

Independence

trustworthiness

accountability

vigilance

integrity

Report on the death of Georgina Cherish Stone – Te Haara following Police Pursuit

July 2013



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Introduction

INDEPENDENT POLICE CONDUCT AUTHORITY

1. At about 12.30pm on Sunday 5 December 2010, a stolen Holden Barina hatchback driven by Setefano Tonga, aged 17, crashed on Chapel Road in Flat Bush, Auckland, following a Police pursuit. A passenger in the car, Georgina Cherish Stone-Te Haara, aged 20, died in hospital from injuries she received in the crash. Mr Tonga and his two other passengers, Mamaku Jacquetta Ngaheue, aged 17, and Shana Menary-Colley, aged 23, were seriously injured.
2. The Police notified the Independent Police Conduct Authority of the incident and the Authority conducted an independent investigation.
3. In addition, two members of the public made complaints to the Authority about Police action during the pursuit and the deployment of road spikes.
4. The Authority's investigation considered matters of Police conduct and compliance with relevant laws and policies. This report sets out the results of that investigation and the Authority's findings and recommendations.

Glossary of terms

Abbreviation/term	Explanation
Eagle	Police helicopter
NorthComms	Police Northern Communications Centre
PPDP	Professional Police Driver Programme
Search mode	Police units in the area are directed to look for the vehicle that has evaded Police, but are not allowed to engage in urgent duty driving while doing so
TDD	Tyre Deflation Device; i.e. road spikes Also known as 'Stingers'
Urgent duty driving	Driving at speed (usually above the speed limit) with red and blue warning lights and siren activated

Index of officers

Communications Centre Staff	Comment
Dispatcher	Dispatched the event on the Counties Manukau channel
Pursuit controller	NorthComms shift commander Supervised the dispatcher and managed the pursuit

Field Staff	Roles	Comment
Officer A Marked patrol	Located the stolen Holden Barina in Maraetai	Officer A had a gold licence Category A vehicle Single crewed
Officers B and C Unmarked patrol	Commenced pursuit on Whitford Road	Officer B had a silver licence Category B vehicle
Officer D Marked patrol	Acting sergeant Took over as lead pursuit vehicle from Officers B and C on Whitford Road	Officer D had a gold licence Category A vehicle Single crewed
Officers E and F Marked patrol	Attempted to deploy road spikes at the intersection of Whitford Road and Chapel Road	Officer E had a gold licence Category A vehicle
Officers G and H Marked patrol	Deployed road spikes on Chapel Road after pursuit had been abandoned	Officer G had a gold licence Category A vehicle

Index of witnesses

Witness	Comment
Witness 1	Overtaken by the Holden Barina near the intersection of Beachlands Road and Whitford-Maraetai Road; witnessed dangerous driving by Mr Tonga (see paragraph 35)
Witness 2	Observed Officers E and F preparing to deploy road spikes at the Whitford Road/Chapel Road roundabout; saw the Holden Barina lose control on Chapel Road at the Kilkenny Drive intersection (see paragraphs 64 and 70-73) Made a complaint to the Authority
Witness 3	Had to take evasive action to avoid being hit by the Holden Barina at the Dannemora Drive intersection and saw Mr Tonga drive over a traffic island (see paragraphs 77-78)
Witness 4	Saw the Holden Barina travelling at over 100 kph near the Smales Road intersection and observed that the driver did not seem to be in control and was swerving everywhere (see paragraphs 86-88)
Witness 5	Saw the Holden Barina drive through red traffic lights at the Smales Road intersection and observed that its right tyre was deflated and it was pulling to the right as it was driving (see paragraphs 89-90)
Witness 6	Observed the Holden Barina passing cars by veering left onto the shoulder of the road near the Cyril French Drive intersection, kicking up dust and travelling at an estimated speed of 120 kph (see paragraph 99)
Witness 7	Saw Mr Tonga driving in a weaving pattern and crossing the centre line near Baverstock Road; also observed cars pulling over to get out of his way and noticed the Holden Barina's front right tyre was completely flat (see paragraphs 100-102)
Witness 8	Was approaching the Stancombe Road intersection when she heard a flat tyre and was overtaken by the Holden Barina which was driving along the median strip; then saw rubber coming off its front tyre (see paragraph 103)
Witness 9	Witness 8's passenger; estimated the Holden Barina was travelling at more than 90 kph (see paragraph 103)
Witness 10	Saw Officers G and H deploy road spikes near the Stancombe Road intersection; observed Mr Tonga swerve towards her vehicle which was waiting at the traffic lights (see paragraphs 120-124) Made a complaint to the Authority
Witness 11	Witnessed the deployment of the road spikes and saw the Holden Barina fishtailing out of control as it drove through Stancombe Road intersection (see paragraphs 125-127)
Witness 12	Was leaving the carpark of Sir Barry Curtis Park when he saw the Holden Barina drift off the road, hit the edge of the driveway and crash (paragraph 131)

Timeline of events on 5 December 2010

Time	Event/Comment
12.10pm	Officer A saw the Holden Barina on Omana Esplanade in Maraetai.
12.13pm	Officer A checked the Holden's registration number and discovered that it had been reported stolen. He confronted the driver of the stolen car, Mr Tonga, who drove away at speed.
12.15pm	Officer A radioed the Police Northern Communications Centre (NorthComms) and reported that he had located a stolen car which had driven off at speed. The NorthComms dispatcher began organising units to head towards Maraetai in search of the Holden.
12.23:17pm	Officers B and C (in an unmarked patrol car) saw the Holden heading north on Whitford Road towards Howick, and they completed a u-turn in order to follow it with their lights and siren activated. Officer B was the driver and had a silver licence.
12.24.16pm	The driver of the Holden (Mr Tonga) accelerated away and Officers B and C formally commenced pursuit.
12.25.17pm	Officer D (in a marked patrol car) took over as lead vehicle in the pursuit because he had a gold licence. Officers G and H began driving towards the pursuit.
12.26:23pm	Officers E and F prepared to deploy road spikes at the Whitford Road/Chapel Road roundabout.
12.26:40pm	Officer D advised the dispatcher that he thought the Holden had run over the road spikes. In fact, Mr Tonga in the Holden drove through the intersection before the spikes could be deployed and turned left into Chapel Road.
12.27:17pm	Officer D provided NorthComms with a risk assessment of the location (Chapel Road); traffic volume (good); speed (80-90kph) and distance (200m behind the Holden). Officer D and other road users witnessed Mr Tonga weaving through traffic on Chapel Road at high speed.
12.27:38pm	Officer D confirmed that the speed limit on Chapel Road was 60 kph, and advised NorthComms that the Holden was heading straight through Dannemora Drive.
12.27:55pm	Officer D advised the dispatcher of location (past Botany); distance (150m behind Holden); driving manner (pretty good) and traffic (a bit heavier).
12.28:34pm	Officer D asked if Eagle (the Police helicopter) was out, and the dispatcher replied that it was not. At around this time Officer D saw Mr Tonga drive straight through red traffic lights at the intersection of Chapel Road and Smales Road.
12.28:40pm	Officer D abandoned the pursuit on Chapel Road near Gracechurch Drive due to Mr Tonga's dangerous driving. He then reported that the Holden was last seen heading straight on Chapel Road and was driving quite erratically.
12.29:30pm (approx)	The dispatcher advised all Police officers attending this incident to go into search mode. Officers G and H deployed road spikes on Chapel Road near the intersection with Stancombe Street, and Mr Tonga drove over them. Mr Tonga continued to drive down Chapel Road at speed for about 400 metres, then crashed into a ditch alongside Sir Barry Curtis Park.



Executive Summary

INDEPENDENT POLICE CONDUCT AUTHORITY

5. This incident began in Maraetai when Officer A attempted to apprehend Mr Tonga, who was driving a stolen car. Mr Tonga drove away from the officer and a short time later Police commenced a pursuit which lasted four and a half minutes and covered a distance of about 6.7 kilometres.
6. During the pursuit Officers E and F attempted to deploy road spikes at a roundabout on the intersection of Whitford Road and Chapel Road, but Mr Tonga drove past before the road spikes could be deployed. A member of the public later complained to the Authority about the pursuit and the attempted use of road spikes at this location.
7. The pursuit was abandoned on Chapel Road due to Mr Tonga's dangerous driving. Officers G and H then deployed road spikes near Stancombe Road in an attempt to stop Mr Tonga. Another member of the public complained to the Authority about the use of road spikes at that location. Shortly after driving over the road spikes Mr Tonga's car crashed.
8. The Authority's investigation considered whether Police complied with the law and fleeing driver policy at each stage of the pursuit, specifically in relation to the: commencement and recommencement of the pursuit; communication; speed and manner of driving; and the ongoing risk assessment/abandonment.
9. Regarding the use of road spikes, the Authority considered whether Police complied with tyre deflation devices (TDD) policy in respect of the decision to use the road spikes; the selection of the deployment site; and the actual deployment.

Authority conclusions

10. The officers involved in this incident experienced radio difficulties throughout which may have impeded their ability to comply with the communication requirements of Police policy in force at the time.
11. The Authority finds that Police were justified in commencing the pursuit and complied with the fleeing driver policy in respect of their speed and manner of driving. The officers

also generally complied with Police policy in respect of their communication with the Police Northern Communications Centre (NorthComms), apart from Officer D's provision of misleading information about the manner of Mr Tonga's driving.

12. Officers E and F's decision to use road spikes was reasonable; but they chose an unsuitable deployment site and the intended deployment was not actively overseen by the pursuit controller as required by the Police TDD policy.
13. Officer D complied with the requirements of the fleeing driver policy when abandoning the pursuit on Chapel Road, but should have made the decision to abandon earlier due to Mr Tonga's sustained dangerous driving.
14. Although the pursuit had been abandoned, Officers G and H decided to deploy road spikes further down Chapel Road in an effort to safely stop the fleeing driver. They deployed the road spikes without the pursuit controller's knowledge or authorisation, and without wearing reflectorised safety jackets. This was a breach of the TDD policy in force at the time.
15. The Authority considers that the officers' deployment of road spikes after the pursuit had been abandoned was against the intent of the TDD policy, but accepts that the policy at the time did not clearly prohibit the use of road spikes in those circumstances.
16. The Authority also has concerns about the risks associated with deploying road spikes near a major intersection controlled by traffic lights, but was unable to conclude that the deployment site was unsuitable in the circumstances.
17. The Authority finds that the officers should not have gone ahead with the spike attempt due to their inability to contact the pursuit controller over the radio.

Section 27 opinion

18. Section 27(1) of the Independent Police Conduct Authority Act 1988 (the Act), requires the Authority to form an opinion as to whether or not any act, omission, conduct, policy, practice or procedure which was the subject-matter of an investigation was contrary to law, unreasonable, unjustified, unfair or undesirable.
19. Pursuant to section 27(1) of the Act, the Authority has formed the opinion that the following were undesirable:
 - i) the radio difficulties experienced by the officers involved in this pursuit;
 - ii) Officer D's provision of inaccurate and misleading information about Mr Tonga's manner of driving to NorthComms;
 - iii) Officer D's failure to abandon the pursuit at an earlier stage;

- iv) the non-compliance of Officers E and F and Officers G and H with the communication requirements of the TDD policy;
- v) the location of the TDD deployment site chosen by Officers E and F (at a roundabout); and
- vi) Officers G and H's decision to deploy the road spikes without authorisation from the pursuit controller.

Section 27(2) recommendations

- 20. Changes have been made to Police policy and practice since this incident occurred over two and a half years ago. The Authority is also engaging with Police to address ongoing concerns regarding the prescriptive nature and workability of the fleeing driver and TDD policies.
- 21. The Authority considers that it would be beneficial for Police to enhance their knowledge and understanding of the impact of tactical options such as road spikes on fleeing vehicles. This would assist in the future development of Police policy and best practice. Therefore, pursuant to section 27(2) of the Act, the Authority recommends that the New Zealand Police ensure that when Police have used a tactical option (such as road spikes) in close proximity to a crash causing serious injury or death, the crash report provides an analysis of the likely impact of that tactical option on the crash.



Background

INDEPENDENT POLICE CONDUCT AUTHORITY

SUMMARY OF EVENTS

Events prior to the pursuit

22. On 27 November 2010, a blue Holden Barina hatchback car was stolen from Budget Rental Cars in Auckland.
23. During the morning of Sunday 5 December 2010, Setefano Tonga drove the stolen Holden Barina around the Manurewa area with one male passenger and three female passengers (Mamaku Ngaheu, Shana Menary-Colley and Georgina Stone-Te Haara). The group then headed east to Maraetai beach, where they drank alcohol. The male passenger left the car at about midday.
24. At approximately 12.10pm, Officer A was patrolling Maraetai in a marked patrol car. He noticed a blue Holden Barina on Omana Esplanade Road that was behaving suspiciously and driving on the grass of the reserve.
25. At 12.13pm Officer A checked the Holden's licence plates on his Mobile Data Terminal (MDT) and found that it had been reported stolen. He was unable to advise NorthComms that he had located the stolen car because his radio transmission was blocked with a busy signal (see paragraphs 152-158 for further discussion of Police radio issues during this incident).
26. Officer A saw that the occupants of the Holden had noticed him and were preparing to leave the area. He drove forward and parked his patrol car in front of the Holden, in an attempt to prevent the group from leaving. Officer A then got out of his car and approached the driver of the Holden, who was later identified as Mr Tonga (Police did not discover his identity until after the Holden had crashed). Officer A asked Mr Tonga who the owner of the car was, and Mr Tonga replied that it was his auntie's car.
27. As Officer A reached in through the open window, turned off the car's engine and tried to remove the keys from the ignition, Mr Tonga grabbed his wrist and became aggressive. During the struggle Officer A released the keys, grabbed Mr Tonga's right hand and tried

- to pull him from the car. Mr Tonga then started the car with his left hand and began to drive away while Officer A still had hold of his right hand. As the Holden began to move, Officer A released his grip on Mr Tonga, who accelerated away and drove west towards Alexander Avenue and out of Officer A's sight.
28. During this exchange, Officer A saw the three female passengers in the back seat of the Holden.
 29. After Mr Tonga had accelerated away, he stopped the car and asked Ms Ngaheu to climb into the front seat of the Holden. Ms Stone-Te Haara sat in the back seat behind Ms Ngaheu, and the Ms Menary-Colley sat behind the driver's seat.
 30. Mr Tonga then drove at speed towards Whitford-Maraetai Road and left the Maraetai area, heading south-west towards Whitford.
 31. In the meantime Officer A ran back to his patrol car and again tried to contact NorthComms, but the channel was busy because the dispatcher was broadcasting a message to all units (the message was unrelated to this incident).
 32. Officer A completed a u-turn and began driving up Alexander Avenue. At 12.15pm he was able to get through to NorthComms, and he made a priority call to the dispatcher advising that he had found the stolen Holden Barina. He stated the Holden's registration number and explained that there was a male driver and three female passengers in the car, and that he had tried to grab the keys but the driver had *"taken off"*.
 33. Because he had lost sight of the Holden, Officer A decided not to pursue the stolen car. He drove to the intersection of Whitford-Maraetai Road and Maraetai School Road and waited there in case the Holden had not yet left the area. At 12.17:19pm he told the NorthComms dispatcher: *"I'm stationary on Whitford-Maraetai Road to see if it's gonna come out of Maraetai."*
 34. The NorthComms dispatcher began directing patrols to the area and, at 12.17:40pm, gave a full description of the stolen Holden car over the Police radio, including that it had four occupants and had been involved in a bag snatch the previous day.
 35. Meanwhile, Witness 1 was driving south on Whitford-Maraetai Road towards Whitford. Just after the roundabout at the intersection with Beachlands Road, he saw the Holden come up behind him and attempt to overtake him at about 110 kph (in a 80 kph speed zone) on a stretch of road with double yellow lines and a blind hill. Witness 1 braked and pulled over to the left side of the road because *"it was a stupid place to pass"* and he *"couldn't see if anything was coming in the other direction"*. About two seconds after the Holden had finished the overtaking manoeuvre, a 4x4 vehicle towing a trailer came over the hill towards them. According to Witness 1, the driver of the Holden carried on *"driving like a lunatic"*.

The pursuit

36. Officers B and C were on patrol in the Howick area when they heard Officer A's radio message about locating the stolen Holden Barina in Maraetai (at 12.15pm). Officer B was the driver and Officer C was responsible for operating the radio. The officers were in a category B unmarked patrol car; category B vehicles are approved for use in pursuits but must be replaced by a category A vehicle as soon as possible (see paragraph 302 for policy).
37. Officer B is trained under the PPDP and was certified as a silver licence holder at the time of this incident. A silver licence holder may not undertake a pursuit unless directly supervised by a gold licence holder (in this case, Officer C had a gold licence). When a patrol car driven by a silver licence holder is involved in a pursuit, it must be replaced by patrol car driven by a gold licence holder as soon as possible (see paragraphs 301 and 302 for policy).
38. At 12.18:26pm, Officer C advised NorthComms that they were on Whitford Road and would head down through Whitford to look for the Holden. Meanwhile the NorthComms dispatcher continued to organise units to head towards the Maraetai area in search of the stolen car.
39. A few minutes later, Officers B and C were travelling south on Whitford Road, near Griggs Road, when they saw the Holden driving towards them. After the Holden had passed them, they did a u-turn in order to follow it, activating their patrol car's red and blue warning lights and siren as they did so.
40. Whitford Road is a two lane road (one lane in either direction). Officer B later said in his Police statement: *"When I first completed the U turn to follow the vehicle there were quite a few vehicles using the road."*
41. At 12.23:17pm Officer C advised the NorthComms dispatcher that they had seen the Holden. In response, the dispatcher asked Officer C to confirm that they were pursuing the vehicle. Officer C replied: *"... negative, it's probably about four or five cars in front of us ..."*. The transmission was interrupted by static and the dispatcher said: *"... someone cut over, confirm you're not pursuing the vehicle ..."*.
42. Officer C responded: *"... yeah negative at this stage, we're in an unmarked car and he's not aware we're behind him. He drove past us; we're still just trying to catch up with it at this stage."* The officer then reported that they were heading towards Broomfields Road.
43. Meanwhile the pursuit controller (the NorthComms shift commander) had been advised that a fleeing driver situation was imminent, and he arrived at the dispatcher's desk at about this time.

44. At 12.24:16pm, Officer C advised the dispatcher that the Holden was one car in front of them and said: *"... I believe he knows we're there, he's taken off."* At this point Mr Tonga appeared to realise that Officers B and C were behind him and he sped up, overtaking the vehicle in front of him.
45. The dispatcher then asked Officer C whether the Holden had gone down Broomfields Road. At 12.24:43pm, Officer C responded: *"Negative, it's still on Whitford Road. At this stage we are pursuing the vehicle. We're pursuing at about 100 kilometres per hour. It's silver driver, B class vehicle."*
46. Police fleeing driver policy requires that once a pursuit has been commenced, the communications centre dispatcher must give the warning, *"If there is any unjustified risk to any person you are to abandon pursuit immediately, acknowledge."*
47. The dispatcher issued the required warning and Officer C acknowledged it. Officer C then advised the dispatcher, at 12.25:17pm: *"We've let a marked patrol vehicle overtake us and he's now pursuing the vehicle."*
48. Officer D was in the category A marked patrol car that took over from Officers B and C as the lead vehicle in the pursuit. He is certified as a gold licence holder, and is trained under the PPDP and therefore competent to engage in pursuits as the lead driver. Officer D was the sole occupant of the car, so in addition to driving he was also responsible for operating the radio and communicating with NorthComms. His patrol car had recently been fitted with hands-free radio.
49. Officer D had initially heard about the search for the stolen Holden Barina while at the Howick Police station. At 12.22:56pm he had advised NorthComms that he was in the Whitford area and looking for the stolen car. Immediately afterwards he heard Officer C say that they had found the Holden and were heading in his direction on Whitford Road (see paragraph 41). He then saw the Holden go past him near Broomfields Road.
50. Officer D did a u-turn, activated his patrol car's warning lights and siren, and accelerated in order to catch up to Officers B and C, who were behind the Holden in the northbound lane of Whitford Road. Officer B then pulled over to let Officer D overtake them. By the time Officers B and C had pulled back out onto the road, the Holden and Officer D's patrol car were out of sight.
51. At 12.25:30pm, after confirming Officer D's call sign, the dispatcher again issued the safety warning required by the fleeing driver policy (see paragraph 46). Officer D acknowledged the warning and advised the dispatcher: *"I'm one up in a class A vehicle, marked ... can't see the Barina at the moment... just some windy hills at the moment, catching up though."*

52. The dispatcher asked Officer D for information about his location and speed, and he replied that he was approaching Somerville Road at 80 kph. The applicable speed limit was 80 kph.
53. In a statement made two weeks after the pursuit, Officer D said the Holden had reached speeds of about 100 kph on Whitford Road, and that he was *“approximately 200 metres behind the stolen car and ... not making much ground as it overtook several vehicles on Whitford Road.”* He then lost sight of the car due to the winding roads.
54. At 12.26:10pm Officer D advised the dispatcher that he could not currently see the Holden but was heading towards some straight roads and should be able to see it shortly.
55. As Officer D approached the roundabout at the intersection of Whitford Road and Somerville Road, members of the public signalled to him that the Holden had gone straight through the roundabout and continued along Whitford Road. The speed limit changes from 80 kph to 50 kph at this intersection.
56. Meanwhile, at the Howick Police station, Officers E and F had heard about the search for the stolen Holden Barina on the Police radio. They communicated with the dispatcher to see if they could assist, and asked for a description of the Holden at 12.17:36pm (see paragraph 34).
57. Officers E and F left the station in a category A marked patrol car and began urgent duty driving towards Maraetai.¹ Officer E was the driver and Officer F was responsible for operating the radio and communicating with NorthComms. Officer E is trained under the PPDP and holds a gold licence. Both officers are trained in the use of road spikes.
58. Officers E and F had Stinger road spikes in the boot of their patrol car. Stinger spikes are one of two authorised spiking devices that were in use by the New Zealand Police at the time of this incident.² They consist of an expanding bed of sharpened hollow spikes that, when placed across the road, and driven over, embed in the vehicle’s tyres and cause a controlled deflation of the tyres. Stinger spikes are designed to fully cover one lane when completely extended.
59. Officers E and F heard over the radio that Officers B and C had seen the Holden on Whitford Road heading towards Howick. They drove to the roundabout at the intersection of Whitford Road and Chapel Road, and parked on a raised traffic island at

¹ Urgent duty driving involves driving at speed with the patrol car’s warning lights and siren activated.

² Stinger spikes are now the only type of road spikes used by the Police, because controlled deflation through hollow spikes reduces the risk of the driver crashing into oncoming traffic or the surroundings.

the southern end of the roundabout (on Chapel Road) with their patrol car's warning lights activated.

60. The Whitford Road/Chapel Road roundabout is large in size and has four exits/entrances – one onto Chapel Road (heading southwest), one onto Orangewood Drive (heading west), and two onto Whitford Road (one heading north and one southeast). The fleeing car was approaching the officers' location at the roundabout from the southeast Whitford Road entrance.
61. Officer E got out of the car and began stopping traffic at the roundabout. In a statement provided one week after the pursuit he said:

"I noticed that the traffic was light to medium and there were approximately 2 to 3 cars at each give way sign. I proceeded to get out of the vehicle and stop motorists and I noticed the traffic was building quickly and I decided to stop all vehicles at that location for their and our safety."

62. Officer F retrieved the Stinger road spikes from the boot of the patrol car. Officer E initially directed Officer F to position himself so he could deploy the road spikes from the centre of the roundabout, but then decided that would be unsafe and directed him to cross the road and assess the site from the footpath. Officer F later said:

"I thought this was a good and appropriate place to deploy the spikes as the vehicle had to slow down to take the corner and the lanes were separated by an island so the vehicle would not be able to cross lanes to avoid the spikes.

... I felt that deploying the spikes was necessary as the vehicle was already driving dangerously and was approaching a residential area which had a high density of traffic, due to the time of day. It was in the public's best interests for the vehicle to be stopped as soon as possible."

63. The Police TDD policy that was in force on 5 December 2010 required officers who were deploying road spikes to contact the lead pursuit driver (Officer D in this case) and the pursuit controller via the Police radio to discuss their chosen location for deploying the road spikes and the risks involved (see paragraph 315 for policy). Officers E and F did not do this. When later interviewed by Police, they said that the radio traffic was very heavy and they were unable to get through (see paragraphs 156(ii) and (iii)).
64. As Witness 2 was approaching the Whitford Road roundabout from the north, he saw Officers E and F preparing to deploy the road spikes. He drove cautiously through the roundabout and onto Chapel Road, because he expected there was a pursuit going on. He was concerned that Police were considering spiking a car at that roundabout, given the busyness of the roads and the fact that it was a residential area.

65. At 12.26:23pm Officers E and F radioed the NorthComms dispatcher and said they were “ready to spike” the Holden at the intersection of Whitford and Chapel Roads. The dispatcher acknowledged this and confirmed that the officers were at the roundabout.
66. At 12.26:40pm Officer D advised the dispatcher that he could now see the Holden about 200 metres in front of him, and that it was turning left into Chapel Road. He saw the Holden brake heavily and squeeze through a gap between Officer E and F’s patrol car and a car that had stopped at the roundabout.
67. The spikes had not been deployed because Mr Tonga had driven through the roundabout before Officer F was ready to deploy them. Officer E estimated that the Holden was travelling at about 30 kph as it went through the intersection. He saw Officer D travel through the intersection about five seconds after the Holden, followed by Officers B and C about 10 seconds later. Officers E and F got back into their patrol car and joined the pursuit.
68. At the time, Officer D did not realise the road spikes had not been deployed. He assumed the Holden had been spiked when it went through the roundabout and he reported this to the dispatcher, saying: “I think the vehicle has been spiked”. The dispatcher asked Officers E and F to confirm this, but did not receive a response.
69. Chapel Road is a long road which is quite straight and has many intersections, some of which are controlled by traffic lights. The speed limit is 60 kph. The number of lanes varies from two (one southbound and one northbound with a painted median strip in between) to up to six (at the intersections with Dannemora Drive and Smales Road).
70. Shortly after Witness 2 had passed through the Whitford Road roundabout (see paragraph 64), he was driving south along Chapel Road. As he approached Kingsgate Place, he saw in his rear view mirror a car coming up “at a hell of a rate” behind him. He pulled his car over to the left, mounting the grass kerb about 60 metres north of Kilkenny Drive to get out of the car’s way. He saw that it was a blue hatchback (the Holden), and when it went past him he estimated that it was travelling at over 100 kph.
71. Witness 2 saw the Holden approaching the intersection at Kilkenny Drive where there were six to eight cars waiting at the red traffic lights (Chapel Road has two southbound lanes and two northbound lanes at this intersection). The lights turned green and the traffic began moving off. According to Witness 2’s Police statement:

“As the car continued through the intersection it lost control and slid sideways into the right hand lane, luckily there was no oncoming moving traffic as the vehicles in the right lane were either stationary or just moving off the lights. It then slid back into the left hand lane and accelerated through the intersection.”

72. Witness 2 saw a marked Police car (Officer D) go past him about 200-300 metres behind the Holden, travelling well above the speed limit but slower and more cautiously than the Holden. The Police car had its warning lights and siren activated and was pursuing the Holden, weaving through the traffic at the intersection. Witness 2 also saw an unmarked Police car (Officers B and C) following at speed with its lights and siren activated.
73. Witness 2 was concerned that Police were chasing the car into the worst area possible for traffic and pedestrians. He later made a complaint to the Authority about the location of the pursuit and the attempted use of road spikes at the roundabout (see paragraphs 146-148 for further discussion).
74. Meanwhile, when Officer D turned into Chapel Road he could see the Holden speeding up and overtaking and undertaking vehicles on both sides of the road. In his Police statement he said: *“Traffic was fairly busy and the driver proceeded along Chapel Road, driving very erratically by constantly swerving between two lanes and ducking in front of cars.”*
75. At 12.27:17pm Officer D advised the dispatcher: *“Vehicle has continued onto Chapel [Road], just passed Kilkenny Drive. Traffic is good. Speed I’d say is about 80-90 ks and I’m about 200 [metres] behind it.”* According to the recording of the NorthComms transmissions, he did not report that Mr Tonga was driving erratically. Officer D later explained to the Authority that:
- i) He believed he would have tried to mention that the driver was driving erratically at some stage of the pursuit. He suggested that if it had not been recorded on the radio transmissions, then another patrol unit may have been transmitting at the same time as him, which would have caused his message about the dangerous manner of driving to be omitted.
 - ii) He was calling things as he saw them from around 200 metres behind the fleeing car. He was also multi-tasking (driving, operating the lights and sirens, and giving up-to-date commentary over the radio).
 - iii) He did ultimately advise NorthComms that the driving was too dangerous when he abandoned the pursuit (see paragraph 94).
76. When prompted by the pursuit controller, the dispatcher asked Officer D to confirm that the speed limit on Chapel Road was 60 kph, which he did. Officer D then told the dispatcher that it looked like the Holden was heading straight through the intersection of Chapel Road and Dannemora Drive.
77. Witness 3 was stopped at a red traffic light at that intersection, heading south. The light turned green, and, as she was driving through, she saw a blue hatchback (the Holden) speed past her on the left hand side and cut in between her car and a black minivan. She had to take evasive action to avoid being hit.

78. Witness 3 then saw the Holden drive straight up onto a traffic island in the centre of the road at speed, lifting off the ground and landing heavily on the grass island. The Holden drove back onto the correct side of the road and sped off. Witness 3 said the Holden had been going so fast that she *“didn’t even see it coming”*, and estimated that it was travelling at well over 100 kph.
79. Ms Ngahehu later said that Mr Tonga was driving at 120-140 kph at this time.
80. The Holden’s front right wheel was damaged as a result of its collision with the traffic island; multiple witnesses later reported seeing that the front right tyre was deflated and that there was rubber coming off it. Officer D was not aware that the Holden’s front right wheel had been damaged and so did not report this to NorthComms.
81. Officer D said in his statement:
- “The vehicle sped through an intersection as he came nearer to Botany Downs shopping centre, a busy mall at this time of year. He continued to swerve around cars on the left and right hand side, almost running them off the road, as two lanes merged into one.”*
82. At 12.27:47pm, the dispatcher asked Officer D to confirm he was still on Chapel Road, approaching Botany. Officer D replied: *“Yeah affirm, driving past Botany now. Still about 150 [metres] behind it. Driving manner seems to be pretty good. Traffic’s a little bit heavier – but nothing too big.”*
83. The description Officer D gave to the dispatcher of Mr Tonga’s driving manner being *“pretty good”* at this time is inconsistent with the witness accounts and with his own statement about the pursuit.
84. When asked about this inconsistency, Officer D advised the Authority that when he said the driving manner was *“pretty good”* he was comparing it to the driving manner of other fleeing drivers in pursuits he had previously been involved in. He considered that Mr Tonga *“was (to a degree) in control of the vehicle”* and his actions of overtaking and undertaking were intentional rather than mistakes.
85. At 12.28:10pm the dispatcher asked Officers E and F for a location update. Officer F replied that they were behind an unmarked vehicle (Officers B and C). After further questioning by the dispatcher, he clarified that they were driving a marked patrol vehicle and were two cars behind the fleeing vehicle.
86. In the meantime, Witness 4 was driving south on Chapel Road approaching the intersection with Smales Road. She was in the left lane and travelling at about 55 kph when:

“All of a sudden I saw a blue small type of vehicle ... come right next to me out of nowhere. It was travelling really fast and passed me on my right hand side. He was easily doing over 100 kph. The vehicle did not seem to be in control, and was swerving everywhere. It went past me so fast that I felt a gust of wind coming into my vehicle.”

87. Witness 4 said that after passing her, the blue car (the Holden) cut into the left hand lane to pass another vehicle:

“He was just everywhere on the road and trying to get through the heavy traffic. He was lucky not to hit any pedestrians. The vehicle was trying to zigzag through heavy traffic at 100 km/h. It was just not possible and I was thinking that the vehicle was going to crash sooner or later.”

88. After she lost sight of the Holden, Witness 4 heard sirens and looked in her rear view mirror and saw a Police car. She and other cars pulled over to the left as a marked Police car (Officer D) went past her, followed by another Police car (Officers B and C) about 30 seconds later.

89. Witness 5 was stationary in the middle lane at the intersection of Chapel Road and Smales Road, waiting for the red traffic light to change, when he saw a small blue car (the Holden) approaching at speed in his rear view mirror. The car passed him in the (vacant) left lane at a speed he estimated to be 120 kph. Witness 5 said:

“The car came past so close to me that it nearly took my wing mirror off and I could feel my car being rocked from side to side as it went past. I noticed that the car’s right hand tyre was deflated and I could see that the car was pulling to the right as it was driving. There were bits of rubber coming off the tyre. The car went straight through the red light. I didn’t see it brake.”

90. Witness 5 described the driver of the Holden’s driving as *“out of control, stupid, extremely dangerous and reckless”*.

91. Officer D was still about 200 metres behind Mr Tonga and saw him purposefully accelerate through the red traffic lights at the intersection of Chapel Road and Smales Road. He noted that Mr Tonga did not appear to apply his brakes and that the traffic was heavy.

92. Meanwhile the dispatcher had continued questioning Officer F (see paragraph 85), asking for confirmation that his patrol car was *“two up”* (i.e. had a Police passenger as well as a driver). The dispatcher appears to have been attempting to find a double-crewed, marked Police vehicle to take over the lead position in the pursuit from Officer D, who was the sole occupant of his patrol car (see paragraphs 301-302 for policy).

93. At this point, Officer D asked the NorthComms dispatcher whether the Police helicopter (Eagle) was available to attend the pursuit, and the dispatcher replied that it was not.
94. Officer D decided to abandon the pursuit because Mr Tonga's driving had become too dangerous. He later explained in his statement that the distance between him and the Holden was increasing and that he did not want to put members of the public at risk by continuing the pursuit. At 12.28:40pm he advised the dispatcher: *"Yeah I'm going to abandon pursuit, he's driving all over the roads. Abandon pursuit, lights and sirens are now turning off."* Officer D pulled over to the left side of the road and deactivated his warning lights and siren.
95. Officers B and C were about one kilometre behind Officer D when they heard the order to abandon the pursuit and saw him pull over and stop. They slowed their patrol car down to the speed limit and deactivated the lights and siren (as did Officers E and F, who were behind them).
96. The dispatcher then asked, on behalf of the pursuit controller, for Officer D to confirm where he had pulled over. He replied that he was *"by Gracechurch Drive, lights and sirens are off, vehicle has stopped."* He then reported that he had last seen the Holden heading straight on Chapel Road and that it was *"driving quite erratically"*.
97. The pursuit had lasted approximately four and a half minutes and covered a distance of about 6.7 kilometres.

Search phase

98. At 12.29:31pm, shortly after the pursuit had been abandoned, the NorthComms dispatcher broadcast a message to all units, directing them to go into search mode and providing a description of the Holden and its last known location. 'Search mode' means that Police units in the area are directed to look for the vehicle that has evaded Police, but are not allowed to engage in urgent duty driving while doing so (see paragraphs 170-171 for policy). This broadcast lasted about 22 seconds.
99. Meanwhile Witness 6, who was driving north on Chapel Road near the intersection with Cyril French Drive, saw a blue hatchback (the Holden) approaching and kicking up dust as it passed other southbound cars by veering left onto the shoulder of the road. He described the level of traffic as medium and estimated that the Holden was travelling at 120 kph; *"an insane speed for the conditions"*.
100. Witness 7 was on the footpath opposite Baverstock Road when she heard a car making an *"unnatural"* sound, and saw a blue hatchback (the Holden) swerving all over the road. She later said:

“It was literally like he was at the point of losing control of the vehicle. He wasn’t in his lane but was driving in a weaving pattern, he crossed the centre line but from the way it looked he was trying to stay within his lane.”

101. According to Witness 7, some of the other cars on the road pulled over into a bus lane and onto the median strip to get out of the Holden’s way. She noticed that the front right tyre was completely flat; she could see the rim of the wheel which was *“pulling parts of the tyre along with it”*. She estimated that the Holden was travelling at 90 kph and said the level of traffic *“wasn’t actually that busy”*.
102. Witness 7 saw the Holden mount the kerb in an attempt to get around traffic that was queuing up for the traffic lights on Stancombe Road. She then saw the Holden come off the kerb to avoid a street light pole and move back onto the road.
103. Witnesses 8 and 9 were travelling south on Chapel Road approaching the Stancombe Road intersection when they heard what sounded like a flat tyre. Witness 8 (the driver) looked over her right shoulder and saw a blue hatchback (the Holden) approaching quickly. She then looked in her driver’s side mirror and saw the Holden driving along the median strip. Witnesses 8 and 9 estimated that it was going faster than 90 kph. The car went past them *“really quick”* and they noticed that it had some rubber coming off its front tyre.

The use of road spikes

104. Officers G and H had heard about the pursuit over the Police radio while on foot patrol in the Botany Junction Shopping Centre. With a view to assisting with the pursuit, they began driving towards the area in a category A marked patrol car. Officer G, a sergeant, was the driver and Officer H was responsible for operating the radio and communicating with NorthComms. Officer G is trained under the PPDP and holds a gold licence, and both officers are trained in the use of road spikes.
105. As they were urgent duty driving north on Chapel Road towards the pursuit, Officers G and H passed Sir Barry Curtis Park where a cultural festival was being held. They noticed a large number of people in that area, including pedestrians crossing Chapel Road to get to the park.
106. While driving through the intersection of Chapel Road and Stancombe Road, Officers G and H heard Officer D abandoning the pursuit (at 12.28:40pm). Shortly afterwards they heard that the Holden was heading south on Chapel Road from the Gracechurch Road intersection.
107. Officers G and H realised that the Holden was heading in their direction and was almost upon them. Officer G drove onto the painted median in Chapel Road just after the

intersection with Stancombe Road and brought the patrol car to stop. Both officers later described the level of traffic at this time as “medium”. The patrol car’s siren was switched off but the warning lights remained activated.

108. Officer H used the patrol car’s radio to attempt to advise NorthComms of their location, but was unable to get through. Officer G also made several attempts to contact NorthComms on his portable radio but was unsuccessful. The radio channel was busy during this time with Officer D confirming that he had pulled over and reporting the Holden’s last known location, and the dispatcher directing all units to go into search mode (see paragraphs 96 and 98).
109. Officers G and H had not discussed what they were planning to do, but by this time they had each decided that it was necessary to deploy road spikes to attempt to stop the fleeing vehicle.
110. When interviewed by Police and by the Authority, they said they were aware of the following information when they decided to deploy the spikes:
 - The fleeing Holden Barina had been reported stolen and was also wanted in connection to a bag snatch. The driver had failed to stop for other officers and a pursuit had been commenced.
 - There had been an earlier attempt to deploy road spikes during the pursuit (by Officers E and F). Officer G thought this *“added to the reasons why [he] thought it was a good tactical move to use them near Stancombe Road.”*
 - Officer D had abandoned the pursuit on Chapel Road. Officers G and H both knew Officer D and trusted his judgment and decision-making ability. Officer G said: *“I was now of the belief that since [Officer D] had decided to abandon the pursuit, the actions of the driver had become an imminent danger to members of the public.”*
 - Due to the reported dangerous driving of the fleeing driver, both officers were concerned for the safety of:
 - road users at the intersection of Chapel Road and Stancombe Road; and
 - members of the public attending the cultural festival event at Sir Barry Curtis Park (located just after the intersection of Chapel Road and Stancombe Road).
 - Officers G and H were also concerned about an upcoming ‘S’ bend on Chapel Road, just south of Sir Barry Curtis Park. Officer G explained:

"I am an experienced driver who has driven that road on hundreds of occasions. I am aware that: the road surface itself, camber, width, slope and bend of that part of the road can be difficult to negotiate even given the best of environmental and vehicle conditions. Had the fleeing driver continued to drive the stolen vehicle in the same manner as he was when [Officer D] abandoned the pursuit then I had real and genuine concerns for the safety of other road users and the other passengers within that stolen Holden vehicle."

- Officer G thought the fleeing driver would have to slow down in order to negotiate the intersection of Chapel Road and Stancombe Road – making the area just before that intersection a good place to deploy road spikes.

111. Officer H got out of the car and attempted to retrieve Stinger road spikes from the boot, but found that the boot was locked. Officer G realised that they were in a dangerous position in the middle of the road with the fleeing car headed in their direction, and decided to find a safer place to pull over. He told Officer H to get back in the car, then drove further up Chapel Road and pulled into the driveway entrance to the Fo Guang Shan Temple, about 75 metres north of the intersection with Stancombe Road. The gates to the temple were closed at the time. He parked the patrol car in the driveway in front of the closed gates, and once again tried to contact NorthComms but was unable to get through.
112. Officer G got out of the car and looked up Chapel Road but could not see the Holden. He retrieved the road spikes from the boot and placed them on the footpath. He then got back into the patrol car, intending to try contacting NorthComms using the car's radio.
113. Meanwhile Officer H had also got out of the patrol car and was looking north up Chapel Road to see if the Holden was approaching. In his statement he said:

"... from a distance, I then noticed a vehicle overtaking a car on the left hand side of the road side swiping a motorist as he drove past. The vehicle was weaving in and out of traffic heading in our direction. The vehicle seemed to be slowing down as it side swiped another motorist travelling in the same southerly direction on Chapel Road. At that point the vehicle was travelling at approximately 80km/hr heading in our direction."

114. Officer H considered that there was no other, less dangerous, means of stopping the fleeing vehicle than the use of road spikes, and that the deployment of the spikes could be effected without unjustified risk to any person (see paragraph 310 for policy). He said:

"I yelled out to [Officer G], that the car was approaching us. At that point, the vehicle was approximately 400 metres away. I noticed the vehicle had sparks from the front tyres and was heading in our direction.

I then turned and uplifted the tyre deflation device known as stingers from the ground and held them in my hand. I then deployed the stingers on Chapel Road. I was only able to deploy half the stingers. They only extended 3-4 metres across the road.

While the vehicle was heading towards the stingers, I could hear a loud grinding noise coming from the vehicle. The fleeing vehicle was slamming on the brakes trying to slow the car down. I could see more sparks coming from the front of the vehicle. I could see the vehicle coming towards the stingers. I then moved towards the patrol vehicle for safety.

The fleeing vehicle accelerated over the stingers at approximately 70-80 km/hr, and then accelerated off at high speed. The vehicle was out of control, trying to avoid other vehicles as it proceeded through the intersection."

115. Officer H did not put on a reflectorised safety jacket before preparing to deploy the road spikes (see paragraph 197 for policy).
116. Officer G had heard Officer H shout that the fleeing vehicle was approaching. In his statement he said:

"I stood up outside of the patrol vehicle and observed the stolen blue Holden vehicle travelling at a fast speed towards the intersection. There were other road users slowly approaching the controlled intersection travelling in the same direction. The stolen blue Holden vehicle then slowed considerably and pushed its way left, through the other approaching road users. It appeared to me that the Holden vehicle was heavily laid down.

The front of the stolen Holden vehicle was very noisy. There appeared to be large amounts of dust and debris coming from the front of the vehicle.

I observed [Officer H] throw the 'stinger' device across the oncoming lane.

The stolen blue Holden vehicle braked heavily prior to the tyre deflation device, and then I believe the front left tyre ran over the deflation device. I believe the speed of the vehicle at contact with the tyre deflation device to be about 50 kilometres per hour.

The stolen Holden vehicle continued on and into the intersection with Stancombe Road. While in the intersection it appeared that the stolen Holden vehicle increased its speed through the intersection and continued on Chapel Road.”

117. Officer G said that after the Holden went over the road spikes, he saw the car slow down and thought “*finally*”, but he then heard the engine rev up and saw the car go straight through the intersection.
118. Officer H quickly retrieved the road spikes from the road so that other vehicles would not drive over them.
119. The distance from where the pursuit was abandoned to where the road spikes were deployed is about one kilometre. The pursuit was abandoned at around 12.28:40pm, and the Holden appears to have driven over the road spikes approximately 40 to 60 seconds later.
120. Witness 10 was a front seat passenger in a car driven by her daughter. Her grandson and two of her other daughters were in the back seat. As they were driving south on Chapel Road towards the Stancombe Road intersection, she had noticed the patrol car parked at the gates to the Fo Guang Shan Temple with its warning lights activated, and had seen Officers G and H preparing to deploy the road spikes.
121. Witness 10 advised her daughter to move as far right as possible because the Police were going to spike someone. The car came to a stop in the ‘right turn’ lane at the traffic lights at the Stancombe Road intersection; there were two other southbound lanes to the left of them (a ‘straight through’ lane and a ‘left turn’ lane), and two northbound lanes to the right. The traffic lights were red and they were waiting behind one car; another car was waiting in the ‘straight through’ lane. The Police officers were about 65 metres behind them.
122. Witness 10 looked over her shoulder and saw a blue car (the Holden) coming down Chapel Road. She then saw Officer H throw the road spikes out in front of the Holden as it approached. In her statement she said:

“The blue car was travelling fast but did not appear to me to be outrageously fast. I know the speed limit is 60 km/h on Chapel Road and I would estimate that the blue car was travelling at maybe 100 km/h but I cannot say for sure.

The blue car didn’t slow down at all but it swerved towards us to try and avoid the road spikes. I actually thought that the blue car was going to hit us and I said that to the girls as I watched it heading towards us. We were stationary at the lights with nowhere to go.”

123. Mr Tonga managed to swerve further in to the left side of road and miss the cars waiting at the red traffic lights. The Holden travelled straight through the intersection in the 'left turn' lane and continued down Chapel Road. Witness 10 noticed that both tyres on the driver's side of the Holden looked like they had blown out.
124. Witness 10 later made a complaint to the Authority that the Police's use of the road spikes at that location put her and her family in danger (see paragraphs 149-150 for further discussion).
125. Witness 11 also witnessed the deployment of the road spikes as he was waiting in a northbound lane at the traffic lights at the Stancombe Road intersection. He described the traffic flow as "fairly light". In a statement he said:

"Within a matter of seconds after the stinger had been deployed a blue car came absolutely flying over the stingers and through the intersection. ...

The blue car would have been travelling at no less than 100 km/h. He tried to avoid the stingers, and as he passed through the intersection his car was fishtailing out of control. ...

Before I saw this blue car, I heard the metallic sound, of what sounded like a wheel rim making contact with the road. As the car came into my view I could see that both front tyres were being driven on the rims and there wasn't any rubber left on either tyre at all."

126. Although Witness 11 recalled that there was no rubber remaining on both of the Holden's front tyres, the Police crash report determined that only the front right tyre had disintegrated down to a bare wheel rim (see paragraph 165).
127. Witness 11 said that the Holden appeared to have narrowly missed a car that was travelling through the intersection and turning right from Stancombe Road onto Chapel Road. He also said there was a group of four teenage boys waiting to cross the road on the corner of Chapel and Stancombe Road, who "could quite easily have been taken out" by the Holden if the 'left turn' lane had not been vacant.

The crash

128. After Mr Tonga had driven over the road spikes and through the intersection of Chapel Road and Stancombe Road, he continued driving south down Chapel Road at high speed.
129. Police have advised the Authority that when a vehicle's tyres are spiked using a Stinger tyre deflation device (TDD) and it continues driving at high speed, the tyres may remain inflated for some time until the vehicle slows down. The Police TDD policy that was in force at the time of this incident stated in respect of Stinger spikes:

“With this device, the vehicle will not necessarily stop once deflation occurs as it is still possible to travel on the wheel rims; however it will be at reduced speed, with compromised braking and handling capabilities.”

130. About 300 metres south of the Stancombe Road intersection, Mr Tonga lost control of the Holden. It veered left onto a gravel surface adjacent to the road and struck the edge of a concrete driveway at the entrance of the car park at Sir Barry Curtis Park. The Holden then rolled a few times before ultimately landing upside down in a ditch beside the road.

131. Witness 12 was in the driveway of the car park, about to turn right into Chapel Road, when he saw the crash. In a statement he said:

“I saw a blue car travelling towards me from my right. It was going at least 70 kph.

The car was drifting off the road and hit the corner of the drive, that’s when I saw the left front tyre burst and start to slide off the road. The blue car missed me by about 1 metre.”

132. The crash investigator was later unable to determine the speed of the Holden in the lead up to the crash, but was able to calculate that the Holden was travelling at between 54 and 59 kph when it became airborne, based on the take off angle and the distance it travelled through the air before landing.

133. Mr Tonga, Ms Ngaheue and Ms Stone Te-Haara were all thrown from the vehicle during the crash. Ms Menary-Colley crawled out of the Holden’s rear window shortly afterwards.

134. The site of the crash was about 400 metres from the intersection of Chapel Road and Stancombe Road. Numerous independent witnesses saw the crash, including people attending the cultural festival event at Sir Barry Curtis Park. Some of these people assisted with providing first aid to Mr Tonga and his three passengers.

Police action following the crash

135. The officers who had been involved in the pursuit (Officers B and C, Officer D, and Officers E and F) and Officers G and H were still on Chapel Road at the time of the crash. They all heard the crash and saw a big dust cloud appear further down the road.

136. Officers B and C activated their patrol car’s warning lights and siren and began urgent duty driving towards the site of the crash, followed by Officer D, Officers E and F, and Officers G and H.

137. At 12.29:55pm, Officer H made contact with the NorthComms dispatcher, and reported that the Holden was on Chapel Road at the Stancombe intersection. The dispatcher then asked whether he was now in pursuit of the vehicle, and at 12.30:18pm Officer H clarified that the Holden had crashed and requested ambulances to attend the scene.

138. The officers arrived at the scene within about one minute of the crash and began providing first aid to Mr Tonga and the three passengers.
139. Ms Stone-Te Haara had suffered severe injuries and was placed on life support when she arrived at Middlemore Hospital. She passed away at 6.07pm after her life support was turned off.
140. The other two passengers were hospitalised for their injuries; one for five days and one for three and a half weeks.
141. Mr Tonga sustained bruising and a temporary spinal injury. He was hospitalised for five days.

Significant times

Time	
12.28:40pm	Officer D advised NorthComms that he was abandoning the pursuit because the fleeing driver was <i>“driving all over the roads”</i> .
12.28:57pm	Officer D confirmed that he had pulled over by Gracechurch Drive.
12.29:20pm	Officer D advised NorthComms he last saw the Holden heading straight on Chapel Road, and it was driving <i>“quite erratically”</i> .
12.29:31pm	The dispatcher instructed units to go into search mode and gave a description of the fleeing vehicle. Officers G and H deployed the road spikes at around the same time as this message was transmitted.
12:29:55pm	Officer H got through to the dispatcher and then advised that the fleeing vehicle had crashed.

Driver's identity

142. Police did not know the identities of Mr Tonga or any of the passengers in the Holden during the pursuit.

Passengers

143. Both the surviving passengers told Police that Mr Tonga had told them to remove their seatbelts so they would be ready to run if he stopped the car. The Police crash report states: *“Upon examination, all of the seatbelts in the Holden were found to be stowed and showed no signs of stretching, indicating that they were not worn at the time of the crash.”*
144. Ms Ngaheu described Mr Tonga's driving as: *“Just fast and crazy and scary. ... A couple of times we nearly had head on collisions.”* She said she looked at the speedometer at one point and it was between 160 and 180 kph.

145. Ms Menary-Colley was sitting in the back seat behind the driver. She described Mr Tonga's driving as: *"crazy, crazy driving. ... He was erratic and out of control. ... He would've been going up to speeds of about 180km an hour. "* She also said: *"I could see members of the public in the streets pretty much the whole time we were driving. I saw people everywhere, walking and biking."*

COMPLAINTS FROM WITNESS 2 AND WITNESS 10

Witness 2

146. Witness 2 made a complaint about the pursuit and the attempt by Police to use road spikes at the Chapel Road/Whitford Road roundabout (see paragraphs 58-67).
147. Witness 2 had lived in the area of the pursuit for over 12 years. He is a part-time race driver and has been employed in a driver training capacity. In his statement for Police, he said:

"I read [in the media] that the pursuit had been called off when "the standard of driving by the offending male deteriorated".

I find this statement to be nonsense when it was obvious the car was entering a high traffic, populated area at what seemed to be more than 100 km/h.

It was midday on a Sunday in a massive shopping area. A pursuit is the last thing that should have happened on this day. There were children, prams, old people and heaps of traffic in the area at the time.

There are numerous intersections along Chapel Road that the blue car must have driven through. I estimate at over 100 km/h and maybe up to 130 to 140 km/h while heading down Chapel Road."

148. Witness 2 also said:

"I find it dangerous that police attempted to use spikes on a corner in a residential area.

I find where the police parked to deploy the spikes dangerous as it would have been the exit point for where the car would have exited the left hand turn. There are also always queues at that intersection for cars turning left."

Witness 10

149. Witness 10 made a complaint relating to the deployment of the road spikes near Stancombe Road, because she felt that the location where Officers G and H deployed the spikes put her and her family in danger (see paragraphs 104-124).
150. When interviewed by the Authority, Witness 10 described seeing the driver of the blue car (Mr Tonga) swerve to his right upon seeing Police, then swerve back in, heading straight towards the car she was in with her three daughters and grandson while they were waiting at a red traffic light. Mr Tonga then managed to swerve in further at the last minute and miss them.
151. These complaints are addressed in the Authority's findings below; specifically at paragraphs 209-215; 223-232; and 249-256.

RADIO PROBLEMS

152. The Counties Manukau Police district began using a new digital radio system on 29 November 2010 – six days before this incident took place. The digital radio network is more secure and provides clearer transmissions than the analogue system. The analogue system is still used in seven of the 12 Police districts as the planned roll-out of the digital radio system has been discontinued for the time being.
153. Under the analogue radio system, officers simply press a button and begin speaking in order to transmit a message. This means that officers sometimes talk over each other and messages can be lost or obscured.
154. On the digital radio network officers are no longer able to talk over each other. On the digital system, when an officer pushes the 'transmit' button, they receive one of the following responses:
 - a single beep, which indicates that the channel is clear and they can transmit the message; or
 - a series of beeps which indicates that they cannot transmit because the channel is busy – i.e. somebody else is already transmitting a message.
155. On the analogue system, officers were able to transmit a 'priority' code when they had important information to give to the dispatcher, and everyone using the channel would be able to hear it and allow that officer time to transmit his or her message. With the digital radio system, however, it is more difficult because the officer first has to be able to get on to the radio channel before they can alert the dispatcher that they have important information. The dispatcher is not able to tell when an officer is trying to transmit a message but that officer cannot get through because the channel is busy. There is an emergency button which enables the officer to cut over everybody else using the radio

channel and transmit a message – but this is primarily reserved for serious emergencies only (such as when an officer is being physically attacked). The emergency button is not generally suitable for fleeing driver situations, primarily because it locks the radio channel open for 10 second bursts of transmission from the device that activated it, which could impede the gathering of critical risk information by the dispatcher.

156. A number of officers reported problems with using the digital radio network during the pursuit of Mr Tonga. These were all related to attempting to transmit messages while the radio channel was busy:

- i) Officer A was unable to report that he had located the stolen Holden because his transmission was blocked by a busy signal, and then by a message that was being broadcast to all units (see paragraphs 25 and 31).
- ii) Officer D has advised the Authority that he attempted on many occasions to provide further commentary to NorthComms but was denied due to radio traffic.
- iii) Officer E said:

“During the pursuit it was extremely difficult to get on the radio. I was not able to inform Comms that I was at the roundabout. I can’t recall if I advised them. I remember that the radio traffic was very very heavy.”

Officers E and F were eventually able to advise Comms that they were at the roundabout (see paragraph 65).

- iv) Officer F also said that during the pursuit, he and Officer E kept trying to call NorthComms with updates and to ask where the dispatcher wanted them to go, but they could not get through because the radio kept indicating that the channel was busy.
- v) Officer G said:

“During the pursuit the radio traffic was chaotic, from the moment we decided that we were in a position to respond we could not get the message through to NorthComms.

... On our way to the intersection of Stancombe and Chapel Roads I attempted a number of times to get on the radio but each time received the series of beeps indicating I could not transmit.”

When he heard the pursuit being abandoned, he: *“wanted to get on the radio immediately to indicate our position however the dispatcher was transmitting and I could not get on the radio at all”* (see paragraphs 108-109).

- vi) Officer H was also unable to contact NorthComms just after he heard the pursuit being abandoned (see paragraph 108). After seeing the dust cloud created by the crash, he attempted to advise the dispatcher but *“was declined a number of times, not being able to transmit due to the Comms operator speaking over the radio.”* He was then able to transmit a message to the dispatcher (see paragraph 137).
- vii) Officer C attempted to advise NorthComms about the crash after seeing the dust cloud and upon arriving at the crash scene, but was unable to due to radio traffic. In a statement he said:

“I attempted to give updates in relation to the crash site but was unable, I am not sure if that was something to do with the volume of radio traffic or handset error.

I recall pressing to talk but receiving the decline tone/beep, each time.”

- viii) Officer B also attempted to contact NorthComms several times upon arriving at the crash scene but the radio was busy.

157. The NorthComms dispatcher for this incident said in her statement:

“I found the new radio system extremely frustrating during the pursuit. I remember that [Officer A] tried to call up but couldn’t get through.

I have real concerns for how the radios are going to work. I don’t feel that we know where staff are and are not aware if they are doing as we have instructed them to. I remember being really really frustrated at how difficult it was to try and get information relayed to Comms due to radio traffic and the way the digital network mutes all staff trying to call in if they are not “first in line”.”

158. Officer D commented in his statement that:

“It’s very annoying not to be able to talk over people, especially when you have something to say which is of priority, you have to wait in line or wait until that person has finished talking.

Also, if you do cut over accidentally, you tend to miss out what the other person is saying as it gives you a loud tone and then a few seconds silence. This can be crucial when trying to hear updates such as where spike strips are being set up.”

POLICE INVESTIGATION

159. Police conducted an internal investigation into the pursuit and the use of road spikes. This investigation concluded that:

- i) no disciplinary action should be taken against any of the officers involved;
- ii) there were no policy or procedure issues that warranted any review of current policy or procedure;
- iii) the crash and subsequent fatality was solely attributed to the driving manner of the driver of the fleeing vehicle; and
- iv) the deployment of the road spikes was justified.

POLICE CRASH ANALYSIS

Environment

- 160. Chapel Road is a main road with a speed limit of 60 kph. It intersects with other busy thoroughfares and provides access to the Botany Downs shopping centre and Botany Downs Secondary College. Both sides of the road are residential.
- 161. This pursuit occurred on a Sunday afternoon in the pre-Christmas shopping period. The level of traffic along Chapel Road was variously described by witnesses as *“fairly busy”*, *“heavy”*, *“medium”*, and *“fairly light”*. There were also more pedestrians than normal in the area, particularly near Sir Barry Curtis Park which was being used for a cultural festival.
- 162. At the location of the crash, Chapel Road has one southbound lane and one northbound lane, separated by double yellow lines. The southbound lane is bordered by a gravel shoulder and a shallow ditch, and the road surface is smooth chip seal.
- 163. The weather was fine and the road was dry and in good condition at the time of the crash.

Crash analysis

- 164. Mr Tonga was driving a stolen blue Holden Barina hatchback. A vehicle inspector found no mechanical defects that in his opinion would have contributed to the cause of the crash.
- 165. An examination of the vehicle after the crash found that its front right tyre had been shredded and the wheel rim was broken. The other three tyres had deflated.
- 166. The crash investigator determined that driver inexperience may have been a factor in the crash, and that the following were all contributing factors:
 - i) alcohol;

- ii) speed;
- iii) Mr Tonga attempting to evade Police;
- iv) Police laying road spikes; and
- v) Mr Tonga telling his passengers to remove their seatbelts.

167. The crash investigator also concluded that the main factor in the crash was Mr Tonga *“driving in a reckless manner”*.

168. The crash report does not go into detail about exactly how or to what extent the Police’s use of road spikes on the Holden may have contributed to the crash.

Setefano Tonga

169. Mr Tonga was almost 18 years old at the time of the crash. He was an unlicensed driver and had been forbidden to drive on 23 September 2010 for driving without a licence.

170. When interviewed by Police, Mr Tonga denied that he had asked his passengers to remove their seatbelts.

171. Blood taken from Mr Tonga approximately 2 hours after the crash was found to contain 108 milligrams of alcohol per 100 millilitres of blood. The legal blood alcohol limit for a driver in New Zealand aged under 20 years was at this time 30 milligrams per 100 millilitres.³

172. On 10 June 2011, Mr Tonga pleaded guilty to the manslaughter of Ms Stone-Te Haara and to other offences relating to the events of 5 December 2010, including driving with excess blood alcohol. He was sentenced to five years and four months’ imprisonment and disqualified from driving for seven years.

Cause of death

173. A post mortem examination concluded that Ms Stone-Te Haara died from *“Multiple blunt trauma to the head, chest and abdomen due to motor vehicle collision”*.

³ On 9 May 2011 the limit for drivers aged under 20 years was reduced to zero milligrams of alcohol per 100 millilitres of blood.



The Authority's Investigation

INDEPENDENT POLICE CONDUCT AUTHORITY

THE AUTHORITY'S ROLE

174. Under the Independent Police Conduct Authority Act 1988, the Authority's functions are to:
- receive complaints alleging misconduct or neglect of duty by any Police employee, or concerning any practice, policy or procedure of the Police affecting the person or body of persons making the complaint; and
 - investigate, where it is satisfied there are reasonable grounds for doing so in the public interest, any incident in which a Police employee, acting in the course of his or her duty has caused or appears to have caused death or serious bodily harm.
175. The Authority's role on the completion of an investigation is to determine whether Police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable.

THE AUTHORITY'S INVESTIGATION

176. As required under section 13 of the Independent Police Conduct Authority Act 1988, Police notified the Authority on 7 December 2010 of the death of Ms Stone-Te Haara and the serious injury of Ms Ngaheue, Ms Menary-Colley and Mr Tonga.
177. The Authority assigned an investigator, who travelled to the scene and viewed the environment where the pursuit took place.
178. The Authority's investigator spoke to the Police staff involved in deploying the road spikes, and the two witnesses who made complaints about the Police's actions during this incident. The Authority's investigator also reviewed material provided by Police, including statements from all the officers involved in the pursuit, statements from independent witnesses, copies of the NorthComms transmissions, the Police investigation report, and the crash investigation report.

ISSUES CONSIDERED

179. The Authority's investigation considered the following issues:

- The radio problems experienced by the officers involved in responding to this fleeing driver incident.
- Whether Police complied with the law and pursuit policy at each stage of the pursuit, specifically in relation to:
 - the commencement of the pursuit;
 - communication;
 - speed and manner of driving; and
 - ongoing risk assessment/abandonment.
- Whether Police complied with policy in relation to the use of road spikes, specifically in relation to:
 - the two separate decisions to use road spikes;
 - the selection of the deployment sites; and
 - the actual deployment of the road spikes.



The Authority's Findings

INDEPENDENT POLICE CONDUCT AUTHORITY

RADIO COMMUNICATIONS

180. See paragraphs 152-158 for an explanation of the communication difficulties experienced by officers involved in responding to this incident.
181. These radio difficulties had a negative impact on this fleeing driver incident, especially the ability of the officers deploying the road spikes to comply with the prescriptive requirements in the TDD policy that were in place at the time. The lack of communication between the deploying officers and NorthComms is discussed further in paragraphs 233-241 and 257-263.
182. Police have advised the Authority that the problems experienced by the officers were the result of operator error. At the time of this incident, the digital radio system had only been in use for six days and the officers were still becoming accustomed to it.
183. Notwithstanding the view of Police that the radio difficulties were caused due to operator error, the Authority notes that all officers and communications staff involved in this pursuit commented on the heavy volume of radio traffic. The Authority has found that most of this was essential commentary on the progress of the pursuit.
184. Following the implementation of the digital radio system Police have made an ongoing effort to educate and train officers on its use. For further information, see the **Subsequent Police Action** section of this report below.

FINDING

Radio difficulties, whether human error or volume related, had a negative impact on this fleeing driver incident, especially the deploying officers' ability to comply with the prescriptive requirements in the TDD policy.

THE PURSUIT

Commencement of pursuit

185. Officer A attempted to apprehend Mr Tonga at Maraetai beach after discovering that the Holden Barina he was driving had been reported stolen, but Mr Tonga was able to escape by driving off at speed.
186. Once Officer A had alerted the NorthComms dispatcher to the situation, the dispatcher organised patrol units to drive towards Maraetai in search of the stolen Holden. She also advised the units that the Holden had been involved in a bag snatch the previous day.
187. A few minutes later, Officer C reported that he believed the Holden's driver knew they were following him because he had *"taken off"*, and about 30 seconds later Officer C stated that they were now pursuing the vehicle.
188. The officers were authorised under the Crimes Act 1961 to commence a pursuit of the driver of the Holden, because they had reasonable grounds to suspect that one or more of the occupants of the car had committed an offence punishable by imprisonment – specifically theft of the car and possibly offences relating to the bag snatch.
189. Officer B was a 'silver' rated driver, and was driving an unmarked category B vehicle. He was entitled to undertake the pursuit because he was supervised by a gold licence holder (his passenger, Officer C).
190. Police policy requires that a pursuit unit driven by a silver licence holder must be replaced by a patrol car driven by a gold licence holder as soon as possible. Likewise, category B vehicles are approved for use in pursuits but must be replaced by a category A vehicle as soon as possible (see paragraphs 301-302 for policy).
191. In this case Officer D took over as the lead pursuit car at 12.25:17pm, about one minute after Mr Tonga had sped off on Whitford Road and Officers B and C had formally commenced the pursuit. Officer D and his category A marked patrol vehicle were certified to conduct pursuits under the PPDP. He was a 'gold' rated driver.
192. When the pursuit began, the weather was fine and the road was dry. According to Officer B, there were *"quite a few vehicles using the road"*. Officers B, C and D considered that the need to apprehend Mr Tonga outweighed the risks involved in the pursuit.

FINDING

The officers involved complied with the law and Police fleeing driver policy in commencing this pursuit.

Communication

193. When Officers B and C formally commenced the pursuit, Officer C advised the NorthComms dispatcher that they were travelling at about 100 kph. Officer C then advised the dispatcher that Officer B was a 'silver' rated driver, and that they were driving a category B vehicle.
194. The dispatcher gave the safety warning required by the fleeing driver policy to Officers B and C. When Officer D took the lead position in the pursuit shortly afterwards, the dispatcher also gave him the safety warning.
195. Officer D acknowledged the warning and advised the dispatcher that he was the sole occupant of his category A marked patrol car.
196. The fleeing driver policy states that the pursuit controller should ensure that a secondary unit takes over the commentary when the lead pursuit vehicle is single-crewed. This did not immediately happen in this case; although it does appear that the dispatcher was attempting to find a double-crewed, category A vehicle to take over the commentary, or even the lead position in the pursuit, shortly before it was abandoned.
197. In any event, it would not have been practicable in this case to have a secondary unit provide the commentary as soon as Officer D became the lead pursuit vehicle, because Officers B and C were too far behind to see what the fleeing Holden was doing. Even Officer D lost sight of the Holden as the pursuit headed north on Whitford Road, due to the winding nature of the roads.
198. Officer D provided the dispatcher with information about his location and speed on Whitford Road.
199. As the pursuit continued along Chapel Road, Officer D regularly provided information to the dispatcher about the location of the pursuit, the speed, the speed limit, the distance between him and the Holden, and the level of traffic. However he did not initially pass on any information relating to the dangerous manner of Mr Tonga's driving. Officer D later advised the Authority that he believed he would have commented on the dangerous manner of driving at some stage during the pursuit but this message may not have gotten through to the dispatcher.
200. At around 12.28pm, Officer D advised the dispatcher "... *Driving manner seems to be pretty good*". The Authority finds that Officer D's description of Mr Tonga's driving manner being "*pretty good*" is at odds with the witness accounts and with his own statements about Mr Tonga's driving on Chapel Road (see paragraphs 74 and 81). Officer D has explained to the Authority that he meant that the manner of driving was "*pretty good*" compared to other fleeing drivers in pursuits he had been involved with in the past.

201. In the Authority's view the description was inaccurate and misleading, and would have given the pursuit controller the wrong impression about the risks involved in the pursuit. Additionally, Officer D's earlier report that the level of traffic was "good" was ambiguous because the word "good" did not specify whether there was a high, medium or low level of traffic.
202. It is vitally important that officers conducting a pursuit pass on clear and accurate information about the risk factors to the pursuit controller, so that he or she can make a sound and reasoned decision about whether to abandon the pursuit. For further discussion about the ongoing assessment of the risk factors during this pursuit, see paragraphs 209-215.
203. Officer D abandoned the pursuit at 12.28:40pm, at which stage he reported that Mr Tonga was "driving all over the roads". The pursuit controller directed the dispatcher to ensure that Officer D had complied with policy by pulling over to the side of the road, and Officer D confirmed that he had stopped near Gracechurch Drive. The dispatcher then directed the units involved to go into search mode and provided a description of the Holden.
204. Aside from Officer D's misleading comment about Mr Tonga's manner of driving, both Officers C and D generally complied with the communication requirements of the fleeing driver policy. Although some risk information was not provided when ideally it would have been – for example, the applicable speed limit was not always reported together with the speed – the Authority accepts that the policy requirements in this respect had recently changed and those omissions did not materially affect the outcome of this incident.

FINDINGS

Police generally complied with the communication requirements of the fleeing driver policy.

Officer D's statements that Mr Tonga's driving manner on Chapel Road was "pretty good" and the level of traffic was "good" were inaccurate and misleading.

Police speed and manner of driving

205. The fleeing driver policy requires officers to drive in a manner that prioritises the safety of the public and staff. In accordance with this policy, the pursuing officers kept their patrol cars' warning lights and sirens activated at all times during the pursuit. The closest reported distance between the lead pursuit car (Officer D) and Mr Tonga was 150 metres.
206. Shortly after he became the lead vehicle in the pursuit, Officer D reported that he was travelling at 80 kph on Whitford Road (the applicable speed limit was 80 kph).

207. About one minute and 20 seconds later, on Chapel Road, he stated that his speed was about 80-90 kph in a 60 kph speed zone.
208. The civilian witnesses generally reported that although the Police cars involved in the pursuit were driving in excess of the speed limit, they were driving more safely and at a slower speed than Mr Tonga.

FINDING

Police complied with the fleeing driver policy in respect of speed and manner of driving.

Ongoing risk assessment/abandonment

209. Once Officers B and C had formally commenced the pursuit, there was little time for them to convey risk factors other than their driver and vehicle classification to NorthComms before Officer D took over as the lead pursuit unit.
210. Officer D quickly lost sight of the Holden due to the winding nature of the roads, but managed to catch up to it near the Whitford Road/Chapel Road roundabout. During the next two minutes, Mr Tonga drove at excessive speed and in an extremely dangerous manner (according to the witness accounts and Officer D's statement; see paragraphs 69-91).
211. The following risk factors were highly relevant at this stage of the pursuit:
- Chapel Road is a busy residential/shopping area, with several major intersections and a posted speed limit of 60 kph;
 - it was midday on Sunday the 5th of December, a very busy pre-Christmas shopping time;
 - Mr Tonga was driving dangerously at high speed;
 - the Holden's front right wheel was damaged and deflated after Mr Tonga drove over a traffic island (however the Authority accepts that Officer D did not realise this at the time); and
 - the level of pedestrian and vehicle traffic along Chapel Road was heavy at times.
212. It was not until Mr Tonga drove through a red traffic light at the intersection of Chapel Road and Smales Road that Officer D considered it necessary to abandon the pursuit due to Mr Tonga's dangerous driving.
213. In the Authority's view, it would have been appropriate for Officer D to have made the decision to abandon pursuit earlier – at least by the time he was approaching the Botany

Downs shopping centre and saw that Mr Tonga was driving in a sustained dangerous manner.

214. As discussed above, Officer D relayed risk factors to NorthComms throughout the pursuit; however there is no record on the NorthComms transmissions of him advising the dispatcher that Mr Tonga was driving dangerously until after he had abandoned the pursuit (this may have been due to radio problems – see paragraph 75). About 40 seconds before the abandonment, he had advised the dispatcher that the “*driving manner seems to be pretty good*” – but later, in his Police statement, he described Mr Tonga as driving “*very erratically*” at that time.
215. Once Officer D had made the decision to abandon the pursuit, he took appropriate action by advising NorthComms, decreasing his speed, deactivating his patrol car’s warning devices and pulling over to the side of the road.

FINDINGS

Officer D carried out ongoing risk assessments in accordance with policy. However, possibly due to radio problems, the pursuit controller was not made aware of the risks associated with Mr Tonga’s manner of driving.

Officer D should have abandoned the pursuit at an earlier stage; ideally by the time he was approaching the Botany Downs shopping centre and saw that Mr Tonga was continuing to drive in a dangerous manner.

Once he had decided to abandon the pursuit, Officer D fully complied with the requirements of the pursuit policy in respect of abandonment.

USE OF ROAD SPIKES

216. The Authority has examined the attempted deployment of road spikes by Officers E and F at the Whitford Road/Chapel Road roundabout and the deployment of road spikes by Officers G and H near Stancombe Road.
217. The findings below consider three different aspects of the officers’ actions and their compliance with policy:
- i) whether the decision to use road spikes to stop the fleeing driver was appropriate;
 - ii) whether the location chosen to be the deployment site was suitable; and
 - iii) whether the officers otherwise complied with Police policy regarding the deployment of the road spikes.

Attempted deployment at Whitford Road/Chapel Road roundabout

218. See paragraphs 56-67 for a description of the attempted deployment of road spikes at the Whitford Road/Chapel Road roundabout by Officers E and F.

Was the decision to use road spikes appropriate?

219. The Police fleeing driver policy and TDD policy permit the use of road spikes to facilitate the end of a pursuit and stop fleeing vehicles in the safest possible manner.

220. Upon hearing that a pursuit had been commenced on Whitford Road and was heading in their direction, Officers E and F decided to attempt to stop the fleeing vehicle by deploying spikes at the intersection of Whitford Road and Chapel Road. They had heard over the radio that the fleeing car was a stolen vehicle and had been involved in a bag snatch the previous day.

221. In his Police statement, Officer F explained that he thought it was necessary to stop the Holden before it entered a more densely populated area.

222. Police had a duty to try to stop the Holden safely and to apprehend the driver of the stolen car. The decision to use road spikes was justified – provided the officers complied with the Police TDD policy, obtained authorisation from the pursuit controller and found a suitable deployment site.

FINDING

The decision by Officers E and F to attempt using road spikes to stop the fleeing car was appropriate in the circumstances, provided they complied with policy.

Was the location chosen to be the deployment site suitable?

223. The TDD policy in force at the time of this incident stated that road spikes may only be used at sites where there is a clear view of the road in each direction, enough visibility for the officer to see the suspect vehicle and other traffic as they approach, and cover (not just concealment) for the officer (see paragraphs 317-319 for policy).

224. The TDD policy also instructed officers that safety is paramount, and not to deploy road spikes:

- from a centre median on a multi-lane road;
- if traffic conditions are heavy;
- if the area has high pedestrian traffic or a lot of parked vehicles; or
- if there is a likelihood of injury to staff, members of the public, or the offender(s).

225. Officers E and F chose to position the road spikes at the roundabout at the intersection of Whitford Road and Chapel Road. Initially Officer E directed Officer F to go to the inside of the roundabout as a possible deployment site, but he correctly deemed that to be too dangerous. He then advised Officer F to cross the road and assess the site from the footpath. He also considered that they could possibly use their patrol car, which was parked on a traffic island in the middle of the road, as cover.
226. From the roundabout the officers had a clear view of both Whitford Road and Chapel Road. Officer E later described the traffic level as “light to medium”, with “approximately 2 to 3 cars at each give way sign”.
227. Witness 2 later made a complaint about Police attempting to use spikes on a corner in a residential area, and said the place where Officers E and F had parked was dangerous because it was at the exit point for drivers turning left into Chapel Road.
228. Officer E explained in his statement that he conducted an ongoing risk assessment and that:

“I believed the place that we were going to deploy the spikes was the most appropriate as the vehicle had to lower its speed to take the corner. If the tyre deflation device had been deployed the vehicle would have been going its slowest speed at that corner.

The area that I parked the car was the most appropriate in the time available to me. It was the best observation point and I could see everything clearly from there.”

229. Officer F also considered the site suitable because the fleeing vehicle would have to slow down to negotiate the roundabout.
230. The Authority’s view, however, is that the roundabout was not a suitable place to deploy the road spikes because:
- the roundabout is large in size with four entrances / exits some distance from each other;
 - it was not guaranteed that the fleeing driver would slow down to negotiate the roundabout;
 - there would be unpredictable traffic behaviour, with vehicles entering and exiting the roundabout from four different directions;
 - the level of traffic was “building quickly”;
 - the officers could not predict which way the fleeing car would go; and

- the officers had not had enough time to properly assess the risks involved.

231. The TDD policy states that the deployment site should be far enough away from the target vehicle to allow the deploying officers time to select and assess the deployment site and to deploy the spikes. Due to the above factors the Authority finds that it was unrealistic for two officers to try to stop all vehicles and prepare to lay spikes in the short space of time before the Holden approached.

232. In this case Officers E and F did not have enough time to deploy the spikes before Mr Tonga drove through the intersection.

FINDINGS

Officers E and F did not have enough time to properly assess the risks associated with the deployment site as required by policy.

The location chosen to deploy the spikes was not suitable in the circumstances.

Did the officers otherwise comply with policy regarding the attempted deployment of the road spikes?

233. Under the TDD deployment policy in force on 5 December 2010 (see paragraphs 309-325):

- i) the pursuit controller had to consider whether to deploy road spikes, monitor and supervise the officers involved in deploying the spikes, maintain communication with the deploying officer and regularly question the deploying officer about road and traffic conditions;
- ii) the deploying officer had to deploy the spikes only on the authority of the pursuit controller, and establish communication with the lead pursuit vehicle to find out (amongst other things) the speed of the pursuit, the target vehicle's lane and other risk factors;
- iii) the lead pursuit driver had to identify and establish communication with the deploying officer and inform him or her of the matters contained in ii) above, and keep the deploying officer informed of the target vehicle's speed;
- iv) spikes could not be deployed if the speed of the fleeing car was over 100 kph; and
- v) the deploying officer had to wear a reflectorised safety jacket, unless "operationally restrictive".

234. In this case, due to the time constraints (and possibly the radio problems discussed above; see paragraph 156), there was no direct discussion over the Police radio between

the deploying officers, the lead pursuit driver (Officer D) and the pursuit controller about the road and traffic conditions at the deployment site, or other risk factors such as the driving manner and speed of the fleeing driver. This information was needed to properly assess the risks involved in the deployment.

235. Officers E and F did not advise the pursuit controller that they were carrying road spikes or that they intended to use them. By the time the pursuit controller first heard that the officers were intending to use spikes, they were already at the location and preparing to deploy. The pursuit controller had no real opportunity to consider the use of the spikes at that location, or to monitor and supervise Officers E and F and question them about the risk factors involved.
236. It is acknowledged that there was considerable urgency in finding a suitable location for and in deploying the spikes; nonetheless there was a responsibility on the deploying officers, and on the pursuit controller, to comply with the requirements of the TDD policy set out above in paragraph 233.
237. The only communications relating to the deployment of road spikes were the following:
- At 12.26:23pm, either Officer E or Officer F informed the NorthComms dispatcher that they were ready to deploy road spikes on Whitford Road.
 - The dispatcher asked whether they were at the roundabout and the officer replied: *"Affirm"*.
 - The dispatcher then said: *"Roger"*.
238. While this exchange could be interpreted as the officers obtaining permission to deploy the spikes from the pursuit controller (who was overseeing the dispatch of the incident), the Authority finds that Police policy required a clearer request for, and granting of, permission to deploy, as well as a more thorough discussion about the deployment site and the risk factors involved.
239. The Police fleeing driver and TDD policies stated at the time that it was the pursuit controller's responsibility to decide whether or not to use road spikes – not the deploying officers'. The pursuit controller is also responsible for supervising and managing the deployment by maintaining communication with the deploying officers. In practice, however, the Authority has found that the communication requirements of these policies are often not fully complied with because road spikes are usually used in time-pressured situations where there is little time to discuss the deployment site and the specific risks involved.
240. The Authority notes that the communication requirements of the TDD policy have changed since this incident. For further information on the changes, see the **Subsequent**

Police Action section of this report below (paragraphs 266-271). The Authority is also engaging with Police to address ongoing issues with the fleeing driver and TDD policies.

241. Ultimately the road spikes were not used at this time because Mr Tonga drove through the roundabout before Officer F could deploy them.

FINDINGS

Officers E and F notified the pursuit controller that they intended to use road spikes.

However, the intended use of the road spikes was not actively considered, supervised and monitored by the pursuit controller as required by policy in place at the time.

Deployment near Stancombe Road

242. See paragraphs 104-126 for a description of the deployment of road spikes near Stancombe Road by Officers G and H.

Was the decision to use road spikes appropriate?

243. Officers G and H were at the intersection of Chapel Road and Stancombe Road when they heard Officer D abandon the pursuit. They later said that they considered it a good option to deploy road spikes to stop the Holden because:

- the fleeing driver was driving a stolen car which had been linked to a bag snatch;
- the pursuit controller had already approved an earlier attempt to deploy road spikes;
- they believed that if Officer D considered it necessary to abandon pursuit, the fleeing driver must have become *“an imminent danger to members of the public”*;
- they were concerned for the safety of other road users and members of the public attending the cultural festival event at Sir Barry Curtis Park;
- they were also concerned that the fleeing driver would not successfully navigate an upcoming ‘S’ bend on Chapel Road, just south of Sir Barry Curtis Park (which they knew to be a very dangerous stretch of road); and
- there were no other tactical options available to stop the fleeing car and they thought they would be criticised if they failed to take action to stop the fleeing driver.

244. The manner in which Mr Tonga was driving the Holden Barina created a high risk to other road users, members of the public and his passengers. The Authority understands that Officers G and H believed they had a duty to try to stop the Holden safely, and that they

believed it was desirable to do so before the Holden reached Sir Barry Curtis Park and the dangerous 'S' bend further south on Chapel Road.

245. However the use of road spikes is a tactical option specifically for the purpose of facilitating the end of a pursuit. Whilst the fleeing driver policy and the TDD policy did not clearly state that road spikes should not be used once a pursuit has been abandoned, the TDD policy did state: *"If the pursuit controller makes the decision [to abandon], they will order the primary unit driver to "abandon pursuit now", and deployment staff to "abandon deployment now"*. The Authority finds that this wording implies that if a pursuit is so dangerous that it has to be abandoned, road spikes should also not be deployed for the same reasons.
246. Officer G has advised the Authority that at the time of this incident he was unaware that road spikes should not be used after a pursuit has been abandoned.
247. In June 2012, Police amended the TDD policy. It now states that officers have a *"discretionary power"* to deploy road spikes without authorisation from the pursuit controller in *"exceptional circumstances"* – however this power does not apply when the pursuit controller has directed a pursuit to be abandoned. The amended policy supports the Authority's view that road spikes are not meant to be used after a pursuit has been abandoned.

FINDINGS

The Authority's view is that the decision by Officers G and H to deploy road spikes after the pursuit had been abandoned was against the intent of the TDD policy.

However the Authority accepts that the TDD policy in force at the time did not explicitly state that road spikes should not be used after a pursuit has been abandoned. The Authority also acknowledges that Officers G and H considered there was an urgent need to stop the fleeing vehicle and acted with the best of intentions.

248. The Authority has concluded that Officers G and H should not have decided to deploy road spikes after the pursuit had been abandoned on Chapel Road. Nonetheless, the Authority will consider whether the officers otherwise complied with the Police TDD policy that was in force on 5 December 2010.

Was the location chosen to be the deployment site suitable?

249. The requirements of the TDD policy in respect of deployment sites are summarised in paragraphs 223-224 above. The TDD policy stated that the deployment site should be far enough away from the target vehicle to give time for selecting and assessing the site and deploying the spikes (see paragraph 326 for policy).

250. The TDD policy noted that deploying road spikes is “*inherently dangerous*” and the safety of the public (and the deploying officers) is the primary consideration. Police are required to consider (amongst other things) the possibility that the fleeing vehicle will make “*unpredictable manoeuvres*” when approaching road spikes (see paragraphs 328-329 for policy).

251. It is also necessary to consider the danger posed by the fleeing vehicle after it has travelled through the spikes. The TDD policy stated in respect of Stinger spikes:

“With this device, the vehicle will not necessarily stop once deflation occurs as it is still possible to travel on the wheel rims; however it will be at reduced speed, with compromised braking and handling capabilities.”

252. Officers G and H chose to deploy the road spikes on Chapel Road, about 75 metres north of the intersection with Stancombe Road. At the deployment site Chapel Road has two lanes (one southbound and one northbound), but further down the road, just prior to the Stancombe Road intersection, the road splits into five lanes (three southbound and two northbound).

253. The following factors supported the officers’ selection of that deployment site:

- Officers G and H knew that the fleeing driver was fast approaching their position and it was the only location available where they could attempt to stop him before he reached Sir Barry Curtis Park and the dangerous ‘S’ bend ahead.
- Officers G and H described the level of traffic as “*medium*”, and other witnesses in the area said it was “*fairly light*” and “[*not*] *actually that busy*”. The officers did not consider the level of traffic at the deployment site heavy enough to warrant abandoning deployment.
- The location provided Officers G and H with a clear view up and down Chapel Road, and they were able to see the fleeing Holden as it approached.
- Officer G considered that the location was a good place to deploy road spikes because he thought the fleeing driver would have to slow down in order to negotiate the intersection of Chapel Road and Stancombe Road. He was not aware at the time that Mr Tonga had earlier driven at speed through a red light at the intersection with Smales Road.
- Officer G also believed that the road spikes slowed Mr Tonga down prior to the intersection, reducing the risk involved.

254. The Authority accepts that Officers G and H were trying to safely remove the danger posed by the fleeing Holden before it caused harm to other road users, pedestrians, and/or the occupants of the car.

255. The Authority also acknowledges that it has not been able to determine whether or not the officers' use of the road spikes actually increased the risk of Mr Tonga losing control of his car. Mr Tonga was continuing to drive dangerously and at high speed (despite no longer being pursued by Police), and his vehicle already had one deflated tyre which would have compromised its handling capabilities. Mr Tonga's erratic driving through the intersection and the subsequent crash further down the road may well have occurred regardless of whether the road spikes were deployed.
256. Nevertheless the Authority has concerns about the deployment site chosen by Officers G and H, for the following reasons:
- It was only about 75 metres from a major intersection controlled by traffic lights. At the time the road spikes were deployed, cars were stopped at the red lights and only one of the three southbound lanes (the 'left turn' lane) was clear. There was a risk that the use of road spikes at that location may further compromise Mr Tonga's control and handling of the vehicle and increase the danger posed to the cars and people waiting at the intersection.
 - There was an increased level of pedestrians and parked cars in the area due to the cultural festival being held at Sir Barry Curtis Park.
 - The officers' decision about the deployment site was made in a short amount of time. The spikes were deployed within about one minute of Officers G and H hearing that Officer D was abandoning the pursuit, and accordingly the selection and assessment of the site for deployment was made in even less time. While it is clear that Officers G and H did consider risks at the deployment site (as demonstrated by the decision to move their patrol car from the middle of the road to the driveway entrance at the Fo Guang Shan Temple), the Authority is of the view that the officers did not have enough time to fulfil all their policy obligations in respect of assessing the deployment site for risks. See the Authority's comment at paragraph 239 regarding the apparent conflict between the detailed and prescriptive requirements of the TDD policy in force at the time and the reality of deploying spikes in risky, time pressured situations.

FINDINGS

Whilst it is clear that Officers G and H undertook a risk assessment on the deployment site, the Authority has concerns about the risks inherent in deploying road spikes near a major intersection controlled by traffic lights.

However, given the range of competing considerations with which the officers were confronted, the Authority is unable to conclude that the chosen deployment site was unsuitable.

Did the officers otherwise comply with policy regarding the actual deployment of the road spikes?

257. The requirements of the TDD policy that was in force on 5 December 2010 are set out at paragraphs 309-325 and summarised in paragraph 233 above. Deploying officers were responsible for maintaining communication with the pursuit controller and the lead pursuit unit, and for ensuring that they only deploy road spikes on the authority of the pursuit controller.
258. In respect of this deployment, Officers G and H both endeavoured to contact NorthComms several times but were unable to get through because the channel was busy.
259. The officers decided to deploy the spikes without authorisation from the pursuit controller because they felt they had a duty to protect the public by stopping the fleeing driver. When interviewed by the Authority, Officer G said:

"I knew the importance of letting NorthComms know and it was definitely not through lack of trying... I was faced really with watching this car zoom past me and not doing anything about it and crossing my fingers in hope, or taking the option of attempting to spike it I guess.

... [M]y rationale was the overriding need I guess for me as a police officer just to bring this pursuit to an end safely with no one getting hurt...."

260. Officer H said: *"...I didn't feel comfortable just standing there not being able to do anything 'cause I do have a duty of care to look after the public, and ... I wanted to stop that vehicle."* He also said that if he and Officer G had not deployed the road spikes, and the fleeing Holden had crashed and injured or killed somebody, they could have been criticised for not taking action to stop the fleeing vehicle. The Authority's view, however, is that the officers could not reasonably have been criticised for not taking action because they would have been complying with the Police TDD policy in force at the time which clearly prohibited the use of road spikes without authorisation from the pursuit controller.
261. Due to the problems with getting onto the digital radio and the short timeframe in which they decided to deploy the road spikes, Officers G and H did not fulfil their responsibilities in respect of directly communicating with the lead pursuit vehicle and the pursuit controller about risk factors and the conditions at the deployment site. They had, however, heard information over the radio about:
- Officer D's speed on Chapel Road (80-90 kph in a 60 kph zone);

- the level of traffic (described as “good”, then later “a little bit heavier but nothing too bad”);
- the location and direction of the fleeing driver; and
- the driving manner of the fleeing driver (initially described as “pretty good”, then after abandonment as “driving all over the roads” and “driving quite erratically”).

262. The officers were not aware that the fleeing Holden’s front right tyre had already been deflated after driving over a traffic island at the intersection of Chapel Road and Dannemora Drive. When the fleeing Holden approached the officers, Officer H saw it weaving through traffic and saw sparks coming from the front tyres from about 400 metres away. Officer G thought the Holden was very noisy and appeared “heavily laid down”, and noticed that large amounts of dust and debris were coming from the front of the vehicle.
263. The Authority finds that the officers’ inability to contact the pursuit controller over the Police radio, in order to discuss the various risk factors and obtain permission to deploy, should have led them to abandon the deployment of the road spikes.
264. Additionally Officer H was not wearing a reflectorised safety jacket when deploying the road spikes as required by policy.

FINDINGS

The Authority acknowledges the radio difficulties that affected Officers G and H and their good intentions in attempting to stop the fleeing Holden in order to protect the public; however the officers breached Police policy by deploying road spikes without consulting and obtaining authorisation from the pursuit controller.

Officer H breached the TDD policy by not wearing a reflectorised safety jacket.



Subsequent Police Action

INDEPENDENT POLICE CONDUCT AUTHORITY

DISCIPLINARY MATTERS

265. None of the officers involved in this incident were subject to disciplinary action because Police found that their actions were justified (see paragraph 159).

CHANGES TO THE TYRE DEFLATION DEVICES POLICY

266. In June 2012 Police published a new version of the TDD policy, which states that officers have a “*discretionary power*” to deploy road spikes without authorisation from the pursuit controller in “*exceptional circumstances*”. However this discretionary power does not apply when a pursuit controller has directed a pursuit to be abandoned. The Authority notes that this is consistent with its interpretation of the previous version of the TDD policy (see paragraphs 245) – that road spikes are intended to be used during a pursuit to bring it to an end, rather than after a pursuit has already ended due to the risks involved.
267. The new version of the TDD policy has also removed the requirement for the deploying officers to establish communication with the lead pursuit vehicle in order to find out information relating to the pursuit (see paragraph 315 for former policy). The deploying officers are still required to find out that information but may use other means to do so.
268. Another change relates to the requirement that officers wear a “*reflectorised safety jacket*” when deploying road spikes unless it is “*operationally restrictive*” (see paragraph 320). In the new version of the TDD policy, officers must consider whether it is “*operationally appropriate*” to wear a “*high visibility garment*” as part of their planned TDD deployment strategy; and must wear a high visibility jacket if they are deploying the road spikes using the “*Pull deployment method*” instead of the preferred “*Kerbside deployment method*”.
269. Police have advised the Authority that officers have received training on the new policy.

DIGITAL RADIO

270. Police have recently advised the Authority that:

- since the implementation of digital radios officers have become more familiar with the manner in which they operate (in particular the inability to talk over each other);
- much work has been done to promote the correct use of radio protocols in order to reduce the amount of unnecessary radio traffic; and
- Police have commenced a rollout of 6500 mobile devices to Police staff (due to be completed by June 2013), which will lessen the need for officers to use the radio to conduct checks and enquiries and should reduce the amount of radio traffic.

271. The Police radio protocols policy is reviewed every two years and is due to be updated in June 2013.



Conclusions

INDEPENDENT POLICE CONDUCT AUTHORITY

272. Police attempted to apprehend Mr Tonga because he was driving a stolen car which had also been linked to a bag snatch. Mr Tonga demonstrated by his actions that he was prepared to risk his life and the lives of others to avoid being caught by Police.
273. Throughout this incident, officers found it difficult to use the Police digital radio, which had been introduced six days earlier. These radio difficulties, whether caused by operator error or the high volume of transmissions, affected nearly every aspect of this fleeing driver incident, particularly the deploying officers' compliance with the communication requirements of the TDD policy in force at the time.
274. A pursuit was commenced on Whitford Road by Officers B and C, and Officer D soon took over as the lead pursuit unit. The Authority finds that the officers were justified in commencing the pursuit and complied with the fleeing driver policy in respect of their speed and manner of driving.
275. The officers also generally complied with the communication requirements of the fleeing driver policy, apart from Officer D providing a misleading description of the manner of Mr Tonga's driving on Chapel Road to NorthComms.
276. During the pursuit Officers E and F prepared to deploy road spikes at the intersection of Whitford Road and Chapel Road, but Mr Tonga drove through the roundabout before the spikes could be deployed. While the decision to use road spikes was reasonable, the officers chose an unsuitable deployment site and the intended deployment was not actively overseen by the pursuit controller as required by the Police TDD policy.
277. Officer D abandoned the pursuit after seeing Mr Tonga drive through a red traffic light at the intersection of Smales Road and Chapel Road, and complied with the requirements of the fleeing driver policy's abandonment procedure. The Authority's view is that Officer D should have made the decision to abandon earlier due to Mr Tonga's sustained dangerous driving.
278. Despite the abandonment, Officers G and H decided to deploy road spikes further down Chapel Road in an effort to safely stop the fleeing driver. They were unable to contact the

pursuit controller over the radio, so they deployed the road spikes without his knowledge or authorisation, and without wearing reflectorised safety jackets. This was a breach of the TDD policy in force at the time.

279. The Authority considers that the officers' deployment of road spikes after the pursuit had been abandoned was against the intent of the TDD policy, but accepts that the policy at the time did not clearly prohibit the use of road spikes in those circumstances.
280. Although Officers G and H clearly considered risks associated with their chosen deployment site, the Authority is concerned about the deployment of road spikes near a major intersection controlled by traffic lights. However the Authority is unable to conclude that the deployment site was unsuitable in the circumstances.
281. Unfortunately the officers' attempt to safely stop the fleeing Holden was unsuccessful. Mr Tonga continued to drive dangerously, and Ms Stone-Te Haara was seriously injured when the Holden crashed shortly after the road spikes had been deployed. She later died in hospital. Mr Tonga, Ms Ngaheu and Ms Menary-Colley were also seriously injured in the crash.

Section 27 opinion

282. Section 27(1) of the Independent Police Conduct Authority Act 1988 (the Act), requires the Authority to form an opinion as to whether or not any act, omission, conduct, policy, practice or procedure which was the subject-matter of an investigation was contrary to law, unreasonable, unjustified, unfair or undesirable.
283. Pursuant to section 27(1) of the Act, the Authority has formed the opinion that the following were undesirable:
- i) the radio difficulties experienced by the officers involved in this pursuit;
 - ii) Officer D's provision of inaccurate and misleading information about Mr Tonga's manner of driving to NorthComms;
 - iii) Officer D's failure to abandon the pursuit at an earlier stage;
 - iv) the non-compliance of Officers E and F and Officers G and H with the communication requirements of the TDD policy;
 - v) the location of the TDD deployment site chosen by Officers E and F (at a roundabout); and
 - vi) Officers G and H's decision to deploy the road spikes without authorisation from the pursuit controller.

Recommendations

INDEPENDENT POLICE CONDUCT AUTHORITY

284. Changes have been made to Police policy and practice since this incident occurred over two and a half years ago. The Authority is also engaging with Police to address ongoing concerns regarding the prescriptive nature and workability of the fleeing driver and TDD policies.
285. The Authority considers that it would be beneficial for Police to enhance their knowledge and understanding of the impact of tactical options such as road spikes on fleeing vehicles. This would assist in the future development of Police policy and best practice. Therefore, pursuant to section 27(2) of the Act, the Authority recommends that the New Zealand Police ensure that when Police have used a tactical option (such as road spikes) in close proximity to a crash causing serious injury or death, the crash report provides an analysis of the likely impact of that tactical option on the crash.



JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

9 July 2013



Appendix: Applicable Laws and Policies

INDEPENDENT POLICE CONDUCT AUTHORITY

CRIMES ACT 1961 – USE OF FORCE

286. Police policy on the use of tyre deflation devices (TDD) states that: *“Deployment of TDD aligns with section 39 of the Crimes Act 1961, and/or the common law power of Police to protect life and property....”*
287. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use force in the execution of their duties, such as arrests and enforcement of warrants. Specifically, it provides for them to use *“such force as may be necessary to overcome any force used in resisting”*, and applies only if the arrest or process *“cannot be executed by reasonable means in a less violent manner”*.
288. Section 62 of the Crimes Act makes law enforcement officers criminally liable for any excessive use of force.

LEGISLATIVE AUTHORITY FOR PURSUITS

289. Under the Land Transport Act 1998, the Police are empowered to stop vehicles for traffic enforcement purposes. Under the Crimes Act 1961, the Police are empowered to stop vehicles in order to conduct a statutory search or when there are reasonable grounds to believe that an occupant of the vehicle is unlawfully at large or has committed an offence punishable by imprisonment. Where such a vehicle fails to stop, the Police may begin a pursuit.

FLEEING DRIVER POLICY

New policy

290. On 18 October 2010, six weeks before this pursuit, Police replaced their former ‘pursuit policy’ with a new ‘fleeing driver policy’. The policy addresses *“the conduct and management of how Police pursue fleeing drivers”*.

Definition

291. Under the policy, a fleeing driver incident occurs when (i) the driver of a vehicle has been signalled by Police to stop, (ii) the driver fails to stop and attempts to evade apprehension, and (iii) Police take action to apprehend the driver. The Police tactic to apprehend is referred to as a pursuit.

Overriding principle

292. Under the Police fleeing driver policy, the overriding principle for conduct and management of pursuits is: *“Public and staff safety takes precedence over the immediate apprehension of the offender.”*

Risk assessment

293. Under the Police fleeing driver policy, the pursuing officer[s] must carry out a risk assessment **both prior to initiation and during a pursuit** (emphasis added). The policy states that *“assessing the risks must be a continuous process until the pursuit is resolved or abandoned.”* The officers involved in the pursuit must provide situation reports to the pursuit controller in a timely manner to enable the pursuit controller to make an independent assessment of the risks and manage the pursuit including whether to direct the abandonment of the pursuit.

294. The assessment must be based on the following: consideration of the speed limit and manner of driving by the offending vehicle; identity and other characteristics of the occupants of the offending vehicle; weather conditions; the environment, including the location, road type and potential hazards; traffic conditions, including vehicle and pedestrian as well as time of day; and capabilities of the Police driver and vehicle. The pursuing officers and the pursuit controller must then use the risk assessment factors to:

“...determine whether the need to immediately apprehend the fleeing offender is outweighed by the potential risks of a pursuit to:

- *the public*
- *the occupants of the pursued vehicle*
- *Police.”*

295. The policy instructs that if there is no need to immediately apprehend the fleeing driver, or the risks are too great, a pursuit must **not** be initiated, or should be abandoned (emphasis in Police policy).

Communication requirements

296. When a pursuit commences, the communications centre must be notified. The communications centre must provide the warning referred to in paragraph 46, which the

pursuing officer[s] must acknowledge. The pursuing officer[s] must provide information about their location and direction of travel. The communications centre must prompt for information about the reason for the pursuit, vehicle description, driving speed and posted speed limit, road and traffic conditions, weather, the offender's manner of driving and identity, and the Police driver and vehicle classifications as well as confirmation that warning devices are activated on the Police car.

Roles and responsibilities

297. Under the policy, the driver of the lead Police vehicle has primary responsibility for the initiation, continuation and conduct of a pursuit. The driver must comply with relevant legislation, ensure lights and siren are activated, drive in a manner that prioritises public and Police safety, continue to undertake risk assessments throughout the pursuit, maintain constant communication with the communications centre, comply with all directions from the pursuit controller (i.e. the shift commander at the Police communications centre), and comply with all directions from a Police passenger if the passenger is senior in rank or service.
298. The passenger in a pursuing vehicle must assist the driver by operating the radio and advising of possible hazards. If senior in rank or service, the passenger may also direct the driver to abandon the pursuit.
299. The dispatcher at the Police communications centre must advise the shift commander (pursuit controller) that a pursuit has commenced, maintain radio communications with staff involved in the pursuit, give the safety reminder referred to in paragraph 46, and communicate instructions from the pursuit controller. If a new unit takes over as the lead pursuit vehicle, the dispatcher must re-issue the safety warning to the driver.
300. The pursuit controller (i.e. the shift commander at the communications centre) is responsible for supervising the pursuit and coordinating the overall Police response, and for selecting and implementing appropriate tactics. When a shift commander is unavailable, a communications centre team leader may take over as pursuit controller.

Driver and vehicle classification

301. Under the fleeing driver and PPDP policies, pursuits may only be carried out by drivers who have qualified under the Professional Police Driver Programme. Officers who hold a gold or silver licence may undertake a pursuit; however a 'silver' rated driver must be supervised by a 'gold' rated driver (unless there are exceptional circumstances). The policies also place restrictions on which Police vehicles can take part in pursuits.
302. When considering whether to commence a pursuit, the capabilities of the officer and the vehicle must form part of the risk assessment, including: the experience of the Police

driver, the type of Police vehicle, and whether it is a single crewed vehicle. The pursuit controller is required to:

- replace vehicles driven by 'silver' rated drivers in a pursuit with vehicles driven by 'gold' rated drivers as soon as possible;
- replace category B vehicles in a pursuit with category A vehicles at the earliest opportunity; and
- ensure that a secondary pursuit unit takes over the commentary if the primary unit is single-crewed.

Abandonment

303. A pursuit must be abandoned if at any stage the risks to safety outweigh the immediate need to apprehend the offender. The Police driver, passenger (if senior in rank or service) and the pursuit controller are all authorised to abandon pursuit. The pursuit controller must then give the direct order: *"All units, [Comms Centre] Alpha, abandon pursuit now. I say again, all units abandon pursuit now."*

304. The policy states that:

"A pursuit must be abandoned when any of the following criteria apply:

- *an offender's identity becomes known and apprehension can be effected later, so long as there is no immediate threat to public or staff safety or the fleeing vehicle's location is no longer known*
- *the distance between the primary unit and the offending vehicle is such, that in order for the Police vehicle to catch up to it, the speed involved creates an additional risk, and Police no longer has the ability to warn road users of the fleeing vehicle*
- *if a person is injured during the pursuit and there is no other unit available to render assistance*
- *there is a sustained loss of contact between the primary and / or secondary units with Comms, or the units fail to provide critical information to Comms in a timely manner*
- *when the siren and / or warning lights fail to operate*
- *any risk assessment criteria conditions change, such as an increase in traffic volumes or weather or road conditions, that mean the risks of continuing with the pursuit outweighs the need for immediate apprehension of the fleeing driver."*

305. The policy sets out the steps that must be carried out following a decision to abandon a pursuit:

Step	Action
1	<i>Acknowledge the direction to abandon pursuit, or advise the pursuit controller that the pursuit has been abandoned.</i>
2	<i>Immediately reduce speed to increase the distance between the fleeing vehicle and their own.</i>
3	<i>Deactivate warning devices once below the speed limit.</i>
4	<i>Stop as soon as it is safe to do so.</i>
5	<i>Report abandonment to the pursuit controller, confirming they are stationary and stating their specific location. This formally concludes the pursuit.</i>
6	<i>Undertake a search phase if authorised by the pursuit controller.</i>

Search phase

306. Once a pursuit has been formally abandoned, the pursuit controller may authorise units in the area to undertake a search to locate the fleeing vehicle. The policy states: *“As the pursuit has been formally abandoned, there is no longer a justification for units to engage in urgent duty driving. Therefore, during the search phase units must not exceed the posted speed limit.”*
307. If the fleeing vehicle is located during the search phase, the unit may signal the driver to stop. However if the driver fails to stop, the unit must seek and receive approval to recommence the pursuit from the pursuit controller before the pursuit can continue.

Recommencement

308. An abandoned pursuit must not be recommenced without the approval of the pursuit controller. Approval to recommence will only be considered if:
- the situation has changed following abandonment; or
 - the risk assessment criteria indicates that the risks involved in the pursuit have reduced, so that the need to immediately apprehend the offender is no longer outweighed by the risks posed by recommencing the pursuit.

TYRE DEFLATION DEVICES

309. The fleeing driver policy permits the use of tyre deflation devices (TDD, i.e. road spikes) during a pursuit.

310. Road spikes must be deployed by a trained operator and can only be used to stop a fleeing vehicle where no other, less dangerous, means of stopping the vehicle are readily available and the deployment can be effected without unjustified risk to any person.
311. The Police TDD policy regulates the deployment of road spikes. Police introduced a new version of this policy in June 2012, which amended the policy that was in force at the time of this incident. The Authority has undertaken its investigation and makes its findings based on the policies and practices in place at the time of the pursuit.
312. The TDD policy that was in force on 5 December 2010 stated that TDD are *“used to facilitate the end of pursuits and stop fleeing vehicles in the safest possible manner...”* and cautioned officers that: *“Every deployment is inherently dangerous and it is your duty to preserve staff and public safety. This must be your primary consideration at all times.”*
313. The TDD policy stated in respect of Stinger spikes (the type of road spikes used in this incident):

“With this device, the vehicle will not necessarily stop once deflation occurs as it is still possible to travel on the wheel rims; however it will be at reduced speed, with compromised braking and handling capabilities.”

Roles and responsibilities

314. Under the policy the pursuit controller was required to (amongst other things):
- consider whether to deploy road spikes;
 - supervise and monitor the officers involved in deploying the road spikes;
 - maintain communication with the deploying officer (and if the pursuit is to be abandoned, direct the deployment staff to abandon deployment and ensure the direction is acknowledged); and
 - regularly question the deploying officer about the road and traffic conditions.
315. The deploying officer was required to (amongst other things):
- be trained in deploying the road spikes;

- deploy them only on the authority of the pursuit controller;⁴
- do everything possible to reduce the risks involved: *“Staff are legally responsible for their actions and must not place themselves, colleagues or the public at risk”*;
- identify and establish communication with the lead pursuit vehicle and find out:
 - the number of vehicles involved, and the location, direction and speed of the pursuit;
 - the target vehicle’s description, whether weapons are involved, and other risk factors;
 - the target vehicle’s lane;
- maintain contact with the pursuit controller and provide accurate situation reports;
- assess the deployment site;
- conduct an on-going risk assessment of the situation to ensure the deployment is still justified and that no other, less dangerous means of stopping the vehicle is reasonably available; and
- conduct an on-going risk assessment of the deployment site until the target vehicle has passed through the site and the device has been removed.

316. The lead pursuit driver was required to identify and establish communication with the deploying officer and inform him or her of the matters contained in paragraph 315 above.⁵

Deployment site

317. Under the TDD policy in force on 5 December 2010, the site chosen to deploy the road spikes had to (amongst other things):

- provide a clear view of the road in each direction;

⁴ In June 2012, Police amended the TDD policy. It now states that officers have a *“discretionary power”* to deploy road spikes without authorisation from the pursuit controller in *“exceptional circumstances”* – however this power does not apply when the pursuit controller has directed a pursuit to be abandoned.

⁵ The new version of the TDD policy no longer specifically requires deploying officers and the lead pursuit vehicle to establish direct communication with each other.

- offer enough visibility in all directions to allow the deploying officer to observe the suspect vehicle and other traffic as they approach;
- provide cover for the deploying officer, rather than simple concealment; and
- be far enough away from the target vehicle to give time for selecting and assessing the site and deploying the spikes.

318. In relation to deployment sites, the policy contained a warning: “**Caution: Do not** deploy a device from a centre median on a multi-lane road” [Bold is Police emphasis].

319. The policy also stated:

“Other site considerations

Safety is paramount during deployment. Do not deploy the device in a location if:

- *traffic conditions are heavy*
- *the area has high pedestrian traffic or a lot of parked vehicles*
- *there is road construction in the area*
- *there is a likelihood of injury to staff, members of the public, or the offender(s).”*

Deployment

320. In respect of the deployment of road spikes, the TDD policy stated:

“Safety considerations

When deploying TDD:

- *ensure your own safety and the safety of others at the deployment site*
- *if safety is compromised, abandon deployment*
- *continually assess the risks of the site until the target vehicle has passed through ...*
- *be aware that the offender may slow down, take sudden action or make unpredictable manoeuvres when approaching the site*
- *unless operationally restrictive, wear a reflectorised safety jacket, in accordance with workplace health and safety requirements and Police policy....”*

321. On 5 December 2010, both the fleeing driver policy and the TDD policy stated that road spikes must not be deployed on vehicles travelling at more than 100kph, motorcycles and heavy vehicles. Both policies were amended in August 2011 to remove the restriction on the use of road spikes on vehicles travelling at more than 100kph.⁶

Abandonment

322. Under the TDD policy in force on 5 December 2010, deployment of the road spikes had to be abandoned if:

- injury was likely to occur to Police, members of the public and/or the offender(s);
- vehicular and/or pedestrian traffic increased at or near the deployment site; or
- the target vehicle was travelling at more than 100 kph (this requirement has since been removed from the policy, as discussed above in paragraph 321).

323. The TDD policy also stated that the pursuit controller must maintain communication with deployment staff and, if the pursuit is to be abandoned, also direct deployment staff to abandon deployment of the road spikes and ensure the direction is acknowledged.

Training

324. Officers are required to pass the nationally recognised training course for the Stinger road spikes before they are authorised to use them.

325. Officers are not currently required to undertake regular 'refresher' training in the use of road spikes.

⁶ Previously the Police had two authorised tyre deflation devices – 'Stingers' and 'Road spikes'. The restriction on the use of tyre deflation devices on vehicles travelling at more than 100 kph has been removed because Police now only use 'Stingers', which cause a more controlled deflation of the vehicle's tyres and are safer to use at higher speeds.

About the Authority

WHAT 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 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?

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.

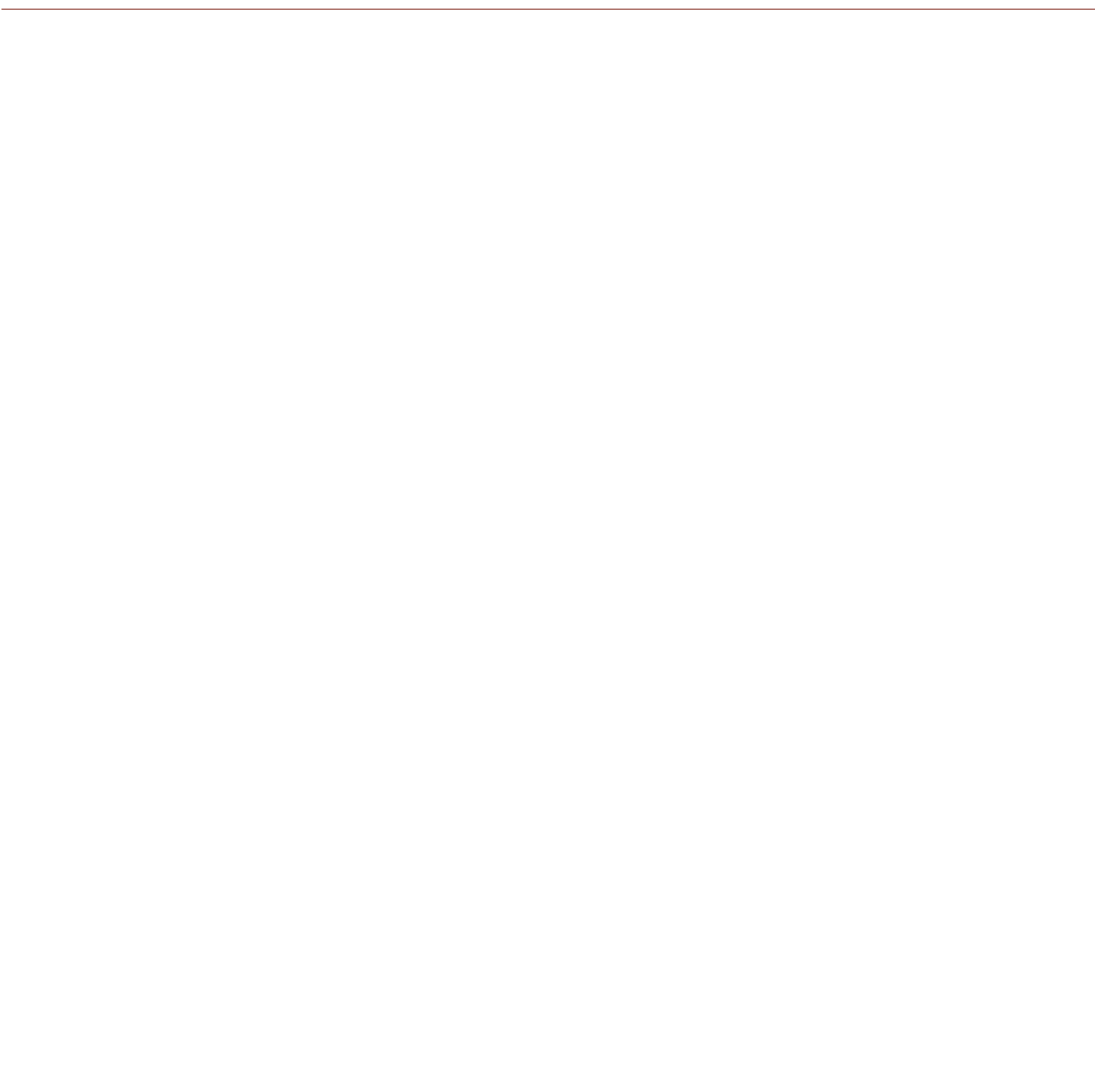
On completion of an investigation, the Authority must determine whether any Police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority can make recommendations to the Commissioner.



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