SRBA), and armed himself with a Glock pistol and a Taser.
14. Meanwhile, at 9.57pm, Ms Z dialled 111 again and spoke to a Police communicator at the Police Central Communications Centre (CentComms). Ms Z stated her address and the communicator realised this call was connected with the earlier one. During the call Ms Z told the CentComms communicator that Mr X had the gun in his hand, and that if he saw Police lights he was *"gonna go all out. He's gonna go guns blazing, please."* Ms Z also said that Mr X had thrown her onto the concrete, that she had scratches and scrapes and that she was bleeding.
15. Ms Z confirmed that Mr X had a *".308 sawn-off shotgun, 17 rounds of the big bullets and the bullet proof vest"*, and that she was concerned for her son-in-law who was sick in the bedroom. She also repeated that if Mr X saw red and blue lights *"it's over."* This call cut out at 10.02pm.

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<sup>1</sup> A gathering point for briefings, and the allocation of roles and equipment.

16. At 10pm, while the second call was occurring, Officer F liaised directly with Officer G who was also heading to the scene.
17. Officers C and D arrived together at the SFP at 10.10pm. Both officers were armed with Glock pistols and Officer C was also armed with a Bushmaster M4 rifle.
18. At 10.12pm, Officer E arrived at the SFP where he armed himself with a Bushmaster M4 rifle, a Glock pistol, and a Taser. Officer E said he was aware at the time that Mr X had a *“sawn-off shot gun”* and believed that this was *“more of a firearms job than a domestic job.”*
19. While at the SFP Officers A, C, D and E discussed the scene and, using Officer A’s mobility device, looked at maps of the area.
20. Police policy and practice requires that the first officers responding to an armed incident should move, within the available resources, to cordon the area. Cordons are to be set up to contain the offender, to keep people and vehicles out, and to clear streets and buildings. When AOS members arrive, they are to take responsibility for containing the offender. Until they arrive, that responsibility rests with GDB staff, who are to maintain positions from which to provide information to the Communications Centre and the Incident Controller.
21. At 10.18pm, NorthComms dispatched Officers C and D to cordon the intersection of Rata Street and Kerepehi Town Road. Officer E was also dispatched to cordon the intersection of Kaikahu and Wani Roads. Officer A remained at the SFP and cordoned the intersection of Kerepehi Town Road and State Highway 2. The officers were not dispatched to the address given by Ms Z because Police were awaiting the arrival of the AOS.
22. Meanwhile Ms Z phoned the emergency line twice more at 10.04pm and 10.21pm. Each time she spoke to a different Police communicator. The calls kept being cut off due to the battery going flat on her cell phone. This, and the nature of the incident, prompted the NorthComms shift commander to seek approval from a PNT member to call Ms Z directly, so that time would not be wasted on Ms Z continually having to re-explain the situation. At 10.26pm, Communicator P called Ms Z directly.
23. Back at the SFP, Officer B arrived at 10.27pm and armed himself with a Glock pistol, a Bushmaster M4 rifle, and a Taser. Officer A then brought up Mr X’s criminal history, alerts and photograph on his mobility device and together they looked at maps of the area.
24. Officers A and B discussed using road spikes as a tactical option if Mr X came their way. Officer B told the Authority that they wanted to stop Mr X from going to the more populated area of Ngatea, and since the SFP was in a rural area, *“if there was going to be a shootout then we would have an area that’s controlled and less risk to anybody else”*.
25. While Officer A was concerned about potential harm to Ms Z if the car was spiked, he felt that options needed to be in place to prevent Mr X from getting to Ngatea, in the event that he left the house. Consequently Officer A obtained permission from NorthComms to deploy the road spikes at the intersection of State Highway 2 and Kerepehi Town Road.

26. Officer B removed the road spikes from his car and put them on the northern side of Kerepehi Town Road, approximately 20 metres from State Highway 2, so they were ready to be deployed.
27. Shortly after this, at 10.40pm, Officers F and G arrived at the SFP in separate Police cars and both officers armed themselves with Glock pistols.
28. Although the Shift Commander did not give the Police General Instruction F061 (fire orders) over the radio, each officer individually considered the fire orders as required by policy, and put on ballistic body armour (see paragraphs 127 - 130 for further detail).
29. After arming themselves, Officer Fs and G decided to team up in Officer F's Police car, with Officer G acting as the 'cover man' for Officer F.
30. At 10.41pm, Ms Z made another call to NorthComms and, after providing her details, left the phone line open so that NorthComms could hear what was happening at the address. As with the other calls, this call was cut off after a couple of minutes.
31. Communicator P called Ms Z at 10.43pm, and Ms Z advised that she and Mr X were about to drive to Ngatea to purchase cigarettes. She warned Police not to turn on their flashing red and blue lights because Mr X was taking the gun with them. She said that he had a firearm on the front seat and that he was wearing camouflage and a balaclava.
32. Communicator P made further calls to Ms Z at 10.46pm and 10.50pm, and established that Mr X and Ms Z were leaving the house and driving towards Ngatea.
33. At 10.49pm, Officers F and G began driving north on State Highway 2 when NorthComms advised that Mr X and Ms Z were leaving their address in a grey car. NorthComms also told the officers that Mr X had taken the "*shotgun and .303 or.308*" rifle with him and that they were heading for a service station in Ngatea.
34. Officer F did a U-turn and drove south on State Highway 2, back towards the SFP at the intersection at Kerepehi Town Road, with the intention of intercepting Mr X before he reached the more populated area of Ngatea. As they approached the intersection, Officer F saw a car that looked similar to Mr X's car driving towards them on Kerepehi Town Road.
35. Officer F drove past the intersection and performed another U-turn so that his vehicle was facing north. From here, Officers F and G could see Mr X's car driving towards them, at a normal speed.
36. In the meantime, when Officer B heard NorthComms advise that Mr X had left his address, he ran over to the road spikes which he had left on Kerepehi Town Road, and laid them out across the eastbound lane. Shortly after, Officer B saw the headlights of a car approaching and, with his rifle, he took cover in a ditch beside the road.

37. Officer A, who was sitting in his car on Kerepehi Town Road, also saw Mr X's car approaching. The car was travelling at approximately 50kph and drove over the road spikes before turning left onto State Highway 2. The road spikes pierced all four tyres on Mr X's car.
38. Officer B also saw the car drive over the road spikes at a "*normal speed*". He could hear the tyres deflating so knew the road spikes deployment had been successful. The officers advised NorthComms that the spiking was successful.
39. Mr X drove for a short distance, slowed as if to stop and then carried on. Officer F drove his car up behind Mr X's car, and could see two people inside. Officer G then activated the Police car's red and blue flashing lights, while Officer F advised NorthComms that he intended to pull Mr X over. Mr X stopped about 200 metres north of the Kerepehi Town Road intersection.
40. Ms Z had left the phone line open during her last call with NorthComms at 10.50pm, and subsequently the Police's confrontation with Mr X was recorded. On the recording Mr X can be heard saying, "[yeah] *I've got a gun on me. Okay there's going to be a shootout.*"
41. Officer F stopped a short distance behind Mr X's car. He put his headlights on high beam and as a result, had a good view of Mr X, Ms Z and the vehicle.
42. Officer A had followed Officers F and G with his car's flashing red and blue lights activated and parked alongside Officer F's Police car. Officer A angled his car slightly to the right so that he could use the car's bonnet as cover. He drew his pistol, knelt behind his driver's door and pointed his weapon towards the driver's door of Mr X's car.
43. Officer G got out of the Police car, drew his pistol and moved towards the back of the vehicle. He saw Ms Z get out of her car "*pretty much immediately*" and concentrated on her until he was satisfied that she was not a threat. Officer F later said he could hear Officer G trying to talk to Ms Z, who was moving back and forward between Mr X's car and Officer G.
44. Meanwhile Officer F got out of his car and yelled to Mr X, who was still in his car, "*armed Police, put your hands in the air.*" Mr X's car door then "*flew*" open, and Mr X partially stepped out of the car before getting back in. Officer F thought this was unusual, so he drew his pistol.
45. Officer F continued to instruct Mr X to put his hands in the air and warned him that they were armed Police. However, Mr X did not comply with the instruction and remained inside his car, where Officer F could see that he was "*mucking around with something*".
46. Officer A recalled seeing Mr X twist around to his right and reach behind his seat with both arms. As he twisted his body, his right leg came out of the car. When Mr X turned back, Officer A saw him holding something with a small barrel. He later said he could see about eight inches of the barrel sticking out of the driver's door. The barrel was pointing out the driver's door but not pointing back far enough to put Police in the line of fire. At this point, Officer A said Officer F's yelling got louder, telling Mr X to surrender and drop the weapon.

47. Officer G also saw the driver's door of Mr X's car open, and observed what he thought was a .303 or a .308 hunting rifle. He could not see what Mr X was doing because he was positioned behind the Police car.

48. Officer F said that he saw Mr X reach into the foot well of the passenger's seat and then a rifle barrel came out of the driver's door. Officer F could see Mr X "fidgeting" with the barrel, moving it up and down. He said it looked like Mr X was:

*"... working a bolt or putting [in] a magazine, I could hear a metallic pipe noise ... of ... gun metal on gun metal ... then this gun ... the barrel came out the open driver's door of the car."*

49. Officer F was talking to Mr X quite loudly, telling him to get out of the car with his hands up. He said:

*"... [when] I saw the gun I was saying, 'Just put the gun down' over and over and 'Put the gun down it's armed Police', 'Just put the gun down, put your hands in the air', over and over again."*

50. Officer F said he could also hear Ms Z yelling and making a lot of noise but could not remember what she was saying. He explained that his focus was on Mr X and that he had many things running through his mind, including whether he was justified in shooting Mr X.

51. Officer A said that he was on a 45 degree angle to Mr X and, as a result, he never had a good view of him. However he did see Mr X turn towards Police, while staying seated, and face out towards the side of the road trying to point his gun in the officers' direction. Mr X then aimed the gun and held it so that it was roughly parallel to the side of his car.

52. Officer A recalled Officer F and Officer G yelling at Mr X to drop the gun. At this point, Officer A said he could see the whole gun and:

*"... the barrel was pointed quite high, at around a 45 degree angle upwards. It was pointed roughly in the direction of between our two patrol cars."*

## The shooting

### The initial shots

53. Officer F then saw Mr X get out of the driver's seat. In his Police interview he said:

*"[Mr X] got out in one fluent movement with the rifle, and he had one hand on where the trigger is and another hand further down the stock. And he's got out and he's just spun around with it and as he has been spinning around, swinging around with it, to bring it up, at that stage I was, even when he got out of the car I was saying 'Put the gun down' and I still remember that.*

*He got out and he had the gun, and he was swinging it around and that's when I fired my gun.*

*It was really close ... I thought 'Who's gonna shoot who first here' and I fired, I fired more than one shot ... and he's still been there with the gun and I fired another, he's still been there with the gun."*

54. Officer F said Mr X did not respond to the shooting and did not react as if he was wounded, although he was sure he had hit him. Instead, Mr X went back into his car. At that point, Officer F thought he had fired four shots at Mr X.
55. Although other officers did not remember Mr X firing his gun at this time, Officer A believed that he did:

*"Then the offender's gun was fired, I heard a loud bang come from it. I don't know if I saw a flash from it. I couldn't tell if I saw a recoil because he was waving it around at the time.*

*... As soon as the offender's gun was fired I heard 5-6 shots coming from the direction of [Officer F's patrol car]. It was almost simultaneously as the offender fired, the shots were fired from the direction of [Officer F's patrol car]."*

### *The final shots*

56. Officer G remembered thinking, when he heard the gunshots, that he hoped the other officers had the situation under control. He said that Ms Z became "hysterical" and was yelling "don't shoot him, don't shoot him." Ms Z walked towards the back of her car and while Officer G followed her, he saw Mr X go back towards, or into, his car. Officer G thought that Mr X was "pissed off" because Police had fired at him.
57. Officer G said that it appeared Mr X was using the "centre pillar" of his car for cover. He saw Mr X turn in his car and saw the gun come out and point towards Officer F. Officer G was expecting Mr X to shoot at Officer F, so he fired a shot in an attempt to stop Mr X from doing so. Officer G then saw Mr X slump forward and judged that he was no longer a threat, so he returned his pistol to its holster.
58. Before Officer G fired, Officer F said he was continuing to instruct Mr X to put his gun down when he saw Mr X swing the gun around and thought that he was going "to have another go". He considered that Mr X may be on drugs or have body armour on, and that he might have to aim his pistol somewhere other than Mr X's central body mass because "nothing seems to be [working] at this stage."
59. Mr X then started to get out of his car again and Officer F, who could see the back of Mr X's head through the rear windscreen, fired a shot through the windscreen. Officer F said he aimed at the back of Mr X's head but, as he fired, Mr X moved and turned his head sideways. Almost instantly after Officer F fired the shot, Mr X slumped forward in the car.
60. Officer G and Officer F had fired these last shots at Mr X almost simultaneously.
61. Officer A saw the rear window of Mr X's car break and Mr X slump forward. He noticed blood running down the right side of Mr X's face, and saw that Mr X was still holding his gun with his left hand and was slowly trying to work the bolt with his right hand.

62. Officer G said that Ms Z was hysterical, yelling *“you’ve fucking killed him”*, so he ran forward and grabbed her and took her back down the road to Officer D, who had arrived at the scene with Officer C. Officer G then ran back to stand behind Officer F.
63. Mr X sat slumped in the driver’s seat but still had the gun pointing out of the opened driver’s door. Officer F could hear Mr X mumbling or gurgling, and told him several times to put the gun down so that Police could give him first aid.
64. People living nearby, and a motorist who drove into the scene before being directed away by Police, also variously heard Police instruct Mr X to *“put the gun down”*, *“get out of the vehicle, get onto the ground”* and *“put down the firearm”*.
65. Meanwhile Officer B drove to the scene where Mr X and the Police cars had stopped, and advised NorthComms that shots had been fired. He parked his car 30 metres behind Officer A’s car as the final shots were fired. Officer B then positioned himself, with his rifle, near the front wheel of Officer A’s patrol car.
66. Officer B could see that Mr X was slumped forward in the driver’s seat, *“but also leaning out the open door like he was getting out or something. I could clearly see the firearm in his hands.”* He saw Mr X doing something with his right hand: *“It looked like he was trying to rack the gun or chamber a round or something. He just continually mucked around with the gun.”*
67. Officer B could see that Mr X was bleeding badly from his head and he gave an update of the situation to NorthComms. Officer B said he then noticed that Mr X’s hands had relaxed, and it became obvious to him that Mr X could not put the rifle down due to his injuries.

### First aid

68. Officer F said that although Mr X still had the gun in his hand and so some threat was still there, it was clear that they needed to give Mr X first aid. Officer F devised a plan and told Officer A to stay where he was and cover Mr X with his gun. He, and Officers B and G, would then move forward to remove the firearm and assess Mr X’s condition.
69. At 10.54pm the officers approached Mr X. Officer G confirmed that Mr X was not a threat and he pulled Mr X onto the road and placed him in the recovery position. Officer G removed Mr X’s rifle and gave it to Officer F. Officer F then placed it in the grass verge to the left of the vehicles to avoid an accidental discharge.
70. Officer G then returned to Officer F’s Police car to get a first aid kit but was unable to find one. At the same time, Officer B ran back to his car and drove it forward, behind Officer F’s car. He removed his first aid kit and, along with Officer C who had approached the scene, began administering first aid to Mr X.
71. At 11pm, NorthComms advised that an ambulance was on the way to the scene.



72. After the officers determined that Mr X was breathing, Officer B searched him. He located a machete and sheath on Mr X's belt, which he removed. A short time later, he searched Mr X's trousers and found a firearm magazine containing ammunition in one pocket.
73. At about 11.14pm, three paramedics arrived at the scene. One of them later told Police that when he arrived he saw Mr X lying on the road being attended to by two Police officers and he considered that they were "*doing a good job*".
74. A paramedic examined Mr X and found that his head was bleeding and had been bandaged. He also noted two bullet wounds to Mr X's left bicep, and two chest wounds. He assessed that one of the bullets had punctured Mr X's lung. When the paramedics removed Mr X's trousers, Officer B found two more rounds of ammunition in his pocket.
75. The paramedics took over administering first aid until the arrival of a helicopter at 11.41pm. Mr X was then transported to hospital.
76. At 11.33pm, members of the Waikato AOS and PNT were stood down. At 11.49pm, the AOS were redeployed to clear Ms Z's home address.
77. Officers F and G were transported to the Paeroa Police Station, where their firearms and some clothing were seized as evidence by a supervisor. The supervisor asked both officers to undergo an alcohol breath-screening test but they both declined.<sup>2</sup>

### Mr X's injuries

78. Mr X arrived at the Waikato Hospital emergency department by air ambulance at 12.18am on 22 October 2014.
79. The initial medical assessment showed that Mr X received several serious gunshot injuries to his head, chest and arms.

### Charges laid against Mr X

80. Following this incident, Mr X pleaded guilty to using a firearm against Police and unlawfully possessing a firearm. Mr X pleaded not guilty to threatening to kill. On 13 March 2017, Mr X was convicted, in the Hamilton District Court, on all three charges and sentenced to eight years and nine months' imprisonment, with a non-parole period of four years and four and a half months.

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<sup>2</sup> Under Police policy that applied at the time of this shooting, there was no requirement for Police officers to submit to drug and alcohol testing following their involvement in critical incidents. In this case, there is no suggestion that Officer's F and G, or any other officer involved in the incident, was under the influence of drugs or alcohol. As at 14 February 2017, a new drug and alcohol testing policy was introduced which requires all Police employees who have discharged a firearm during an incident to undergo a drug and/or alcohol testing procedure.

## Police investigation

81. The Police conducted a criminal investigation into the shooting of Mr X. This investigation concluded that none of the officers were criminally liable for their actions during this incident.

## Scene examination

82. The Institute of Environmental Science and Research (ESR) conducted a scene examination of State Highway 2 outside of Kerepehi. They found evidence of seven bullet cartridges fired from Police-issue Glock pistols. Six of the fired cartridge cases came from Officer F's pistol, while the remaining one was fired from Officer G's pistol.
83. The cut down bolt-action rifle belonging to Mr X was also located in the grass verge to the left of the vehicles. The bolt was not in a locked position and was partially withdrawn, exposing an unfired cartridge. ESR determined that Mr X had not discharged his rifle during his confrontation with Police.

## THE AUTHORITY'S INVESTIGATION

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84. As required under section 13 of the Independent Police Conduct Authority Act 1988, Police notified the Authority on 22 October 2014 of the shooting of Mr X. The Authority immediately commenced an independent investigation.
85. The Authority visited the scene of the shooting and spoke with Ms Z and Mr X's family. The Authority also interviewed Ms Z, and Officers A, B, F and G, monitored the Police investigation throughout and reviewed all the documentation produced by the Police investigation team.
86. The Authority's investigation considered the following issues:
  - 1) Did Police respond to Ms Z's call appropriately and in a timely manner?
  - 2) Were Police justified in arming themselves in response to this incident, and were all procedures for arming complied with?
  - 3) Did Police comply with all requirements in respect of communications, and command and control?
  - 4) Were tactical options other than the use of firearms available and considered?
  - 5) Were Police justified in shooting Mr X?
  - 6) Was all reasonable assistance given to Mr X after he was shot?

## THE AUTHORITY'S FINDINGS

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### **Issue 1: Did Police respond to Ms Z's call appropriately and in a timely manner?**

87. At 9.49pm on Tuesday 21 October 2014, Ms Z notified SouthComms of the situation at her address. The call originated from Kerepehi and fell within the dispatch boundaries of NorthComms. Within a minute, NorthComms had dispatched the first unit to the SFP. Over the next six minutes, NorthComms also separately dispatched Officers B, C, D and E to the SFP.
88. Within 10 minutes, NorthComms paged the Waikato AOS and over the next 40 minutes Officers A, B, C, D, E, F and G arrived at the SFP. During this time, Officers C, D and E were dispatched to cordon off areas surrounding the Kerepehi Township.
89. An hour after Police were first advised of the incident, Mr X and Ms Z left the address and drove over the road spikes at the corner of the SFP, on Kerepehi Town Road. At this stage the AOS and PNT had not arrived at the SFP and therefore the officers present had to deal with the developing situation.
90. Although members of the AOS and PNT were deployed, they did not arrive before Mr X had been shot and incapacitated. When the AOS squad arrived after the shooting, they were redeployed to clear Mr X's home address.

91. The Authority is satisfied that Police were dispatched to attend this incident in a timely manner. AOS were dispatched almost immediately and this was appropriate in the circumstances.

#### FINDING

The deployment of GDB, AOS and PNT officers to attend the firearms situation in Kerepehi was appropriate and undertaken within a reasonable time.

#### Issue 2: Were Police justified in arming themselves in response to this incident, and were all procedures for arming complied with?

92. Ms Z's comments to SouthComms gave clear and specific evidence of the risk that officers would encounter when they engaged with Mr X. It had been reported that Mr X was armed with a sawn-off shotgun, had 17 rounds of ammunition and a bulletproof vest, had threatened Ms Z and would *"go for a shootout"* if he saw Police.
93. Mr X's criminal history, which included previous firearm offences, indicated that Mr X had access to firearms and would act violently towards Police.
94. Based on their assessment of the threat Mr X would present, the officers were justified and authorised to arm themselves in accordance with relevant Police policies.
95. Although the Shift Commander did not give fire orders to the attending officers over the radio, all officers complied with policy by reminding themselves of the fire orders (refer to paragraphs 127 - 130).

#### FINDING

Officers attending the incident were justified in arming themselves and complied with relevant Police policies.

#### Issue 3: Did Police comply with all requirements in respect of communications, and command and control?

96. Ms Z phoned the emergency line a number of times, and each time spoke to a different communicator among the three different communication centres.<sup>3</sup> Each time the calls terminated due to the battery going flat on her cell phone. All calls originated from Kerepehi and fell within the dispatch boundaries of NorthComms, and as a result, the NorthComms Shift Commander was the incident controller and was responsible for controlling the Police response to the incident.

<sup>3</sup> Police operate three Communication centres: Northern, Central and Southern. A 111 call can be answered by a communicator in any of the three centres.

97. Due to the complexity of the situation, which was exacerbated by Ms Z's poor cell phone battery, the NorthComms Shift Commander made the decision to call Ms Z directly. This aided Police in getting up-to-date and accurate information. As Ms Z held the line open during the Police shooting of Mr X, the recording has been helpful in determining the sequence of events.
98. Tactics in relation to cordon and containment, the setup of road spikes and the stopping of Mr X's car were all communicated to NorthComms. The officers also knew the AOS were en route, although they did not arrive until after the shooting.

## FINDING

The communication and command and control of this incident were in line with policy and good practice.

### Issue 4: Were tactical options other than the use of firearms available and considered?

99. Other than use of firearms, options that can be considered by the Police when dealing with a violent offender include:
- cordon and containment;
  - retreat or delaying an arrest;
  - road spikes;
  - CS gas;
  - oleoresin capsicum (OC) spray and/or a baton;
  - a Taser; and
  - Police dogs.
100. Standard Police practice when dealing with an armed offender is to cordon the area and verbally appeal to the offender in order to negotiate a surrender (if the offender's actions permit). In this instance, Mr X left the house before a sufficient number of officers had amassed to effectively cordon the area. In addition, the PNT had not arrived to try to negotiate with Mr X. The mainly GDB officers present were forced to deal with the unfolding situation, in a rural environment.
101. Retreat or delay in arresting Mr X was not an appropriate tactical option considering the immediate threat he posed to Ms Z. The officers also felt that they needed to stop Mr X before he drove into a more populated area with a loaded firearm.
102. Road spikes are an approved Police tactic when there is no other less dangerous option of stopping a fleeing vehicle. In this instance, Mr X was not fleeing from Police but he was a mobile-armed offender and planning to drive to Ngatea. Although Officer A had concerns

about Ms Z's welfare should spikes be deployed, the Shift Commander approved the use of spikes on the basis that they wanted to prevent Mr X from reaching a more populated area.

103. The use of CS gas (or 'tear gas'), OC spray, a baton, a Taser and/or a Police dog were not appropriate in the circumstances because they all require the officer to get very close to the offender. In this instance, Mr X was carrying a loaded firearm and had threatened to fire his weapon if he saw Police.

## FINDINGS

Road spikes were appropriately deployed in accordance with policy to try to stop Mr X before he got to a populated area.

Police did consider tactical options other than firearms. However, the other options were not viable or appropriate in the circumstances.

### Issue 5: Were Police justified in shooting Mr X?

104. Sections 39 and 48 of the Crimes Act 1961 provide legal justification for Police to use reasonable force to arrest an offender, and in defence of themselves or another. However, any force used must be the minimum necessary to achieve the objective, and must be reasonable under the circumstances as they believe them to be. The Police Tactical Options Framework guides Police in determining the appropriate level of force to use in certain situations (see paragraphs 114 - 116 for Law and Police General Guidelines on use of force).
105. 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 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.
106. The Authority is satisfied that Officers F and G believed that Mr X posed an immediate threat of death or grievous bodily harm to Ms Z and to Police. Officers F and G knew that Mr X had previous firearm offences and had threatened to "*go for a shootout*" if he saw Police.
107. Officer F challenged Mr X several times informing him that he was armed and that Mr X should put the gun down and put his hands in the air. Instead, Mr X continued to work the bolt on his firearm and aimed his weapon at Police.
108. Officer F judged that the situation had reached a point where shooting Mr X was the only way to protect himself and the other officers. Officer F had attempted to avoid a lethal outcome by giving Mr X the opportunity to surrender, but instead Mr X continued to act in a way that made Officer F believe that he would fire his gun at him.

109. Similarly, Officer G believed that Mr X had become angrier following Officer F firing at him and that Mr X intended to shoot at Officer F. He considered that the only way he was able to protect Officer F was to shoot Mr X.
110. Based on their understanding of the circumstances, Officers F and G were lawfully justified in using a firearm to prevent Mr X from carrying out his threats. This was the only tactical option available to Officers F and G to neutralise the threat.

#### FINDING

Officer F and Officer G were justified in shooting Mr X.

#### Issue 6: Was all reasonable assistance given to Mr X after he was shot?

111. Once the officers removed the gun from Mr X, they immediately put Mr X into the recovery position and began administering first aid. Within six minutes, an ambulance was on the way to the scene.
112. Three paramedics arrived on the scene within 20 minutes, and considered that the officers giving Mr X first aid were *“doing a good job”*. The paramedics continued to provide Mr X with first aid until the arrival of a helicopter, which transported Mr X to hospital.

#### FINDING

Police provided all reasonable assistance to Mr X after he was shot.

## CONCLUSIONS

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113. The Authority has concluded that:

- 1) The deployment of GDB, AOS and PNT officers to attend the firearms situation in Kerepehi was appropriate and completed within a reasonable time.
- 2) Officers attending the incident were justified in arming themselves and complied with relevant Police policies.
- 3) The communication and command and control of this incident were in line with policy and good practice.
- 4) Road spikes were appropriately deployed in accordance with policy to try to stop Mr X before he got to a populated area. Police did consider tactical options other than firearms, however the other options were not viable or appropriate in the circumstances.
- 5) Officer F and Officer G were justified in shooting Mr X.
- 6) Police provided all reasonable assistance to Mr X after he was shot.



**Judge Sir David Carruthers**

Chair  
Independent Police Conduct Authority

20 April 2017

**IPCA: 14-0789**



## Applicable Laws and Policies

### Law on the use of force

114. Section 39 of the Crimes Act 1961 provides for Police officers to use reasonable force in the execution of their duties such as arrests. 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.”*
115. Section 48 of the Crimes Act 1961 states: *“Everyone is justified in using, in defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.”*
116. Section 62 of the Crimes Act 1961 makes a Police officer criminally responsible for any excessive use of force.

### Police policy on use of force

117. 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.
118. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring 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.
119. 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. Officers 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; emotional state, the influence of drugs and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer’s Perceived Cumulative Assessment (PCA)).
120. A key part of an officer’s decision to decide when, how, and at what level to use force depends on the actions, 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.

121. 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.

### Use of road spikes

122. The overriding principle of the Police tyre deflation device (TDDs, i.e. road spikes) is that:

*“Every deployment is inherently dangerous and Police deploying TDDs must take care to preserve the safety of themselves, their colleagues and members of the public. This must be the primary consideration at all times.”*

123. Certified officers may deploy road spikes when there is no other, less dangerous, means of stopping a fleeing vehicle and the spikes can be used without unjustified risk to any person. Officers are instructed to consider, amongst other things, the urgency of the situation and how the deployment will impact on the fleeing driver and vehicle.

124. Under the policy, officers deploying road spikes are required to establish the speed of the pursuit, provide situation reports to the pursuit controller (i.e. the communications centre’s shift commander), and conduct ongoing risk assessments of the situation and deployment site. The pursuit controller must regularly question deployment staff about their risk assessment, including road and traffic conditions.

125. The deployment site must:

- provide cover and an escape route for the deploying officers;
- provide a clear view of the road;
- not be on or immediately before a bend in the road;
- be suitable for the safe and effective deployment of the road spikes; and
- be far enough away from the fleeing vehicle to allow time to select and assess the site and carry out the deployment.

126. Officers must abandon the deployment of the road spikes if instructed to do so by the pursuit controller, or if injury is likely to occur to the public, Police or the occupants of the fleeing car.

### Use of firearms

127. 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.

128. 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 cannot reasonably protect themselves or in a less violent manner.
129. In operational situations where firearms are issued, General Instruction F061 also requires that an officer's attention is drawn to the fire orders printed in their Police issue notebook "*if time and circumstances permit*".
130. Police policy also requires officers to notify their immediate supervisor and the Police Communications Centre of their decision to deploy with firearms.

## ABOUT THE AUTHORITY

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### Who is the Independent Police Conduct Authority?

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

It is not part of the Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Sir David J. Carruthers.

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its 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 complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

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.



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