



# Fatal crash in Albany involving a Police vehicle

INDEPENDENT POLICE CONDUCT AUTHORITY

## INTRODUCTION

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1. At about 12.47pm on 2 February 2010, Cornelis Klein, aged 50, deliberately rammed his Jeep into the back of a Police patrol vehicle at an intersection in Albany, North Shore. Mr Klein's vehicle then collided head-on with a car driven by Michael Roden Plimmer, aged 71. Mr Plimmer was killed instantly.
2. The Police notified the Independent Police Conduct Authority of the death, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

## BACKGROUND

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### Summary of events

3. At around 12.40pm on Tuesday 2 February 2010, Mr Klein was driving a female passenger southward on the Albany Expressway in a black Jeep Cherokee. Earlier that day he had been behaving strangely and making irrational statements. While talking to his passenger, he threatened to commit suicide.
4. His passenger was upset and threatened to call the Police if Mr Klein did not stop and let her out of the vehicle. As Mr Klein pulled the Jeep over to the side of the Expressway, he became extremely angry and started yelling and screaming.
5. His passenger got out of the Jeep and ran away, fearing for her safety. She used her cell phone to make an emergency call to Police to inform them of Mr Klein's suicide threat.
6. Mr Klein followed her for a short distance, but then returned to his Jeep and drove away.

7. Officer A and Officer B were on patrol on the East Coast Road at this time. Officer A was driving the patrol vehicle and Officer B was responsible for operating the radio.<sup>1</sup> At 12.41pm a dispatcher at the Northern Communications Centre (NorthComms) instructed the officers to attend the incident.
8. The dispatcher told the officers that a man named Klein had threatened to commit suicide, and that his vehicle was a black Jeep parked on the Albany Expressway. At the time NorthComms did not know the Jeep's registration number or that Mr Klein had left the Albany Expressway.
9. Officer A immediately activated the patrol car's warning lights and siren and drove towards the Albany Expressway by way of Rosedale Road, reaching speeds of about 90 kph in a 50 kph speed zone. In the meantime Mr Klein had left the Albany Expressway, driven down Tawa Drive and turned onto Rosedale Road, heading west.
10. After crossing the Tawa Drive roundabout on Rosedale Road, Officer A and Officer B saw Mr Klein's black Jeep in the queue of traffic ahead of them, but did not realise that it was connected to the incident they were attending because they were expecting to find the Jeep parked on the Albany Expressway.
11. Unlike other drivers, Mr Klein did not pull over to the left to let the patrol car pass him, so Officer A used the painted median strip to overtake the Jeep at an estimated speed of 90-95 kph.
12. As the patrol car passed the Jeep, Mr Klein yelled at the officers and put his hand out the window to give them 'the finger'. He then began following the patrol car at high speed.
13. The patrol car slowed down as it approached the intersection of Rosedale Road and Clemows Lane. Officer A heard a horn sounding repeatedly, and saw in his rear-view mirror that the Jeep was speeding towards the patrol car. He accelerated away but the Jeep continued to follow the patrol car closely. Officer B took note of the Jeep's registration number with the intention of later following up on the aggressive and dangerous driving she had witnessed.
14. At the intersection of Rosedale Road and Bush Road, Officer A slowed the patrol car to a crawl because there were a number of vehicles waiting to turn right at the traffic lights. The Jeep was then driven directly into the back of the patrol car at a speed of about 80 kph.

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<sup>1</sup> Officer A is a qualified driver under the Police Professional Driver Programme and holds a Gold classification.

15. The impact of the crash shunted the patrol car across the intersection and into the path of oncoming traffic, causing it to scrape past several vehicles and end up on the opposite side of the intersection, about 90 metres from where the Jeep had hit it.
16. The Jeep then crossed the centreline and crashed head-on into the right front corner of a Holden Commodore being driven east on Rosedale Road by Mr Plimmer. The Holden was forced backwards onto the footpath and the Jeep rolled, coming to rest on its roof in the middle of the two eastbound lanes.
17. Eight vehicles were involved in the crash, including Mr Klein's Jeep, the patrol car and the Holden.
18. Officer A and Officer B were not seriously injured in the collision. Immediately after the crash, at 12.47pm, Officer B advised NorthComms that their patrol vehicle had been hit from behind and that several cars had become involved as a result of this crash.
19. The officers quickly ascertained that Mr Plimmer had died.
20. Mr Klein suffered minor injuries and was able to crawl from his upturned Jeep. When Officer A, and later a paramedic, asked him why he had rammed the patrol car, Mr Klein replied: *"I'm God."*
21. Within a few minutes the officers confirmed that Mr Klein was the person who had reportedly threatened to commit suicide on the Albany Expressway.
22. After Mr Klein was discharged from hospital later that day, he made a statement to Police admitting that he had deliberately rammed the patrol car. He said that he was angry at the Police for overtaking him and that he believed they were driving too fast. Furthermore, he claimed to have never understood or accepted the fact the Police may exceed the speed limit while other motorists must not.

### **Crash analysis**

23. At the time of the incident, the weather was overcast and the roads were dry.
24. A Police collision analyst determined that neither the Jeep nor the patrol car had any pre-existing faults in respect of the brakes, steering, suspension or throttle operation which would have contributed to the cause of the crash. In addition, there was no evidence to suggest that Mr Klein lost control of the Jeep prior to colliding with the patrol car.
25. Due to the number of secondary collisions, the collision analyst was unable to conduct an accurate speed analysis. However from the analyst's calculations it appears most likely that the Jeep's speed was over 69 kph when it rammed the patrol car.

## Prosecution

26. Mr Klein has been charged with the manslaughter of Mr Plimmer. His trial is set for 13 June 2011.

## LAWS AND POLICIES

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### Urgent duty driving

#### Definition

27. Urgent duty driving is defined as occurring when:

*“...an officer on duty is **either**:*

- *responding to a critical incident*
- *apprehending an offender for a traffic or criminal offence*
- *engaged in a pursuit; or*
- *engaged in activities approved by the commissioner in writing*

***and** to comply with traffic rules and regulations would prevent the execution of that duty [emphasis in original].”*

28. Critical incidents include situations involving (i) force or the threat of force, (ii) any person facing the risk of serious harm, or (iii) officers responding to people in the act of committing a crime.

#### Overriding principle

29. Under the Police urgent duty driving policy, the overriding principle is: *“No duty is so urgent that it requires the public or police to be placed at unjustified risk.”*

30. When deciding whether it is appropriate to commence or continue urgent duty driving, an officer must consider the following factors:

- *“time of the incident – is it in progress?”*
- *nature and seriousness of the incident*
- *proximity of other units to the incident*
- *environment e.g. weather, traffic volume, road type, speed limit and pedestrians etc*
- *driver classification and vehicle classification*
- *whether warning devices are activated or a “silent approach” is being used [emphasis in original].”*

*Silent approach*

31. The urgent duty driving policy states:

*“Police **must** use flashing lights and sirens at all times (continuously) unless a “silent approach” is tactically appropriate and can be used safely. Police must not rely in road users to take evasive action when warning lights and siren are activated – they do not guarantee safety [emphasis in original].”*

32. A “silent approach” involves reducing speed and turning off sirens when in close proximity to a critical incident in order to avoid alerting an offender or aggravating a situation e.g. a “report of a suicidal person”.

## THE AUTHORITY’S FINDINGS

**Were the officers justified in commencing urgent duty driving?**

33. According to Police policy, urgent duty driving is permitted when an officer would be prevented from responding to a “critical incident” if required to comply with the traffic rules and regulations. Critical incidents include situations where any person is facing the risk of serious harm (see paragraphs 27-28).
34. Officer A was engaged in urgent duty driving immediately prior to the multiple crash which took place at the intersection of Rosedale Road and Bush Road. Such driving was justified because the officers were responding to a report that somebody had threatened to commit suicide. Officer A and Officer B needed to attend the scene as soon as possible in order to attempt to intervene and prevent serious harm occurring.

## FINDING

The officers were justified in commencing urgent duty driving.

**Was the speed and manner of Officer A’s driving appropriate?**

35. When deciding to commence or continue urgent duty driving an officer must consider several factors, including: the environment, the urgency of the situation, and whether warning devices can be used or a silent approach is necessary (see paragraph 30). The overriding principle is: “No duty is so urgent that it requires the public or police to be placed at unjustified risk.”
36. Officer A holds a Gold classification under the Police Professional Driver Programme and is qualified to conduct urgent duty driving. There were good driving conditions when he decided to commence urgent duty driving; the roads were dry and there was only a

medium level of traffic on Rosedale Road. He activated the patrol car's warning lights and siren before increasing his speed past the limit of 50 kph.

37. The patrol car reached an estimated top speed of 90-95 kph while overtaking Mr Klein's Jeep, but slowed when passing through the intersections on Rosedale Road. This level of speed was acceptable considering the urgent circumstances.
38. Neither the public nor the officers were placed at unjustified risk by the manner of Officer A's driving.

#### FINDING

The officers complied with the urgent duty driving policy in relation to speed and manner of driving.

#### Should the officers have used a silent approach?

39. Police may consider using a "*silent approach*" when they want to avoid aggravating a dangerous situation (see paragraph 32). One of the examples listed in the policy of when it may be appropriate to use a silent approach is a "*report of a suicidal person*".
40. In this case Officer A and Officer B were not aware that the man who had reportedly threatened to commit suicide had left the Albany Expressway, and did not know the registration number of Mr Klein's Jeep. They did not realise that the black Jeep they saw on Rosedale Road was connected to the incident they were attending because they expected to find the Jeep parked on the Albany Expressway.
41. If the officers had realised that Mr Klein was the driver of the Jeep, they may have decided to use a silent approach. However there was no opportunity for them to do so.

#### FINDING

There was no opportunity for the officers to use a silent approach.

#### CONCLUSIONS

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42. The Police officers complied with the urgent duty driving policy.
43. Without being aware of Mr Klein's identity or his background, the officers could not have anticipated Mr Klein's extreme reaction to being overtaken by the Police vehicle.
44. Pursuant to section 27(1) of the Independent Police Conduct Authority Act 1988, the Authority has formed the opinion that the actions of the officers were not contrary to law, unreasonable, unjustified, unfair or undesirable.

45. The Authority makes no recommendations pursuant to section 27(2) of the Act.

A handwritten signature in black ink, appearing to read 'L.P. Goddard', is centered on the page.

HON JUSTICE L P GODDARD

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

APRIL 2011

# 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.

It is not part of the Police – the law requires it to be fully independent. The Authority is chaired by a High Court Judge and has four other members.

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 has highly experienced investigators who have worked in a range of law enforcement 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;
- 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 determine whether any Police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority can make recommendations to the Commissioner.



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