



**IPCA**

Independent Police  
Conduct Authority

Whaia te pono, kia puawai ko te tika

# **Serious crash following a Police pursuit on Yaldhurst Road, Christchurch**

*August 2016*

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## Introduction

1. Just before 10am on Monday 24 November 2014, the Canterbury Organised Crime Unit (OCU) commenced an operation to apprehend an unidentified drug courier at Christchurch Airport. The drug courier would be picked up by Mr X and Mr Y.
2. At short notice, Officer A directed Officer B to plan and coordinate this operation. He requested assistance from the Armed Offenders Squad (AOS) to apprehend the suspected offenders, due to the risk that they might be carrying firearms.
3. The AOS agreed to assist, and planned to stop the BMW within the airport grounds once they had received confirmation from the surveillance team and Officer B that the drug courier had been picked up by Mr X and Mr Y.
4. About midday, a surveillance team reported that Mr X and Mr Y appeared to be driving towards the airport. Both Officer B's team and the first AOS team went to the airport and waited. At 1pm, when it was apparent that the offenders were not going to the airport, the first AOS team was stood down.
5. Later that afternoon, due to reports that the BMW was on the move again, a second AOS team was sent to the airport. The BMW arrived at the airport at approximately 4:30pm. The vehicle stop within the airport grounds did not take place as planned, but the AOS officers decided to block the BMW just before the Wairakei Road roundabout using their vehicles.
6. As they were attempting to block the BMW, Mr X (who was driving) rammed one Police car and drove into an AOS officer before fleeing. At approximately 4:46pm, an AOS Dog Handler commenced a pursuit of the BMW.
7. The pursuit lasted six minutes, during which time the AOS Dog Handler attempted to force the BMW off the road.
8. Approximately two minutes later, as the pursuit continued westward along Yaldhurst Road (State Highway 73), the BMW crossed the centre line and crashed into a Honda Jazz containing three elderly people. All three occupants of the Honda Jazz were seriously hurt. Mr Y and the drug courier also received serious injuries. Mr X was unhurt.
9. The Police notified the Independent Police Conduct Authority of the incident, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

## Glossary of terms

Abbreviation/term	Explanation
OCU	Canterbury Organised Crime Unit
AOS	Armed Offenders Squad
AOS Tactical Commander	The AOS officer responsible for overseeing the AOS tactical response during an operation or incident.
AOS Forward Commander	The AOS officer responsible for controlling the AOS tactical response in the field, and ensuring that the tactics planned by the tactical commander are implemented. The forward commander reports to the tactical commander.
District Command Centre (DCC)	The District Command Centre (DCC) has access to all communications information, and maintains an overall view of policing within a Police District with a focus on crime prevention. The DCC may also act in an incident response capacity, and is able to deploy a wide range of staff and resources, including staff that would not normally be deployed in response to an incident.
Mobility device	This is either an iPad or an iPhone that Police officers carry in their vehicles and can use to access Police databases.
Vehicle stop	A manoeuvre undertaken by the AOS which compels a vehicle to stop.

## Index of officers

Communications Centre Staff	Roles/Comment
Pursuit controller	The shift commander at SouthComms, who managed the pursuit.
Dispatcher	Maintained radio communications with the pursuing unit.
Field Staff	
Officer A	Acting Detective Senior Sergeant, Canterbury Organised Crime Unit.
Officer B	Detective Sergeant, Canterbury Organised Crime Unit.
AOS Commander	Acting AOS Commander for Canterbury Police District.
AOS Officer 1	Tactical commander, first deployment.
AOS Officer 2	Forward Commander, first deployment.
AOS Officer 3	Tactical Commander, second deployment.
AOS Officer 4	Forward Commander, second deployment.
AOS Dog Handler	Pursuit driver.
AOS Officer 5	Pursuit passenger, responsible for communication during the pursuit.

## Index of civilians

Reference	Roles/Comment
Mr X	Driver of the BMW.
Mr Y	Front passenger in the BMW.
Drug courier	Rear passenger in the BMW.
Truck driver	Braked to avoid the BMW and dog van following the attempted vehicle stop on Yaldhurst Road (eastbound).
Mr N	Saw the BMW and dog van travelling westwards along Yaldhurst Road, immediately prior to the crash.
Mr P	Driver of the Honda Jazz.
Mrs P	Rear passenger of the Honda Jazz.
Mrs Q	Front passenger of Honda Jazz.

## Background

### EVENTS OF 24 NOVEMBER 2014

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#### Events preceding the pursuit

10. At approximately 9:53am on Monday, 24 November 2014, Officer A, an acting detective senior sergeant in the Canterbury Organised Crime Unit (OCU), commenced an urgent operation to apprehend a drug courier carrying methamphetamine. The identity of the drug courier was unknown, but he or she would be picked up by Mr X and Mr Y at Christchurch Airport.
11. Officer A quickly assessed the different courses of action open to him and his team. He considered that:
  - since the identity of the drug courier was unknown, that person could not be apprehended before making contact with Mr X and Mr Y;
  - tight timeframes and risks were involved in attempting to apprehend the men and the courier after they had reached their vehicle but before it was driven away; and
  - permitting Mr X, Mr Y and the courier to reach their destination might allow them the opportunity to destroy evidence before Police could secure it.
12. He decided that the best option would be to stop their vehicle once the drug courier had been picked up but before it left the airport environs. This would provide the best opportunity for recovering any drugs.
13. At approximately 10:36am, after attending an unrelated meeting, Officer A contacted the officer in charge of the Canterbury Surveillance Unit, who agreed to send a surveillance team to monitor Mr X and Mr Y at an address in Bishopdale.
14. Both the OCU and the Surveillance Unit were familiar with Mr X, Mr Y and their associates:
  - 14.1 In May 2014, Mr X had been stopped by Police and found to be in possession of drugs, but complied with Police instructions.
  - 14.2 In October 2014, Mr X and Mr Y were linked to two addresses where search warrants were carried out in connection with suspected drug offending. The risk assessments carried out by the OCU on the target individuals identified Mr X as a known associate, who might be present when the search warrants were executed. Mr X was not identified as raising any specific firearms or violence risks, other than the possibility that he might be 'cooking' volatile drugs at the address.

The Armed Offenders Squad (AOS) were asked to assist with executing these search warrants as a precaution because Police were aware that firearms had been found at other addresses where methamphetamine was being sold.

15. At about 10:38am, 45 minutes after he received the information, Officer A phoned Officer B, a detective sergeant in the OCU, and briefed him. At this time, Officer B had been a supervisor with the OCU for approximately six weeks.
16. Officer A directed Officer B to put an investigation team together to liaise with the surveillance team, and to then formulate a plan to respond to the surveillance team's observations. Officer A further advised Officer B that, should Mr X and Mr Y be observed picking up a person from the airport, Police would be justified in stopping and searching the vehicle and its occupants under the Search and Surveillance Act 2012.
17. Officer A did not discuss with Officer B how this stop and search might take place, or how the operation might be planned and assessed for risks, trusting that Officer B was sufficiently experienced to undertake this himself.
18. Officer B briefed his team of detectives and directed them to carry out background checks on Mr X and Mr Y. They established that a silver BMW was registered to Mr X. The team discussed options for apprehending the targets, and decided that a 'vehicle stop'<sup>1</sup> in the airport grounds was the best option to secure the vehicle's occupants and any evidence of drugs they might be carrying.
19. Officer B later told the Authority that he was unable to record the team's considerations and decision making process in his notebook due to time constraints and the urgency of the situation.
20. At 10:49am, Officer B informed the surveillance team watching Mr X at the Bishopdale address that he had decided to use the AOS to stop Mr X's BMW within the airport grounds. His decision to involve the AOS was based on:
  - the fact that the AOS were specifically trained in vehicle stops;
  - the links that Mr X and Mr Y had to addresses where the AOS had previously been deployed; and
  - the general risk that people dealing in class 'A' drugs, such as methamphetamine, might have access to weapons (although neither Mr X or Mr Y raised a specific alert for firearms or serious violence on the Police database).
21. At 10:57am, Officer B contacted the on-call AOS tactical commander<sup>2</sup> (AOS Officer 1), briefed him on the situation and requested AOS assistance to carry out a vehicle stop at the airport. AOS Officer 1 advised Officer B that he was currently deployed at another incident, but would ring Officer B back when he was free.

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<sup>1</sup> A manoeuvre undertaken by the AOS which compels a vehicle to stop (see paragraphs 333-334).

<sup>2</sup> The tactical commander is the AOS officer responsible for overseeing the AOS tactical response during an operation or incident.

22. Officer B did not inform the Southern Communications Centre (SouthComms) shift commander or the District Command Centre<sup>3</sup> (DCC) about the operation. He later stated that it was not common practice for the OCU staff to liaise with SouthComms or the DCC *“when we’re doing some sort of covert job<sup>4</sup>”*.
23. In the meantime, Officer B and his team started driving towards the airport so that they could stop the vehicle if the drug courier arrived before the AOS were able to deploy. They listened to updates provided by the surveillance team over the dedicated surveillance radio channel, however the target BMW did not leave the Bishopdale address.
24. While en route to the airport, Officer B undertook a brief risk assessment in his notebook:
- There was no specific mention that the suspects had access to weapons in the information received by Police.
  - Mr X and Mr Y were not specifically known to have access to firearms.
  - The airport environment:
    - was busy; and
    - contained natural choke points where it would be easier to stop the BMW, but the AOS would plan the vehicle stop manoeuvre.
  - The BMW should be stopped before it left the airport and reached the open road.
  - Officer B’s team would wait at a *“holding point<sup>5</sup>”* until the AOS had safely conducted the stop, then take the BMW’s occupants to the Airport Police base.
25. At 11:39am, while still at the scene of the other incident AOS Officer 1 rang Officer B back and they had a brief conversation. AOS Officer 1 described the detail and risk assessment information that Officer B was able to give him as *“limited”* due to the fluid nature of the operation. However, AOS Officer 1 was clear that Officer B told him that *“a large amount of meth”* was involved, and he *“wanted to get the BMW stopped in the car park of the Christchurch International Airport and before it hit the open road area.”*
26. Officer B later told the Authority that at no point was he aware of how much methamphetamine would be transported by the courier, and he never told any member of the AOS that it was *“a large amount.”*
27. Either during this phone call or during his earlier conversation with AOS Officer 1, Officer B suggested that the stop should be done in the exit area of the pick-up/drop-off zone of the

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<sup>3</sup> The District Command Centre has access to all communications information, and maintains an overall view of policing within a Police District with a focus on crime prevention. However, the DCC may also act in an incident response capacity, and is able to deploy a wide range of staff and resources, including staff that would not normally be deployed in response to an incident.

<sup>4</sup> An ‘undercover’ Police operation or action.

<sup>5</sup> An agreed waiting point.

airport, because the OCU had previously carried out successful vehicle stops in this location. However, Officer B told the Authority that he expected that the AOS would make a final decision about whether this was a suitable location or not.

28. Once the phone call ended, AOS Officer 1 started to turn his mind to key aspects of the operation, such as the nature of the targets and the area of operation, and the implications of stopping suspected drug dealers. He recorded this information in an AOS Operation Record (see paragraphs 225-227 and 330 for further explanation). AOS Officer 1 also briefed the AOS Commander, who was with him in the AOS command vehicle. All tactical options planned for an AOS deployment required approval from the AOS Commander<sup>6</sup>.
29. While on his way back from the previous deployment, AOS Officer 1 contacted and briefed AOS Officer 2, and directed him to form a vehicle stop team to deploy at short notice should this be required before AOS Officer 1 arrived.
30. At about midday, AOS Officer 1 arrived back at Christchurch Central Police Station, and started planning the operation in the AOS squad room:
  - He thought the *“possibility of firearms being present to be high”* because he understood that a large amount of methamphetamine was being transported;
  - The Police database indicated that Mr X had possible gang associations, which also raised the operational risk;
  - He considered using different tactics to intercept the courier, but decided that because they had limited factual information about how and when the courier would arrive, a vehicle stop would be the best tactical option;
  - He studied a map of the airport environment, assessing access roads, natural barriers which slowed vehicle progress, areas of high pedestrian traffic, and areas where the AOS vehicles might privately rehearse their tactics and await information relayed by the surveillance team;
  - He designated AOS Officer 2 as the forward commander<sup>7</sup>, which meant that AOS Officer 2 took responsibility for the deployment, tactics, oversight, command and control of the operation at the airport.
31. AOS Officer 1 discussed his assessment and proposed tactics with the AOS Commander and the incoming tactical commander for the next shift, AOS Officer 3 (who was not yet on duty and was not intending to deploy with the AOS team). The AOS Commander agreed with AOS Officer 1’s assessment and approved the vehicle stop tactic.

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<sup>6</sup> At the time of this incident, the AOS Commander for the Canterbury Police District was working overseas. A temporary arrangement was in place whereby an acting AOS Commander would approve the tactics planned in response to a specific incident by the on-duty tactical commander, prior to deployment.

<sup>7</sup> The forward commander is the AOS officer responsible for controlling the AOS tactical response in the field, and ensuring that the tactics planned by the tactical commander are implemented. The forward commander reports to the tactical commander.

32. AOS Officer 1 then provided his team with a full tactical briefing and confirmed Fire Orders<sup>8</sup> (the circumstances under which Police may use firearms). He explained that Officer B would be contacting him directly about the movements of the BMW, and that the BMW would only be stopped once it had been confirmed that Mr X and Mr Y had picked up the courier.
33. AOS Officer 2 then assigned the AOS team members to specific roles in accordance with AOS operating procedures for carrying out a vehicle stop. All seven officers donned full AOS kit, which included AOS body armour and a helmet, and armed themselves.

#### *First AOS deployment to Christchurch Airport*

34. Officer B's team arrived at the airport just after midday, and parked in a customs inspection area. At 12:20pm, Officer B rang and informed AOS Officer 1 that the surveillance team had seen the BMW containing two males (assumed to be Mr X and Mr Y) leaving the Bishopdale address. AOS Officer 1 directed the AOS squad to deploy to the airport, while he would remain behind and monitor the surveillance radio. The team deployed in two marked patrol cars and a marked dog van.
35. While travelling to the airport, AOS Officer 2 used his mobility device<sup>9</sup> to study the airport environment. Upon arrival, he directed one patrol car and the dog van to conceal themselves behind a Customs building, while he inspected the airport carpark area. He decided that the best place to stop and contain the BMW would be between the exit of pick up/drop off zone and the first roundabout. This stretch of Durey Road provided a natural choke point, with kerbing and concrete islands to help contain the BMW.
36. Directly opposite this area was the Air New Zealand engineering carpark, which was concealed from the road by a tall hedge. The entry to this carpark was controlled by an electronic gate. AOS Officer 2 judged that this would be a good place for the AOS vehicles to wait until commanded by AOS Officer 1 to stop the vehicle, since the BMW was likely to drive directly past their position after picking up the courier. AOS Officer 2 obtained permission from staff in the nearby Air New Zealand engineering office to use the carpark, and was given a swipe card for the electronic gate. The AOS team relocated to the carpark, where AOS Officer 2 briefed them about how the vehicle stop would be conducted.
37. At approximately 12:51pm, Officer B updated Officer A about his progress, advising him that the AOS had been briefed and would carry out a vehicle stop. Meanwhile, the BMW drove across the city towards the Port Hills. It parked at an address on Port Hills Road and remained stationary there.

#### *AOS stood down and second deployment*

38. At about 1pm, it became clear that the BMW would not imminently be travelling to the airport. Officer B contacted AOS Officer 1 and informed him that the AOS vehicle stop team

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<sup>8</sup> See paragraphs 324-328.

<sup>9</sup> This is either an iPad or an iPhone that Police officers carry in their vehicles and can use to access Police databases.

could stand down. The AOS team returned to Christchurch Central Police Station. Once back at the station, the AOS officers removed their kit and returned to their normal duties. Officer B's team returned to Christchurch South Police station, and Officer B updated Officer A, specifically telling him that he had stood the AOS down.

39. At 1:52pm, Officer B heard on the surveillance radio channel that the BMW had left the Port Hills Road address and was travelling back towards the city. Officer B considered that it was possible that the BMW might continue to the airport, and decided to return to the airport with his team. He informed Officer A of his decision, and arrived at the airport at approximately 2:20pm.
40. The BMW drove to several addresses in the commercial and industrial areas of Christchurch. At 3pm, when the BMW had not ventured near the airport, Officer B decided to return to the Christchurch Central Police station. A short time later, he changed his mind and decided to wait a few streets away from the airport. At about 3:20pm, the surveillance team reported that the BMW was heading towards the airport, and Officer B and his team returned to the airport.
41. At about this time, Officer B rang AOS Officer 1 to advise him that the BMW was now heading towards the airport and a vehicle stop was required. AOS Officer 1 told Officer B that he was now off-duty, and told him to contact the on-call AOS tactical commander, AOS Officer 3.
42. AOS Officer 3 received Officer B's call while he was still at home. AOS Officer 3 had been present at AOS Officer 1's earlier briefing about the vehicle stop operation (see paragraph 31). He rang the Acting AOS Commander to inform him that the AOS had been asked to go back to the airport, and sought approval to use the same tactics as previously planned since the overall situation had not changed (the identity of the courier was still unknown). The AOS Commander gave his approval.
43. Concerned that the BMW would shortly arrive at the airport, AOS Officer 3 rang AOS Officer 2 (who was in the AOS squad room), explained the situation and asked him to organise an urgent vehicle stop team with whoever was immediately available.
44. AOS Officer 2 advised AOS Officer 3 that he, AOS Officer 4 (who had been designated forward commander) and two other AOS officers who were immediately available would drive to the airport in a Nissan Patrol four wheel drive vehicle (the Nissan Patrol). The remaining squad members were paged, directed to kit-up and meet at the Air New Zealand engineering carpark for an urgent vehicle stop.
45. The AOS Dog Handler rang AOS Officer 2 to advise him that he was responding to the page, and to check where he should meet the AOS team. AOS Officer 2 gave the AOS Dog Handler a "brief run down" of the circumstances and asked him to go directly to the airport.

46. The BMW drove past the airport and back towards the Bishopdale address. Officer B rang AOS Officer 3 and told him to 'stand down'<sup>10</sup>, however AOS Officer 3 disagreed that this was the best course of action. After discussion it was decided that the AOS would remain at the airport. Officer B also decided that his team would remain at the airport until 4:45pm.
47. At 3:37pm, Officer B received information that Mr X and Mr Y were now at the Bishopdale address.
48. At about 4pm, Officer A rang Officer B and requested a progress update, which Officer B provided. At the same time, AOS Officer 3 arrived at the AOS squad room and started to complete the AOS Operation Report. He recorded that his overall risk assessment for the deployment was "very low", meaning "there was a risk or a potential risk of violence against life or property, but no threat had been reported"<sup>11</sup>.

#### *AOS prepare to stop the BMW*

49. At about 3:45pm, the Nissan Patrol arrived at the Air New Zealand engineering carpark. AOS Officer 2 had advised AOS Officer 4 about this location while en route to the airport. AOS Officer 4 agreed that it was the ideal location to wait for the BMW. The other AOS officers followed in a marked police car and a Police dog van. AOS Officer 4 monitored the surveillance radio channel to remain updated about the BMW's movements.
50. The surveillance team, the AOS and Officer B's team were operating a joint radio channel that all could listen to simultaneously. The AOS were also operating their own secure radio channel. AOS Officer 3 was monitoring both channels at the AOS squad room.
51. At approximately 4pm AOS Officer 2 rang Officer B. Officer B updated him, and AOS Officer 2 confirmed that the AOS were in place and ready.
52. AOS Officer 4 decided that the plan made by the first AOS team should be used again. Officer B would inform AOS Officer 3 when the courier had been picked up and the BMW was ready to be stopped. AOS Officer 3 would direct AOS Officer 4 that the vehicle stop could proceed. Once the BMW drove close to the ticket arm barrier at the exit to the airport, AOS Officer 4 would give the 'go' command and the AOS vehicles, hidden in the Air New Zealand Engineering carpark, would drive forward and block the BMW in.
53. AOS Officer 4 briefed all team members on the tactics to be used, and ensured that the officers not involved earlier fully understood the circumstances and what was required to stop the BMW for the purposes of a search under section 20 of the Search and Surveillance Act 2012<sup>12</sup> (a warrantless search for drugs).
54. The AOS Dog Handler had not been part of the earlier deployment. AOS Officer 4 provided him and another officer with an additional briefing to bring them up to date.

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<sup>10</sup> Return to the Police station with the expectation that AOS assistance is no longer required for the operation.

<sup>11</sup> AOS Operation Record Threat Assessment definition.

<sup>12</sup> See paragraph 358.

55. The AOS Dog Handler stated he was told that:
- They were to do an “armed vehicle stop” on a “suspected drug mule”.
  - This person was going to be picked up by two “dangerous offenders” who were “possibly gang members dealing with methamphetamine.”
  - They would attempt to stop the BMW, but if the driver did not stop voluntarily, “*we would do a non-compliant stop<sup>13</sup> on them, as trained.*”
56. On the basis of this information, and the fact that the AOS had been deployed, the AOS Dog Handler formed the view that there was a “*high likelihood*” that the BMW occupants would have firearms or weapons.
57. AOS Officer 4 told the Authority that he did not confirm to the AOS Dog Handler one way or another whether the vehicle stop would be ‘compliant’ or ‘non-compliant’<sup>14</sup>. He said, in general, if an offending vehicle did not stop voluntarily, the forward commander may direct the vehicle stop team to stop the target vehicle forcefully.
58. AOS Officer 4 read the officers their ‘Fire Orders’<sup>15</sup>, and directed AOS Officer 5 to be the front seat passenger in the dog van to act as ‘cover man’ for the AOS Dog Handler. AOS Officer 4 rang AOS Officer 3, explained his plan and gained approval for his tactics. AOS Officer 4 then positioned himself in the front passenger seat of the Nissan Patrol.
59. At about 4:15pm the BMW, containing occupants assumed to be Mr X and Mr Y, left the Bishopdale address. The AOS and Officer B tracked its movements via radio updates from the surveillance team.
60. At approximately 4:20pm, Officer B briefed his team, specifying which team member would speak to which offender, and directing another team member to organise a drug dog and handler to assist with the search of the BMW. He directed that the car occupants should be taken to the Airport Police base to be searched, and requested that a suitable officer be organised to search the courier. He then reminded his team of the statutory requirements for conducting a search under the Search and Surveillance Act 2012, and of the relevant Bill of Rights provisions.
61. At about 4:30pm, the BMW arrived at the airport, drove past the carpark where the AOS were waiting, and rather than following the loop to the pick-up area, drove into the airport carpark building.
62. The AOS team moved forward into the entrance of the Air New Zealand engineering carpark in preparation for stopping the BMW, adjusting their planned tactics to account for the different

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<sup>13</sup> A ‘non-compliant stop’ describes when Police stop a vehicle by applying force. See paragraphs 333-334.

<sup>14</sup> See paragraphs 333-334 for the differences between compliant and non-compliant vehicle stop tactics.

<sup>15</sup> Fire Orders are the circumstances under which Police may use firearms. See paragraphs 316-318 and 324-328.

exit route the BMW would be following from the parking building (they would now be required to drive over a low concrete island which separated the exit lanes in order to block the BMW).

63. However, the BMW exited the parking building without picking up a third occupant. The Nissan Patrol pulled out and followed the BMW towards the Orchard Road roundabout. While the BMW drove back towards the airport, the Nissan Patrol drove into the carpark of the Sudima Hotel to avoid detection.
64. At 4:44pm, the surveillance team radioed that the BMW had entered the airport's drop-off/pick-up area, but they had since lost sight of it. After approximately two minutes, both the surveillance team and the AOS vehicles still parked in the Air New Zealand engineering carpark radioed that the BMW was now driving out of the airport. As the BMW drove through the Orchard Road roundabout and past the Sudima Hotel carpark, AOS Officer 4 saw that it now contained three occupants.
65. The Nissan Patrol pulled out to follow the BMW along Orchard Road. AOS Officer 4 radioed AOS Officer 3, informed him that the BMW had three occupants and asked if Officer B wanted it to be stopped. AOS Officer 3 then phoned Officer B and asked him to confirm the stop, Officer B replied "Yes, do it." AOS Officer 3 radioed the order back to AOS Officer 4. By this point, the BMW, the Nissan Patrol, the patrol car containing AOS officers and AOS dog van were approaching the roundabout on Wairakei Road, approximately one kilometre from Christchurch Airport. Officer B and his team were several cars behind the AOS vehicles.

#### *AOS attempt to stop the BMW on Wairakei Road*

66. The BMW stopped in the line of traffic on the right-hand eastbound lane on approach to the roundabout. A wide, raised concrete island separated these two eastbound lanes from the westbound roundabout exit lane. AOS Officer 4 decided that this was a good opportunity to secure the BMW since it was already stationary, and ordered the AOS officers to carry out the vehicle stop manoeuvre to block the BMW in.
67. At this point, the Nissan Patrol was separated from the BMW by one vehicle in the traffic queue. The positioning of this car and the raised island prevented the AOS vehicles from performing the vehicle stop manoeuvre from the right hand side.
68. At approximately 4:46pm the Nissan Patrol pulled out of the traffic, travelled up the left-hand side of the traffic queue and pulled across the front of the BMW at a 45 degree angle. The right rear corner of the Nissan Patrol made contact with the left front of the BMW. The marked patrol car also drove forward to block the BMW from the rear. The dog van, arriving a couple of seconds later, stopped approximately four metres behind the patrol car. None of the Police vehicles had activated their lights and sirens to avoid alerting the offenders to the Police presence prior to stopping the BMW.
69. AOS Officer 4 got out of the Nissan Patrol with his firearm, stood directly in front of the BMW, made eye contact with Mr X and shouted "Police, don't move!" Several other AOS officers got out of the two front AOS vehicles with their weapons raised.

70. Immediately, Mr X reversed the BMW and collided with the patrol car behind it. Mr X then accelerated forward aggressively and drove into AOS Officer 4, who was flipped over the bonnet and landed on his back on the road. Mr X drove over the raised concrete island, and accelerated the wrong way around the roundabout and exited onto Russley Road (State Highway 1), travelling southwards at speed.
71. The patrol car attempted to drive after the BMW, but sustained damage when mounting the concrete island and became un-drivable.
72. When AOS Officer 4 got up from the road, he saw the BMW driving away, closely followed by the dog van. AOS Officer 4 checked himself for injuries and, finding that his injuries appeared to be minor, he got back into the Nissan Patrol.
73. He and the other AOS officers in the Nissan Patrol could hear the pursuit over the main radio channel, and drove around the roundabout and along Russley Road with warning lights and sirens activated.

### The pursuit

74. Unfortunately, the AOS Dog Handler did not have the same radio communications as the other AOS vehicles. He was required to go to the airport as soon as he arrived at Christchurch Central Police Station, and did not have time to pick up a portable surveillance radio. In addition, the AOS radio in his vehicle was malfunctioning, meaning he could send radio messages but could not hear radio messages sent on this channel. He was reliant, therefore, on AOS Officer 5 relaying information sent over the AOS and surveillance radio channels. He could, however, hear information broadcast over the main radio channel.
75. The AOS Dog Handler and AOS Officer 5 saw the BMW hit AOS Officer 4 (although they did not know which officer it was at the time). In interview with the Authority, the AOS Dog Handler said that he was unsure how seriously hurt the squad member was, but believed that the BMW had driven over the officer and the officer had been badly hurt or killed.
76. The AOS Dog Handler told the Authority the he *“still believed then that we were doing a, now, non-compliant<sup>16</sup> vehicle stop”* since the attempt to stop the BMW had failed.
77. The AOS Dog Handler believed it was imperative to stop the driver of the BMW, who had committed a serious crime against AOS Officer 4, and, in so doing, had demonstrated that he was a significant danger to the public. He told the Authority that, given what he was prepared to do to a Police officer, *“you wouldn’t know what he was prepared to do.”* The AOS Dog Handler also continued to believe that it was likely that the occupants were armed.
78. The AOS Dog Handler could see that neither the patrol car nor the Nissan Patrol were immediately able to follow the BMW (the officers in the Nissan Patrol were occupied with ensuring that AOS Officer 4 was not badly hurt). The AOS Dog Handler activated his lights and

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<sup>16</sup> A ‘non-compliant stop’ describes when Police stop a vehicle by applying force. See paragraphs 333-334)

sirens straight away, pulled out to the left, and accelerated the correct way around the roundabout. He directed AOS Officer 5 to switch to the main radio channel and advise SouthComms that they were in pursuit following an AOS vehicle stop. He hoped that, by doing so, the other AOS or Police vehicles would hear where the pursuit was, and assist.

79. At 4:46:45pm AOS Officer 5 radioed:

*“Failing to stop on Johns Road<sup>17</sup> with this surveillance job, [BMW registration number] heading west on Johns towards Memorial over”*

80. AOS Officer 5 later told the Authority that he assumed that SouthComms was aware of the AOS vehicle stop operation. This was not in fact the case.
81. The AOS Dog Handler accelerated to approximately 100kph on Russley Road (an 80kph zone) in order to catch up with the BMW. It was a fine day, the roads were dry but traffic was building due to the upcoming rush-hour.
82. At 4:47:03pm, the SouthComms dispatcher<sup>18</sup> issued the standard pursuit warning (see paragraph 343), which AOS Officer 5 acknowledged in accordance with Police policy. AOS Officer 5 then advised that it was an AOS officer calling the pursuit, a dog handler was driving, and he was appropriately certified to be the lead pursuit driver. AOS Officer 5 then incorrectly gave their location as *“south[bound] on Memorial.”* In fact they were travelling south on Russley Road.
83. The AOS Dog Handler could see the BMW about 100 metres in front of him, approaching the roundabout with Memorial Avenue, at which point the single lane split into two.
84. Approximately 130 metres from the roundabout a painted island separates the two southbound lanes from two northbound lanes. After a further 75 metres, the painted island became a raised, grassed island on approach to the roundabout. The grassed island was approximately 55 metres long.
85. Due to traffic congestion in both southbound lanes at the roundabout, the BMW slowed to approximately 30kph, crossed the centre line, drove along the painted island, and then drove along the far edge of the grassed island on the wrong side of the road, before turning the correct way into the roundabout and exiting left into Memorial Ave. The dog van closely followed the BMW onto the wrong side of the road and around the roundabout at the same speed.

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<sup>17</sup> Johns Road becomes Russley Road approximately 750 metres north of the Wairakei Road roundabout.

<sup>18</sup> A dispatcher is based at the Communications Centre, and maintains radio contact with pursuing units during a pursuit.

86. CCTV images show that oncoming traffic stopped and waited for the two vehicles to clear the roundabout. The Nissan Patrol followed the route taken by the BMW and dog van approximately 18 seconds later. Again, traffic stopped to let it through.
87. Both the BMW and the dog van travelled at approximately 100kph along Memorial Avenue in a 60 kph zone, 50 metres apart. At 4:47:25 the dispatcher prompted AOS Officer 5 to advise why they were pursuing the BMW, to which he responded that the BMW had *“failed to stop on a 3T<sup>19</sup>. It’s a surveillance AOS job.”* He then provided the BMW’s registration number and stated that it had three occupants. He advised that traffic was *“moderate”* as they approached the intersection with Roydvale Avenue, but did not give the speed at which both vehicles were travelling.
88. The BMW slowed and turned right against a red traffic light into Roydvale Avenue, where traffic was light. The dog van followed, and the pursuit moved into a suburban area. The AOS Dog Handler told the Authority that throughout the pursuit he carried out risk assessments as per Police policy, and relayed his assessments to AOS Officer 5 for him to communicate to SouthComms. The BMW was still being driven *“aggressively”* in the AOS Dog Handler’s opinion, but he was staying within his own lane. The BMW went through a stop sign at about 50kph and turned right onto Avonhead Road.
89. At 4:47:50pm, the dispatcher asked whether the fleeing driver’s identity was known to Police. AOS Officer 5 responded that it was unknown, because neither Mr X or Mr Y had been positively identified in the vehicle, and the surveillance team had briefly lost the BMW at the airport, at which point the suspected occupants of the BMW might have changed.
90. Seven seconds after AOS Officer 5’s radio transmission, Officer B came on the main radio channel and stated that the identity of the driver was known, and that the occupants were believed to be in possession of methamphetamine.
91. The pursuit controller<sup>20</sup> understood that this was an AOS operation, but he later stated *“it was unclear to me [to] what extent AOS were involved, and it was unclear to me whether the AOS commander was the pursuit controller or not.”*<sup>21</sup>
92. At approximately 4:48pm the pursuit controller attempted to call AOS Officer 3 on the radio to get more information about the context and seriousness of the incident, and to determine who was in command of the pursuit. However, he could not get through to AOS Officer 3.

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<sup>19</sup> ‘3T’ is Police code for stopping a vehicle or person.

<sup>20</sup> The pursuit controller is responsible for supervising a pursuit and coordinating the overall tactical response.

<sup>21</sup> Under Police Fleeing Driver policy, an AOS Commander will act as pursuit controller during an AOS specialist operation until transfer of command to Communications is given, unless operational circumstances dictate otherwise.

### *The dog van makes contact with the BMW*

93. The dog van pursued the BMW westwards on Avonhead Road. The AOS Dog Handler accelerated to close the distance between the vehicles, so he could see who was in the BMW. He saw two males in the front seats, and a female in the rear.
94. At that point, the BMW suddenly braked. The AOS Dog Handler undertook emergency braking, but made minor contact with the back rear bumper of the BMW. The AOS Dog Handler estimated that both vehicles were travelling at approximately 50-60kph immediately prior to braking, but said that the BMW did not appear to be affected or damaged by the contact.
95. The AOS Dog Handler then backed off, because he could see that the pursuit was approaching a busy intersection with Russley Road, and he wanted to give the BMW space to slow down or stop if the fleeing driver chose.
96. While this was happening, AOS Officer 5 gave two location updates:
  - “North on Avonhead, back towards Memorial”; and
  - “North on Withells, towards John Road”.
97. Both updates were inadvertently inaccurate. The pursuit was travelling:
  - on Avonhead Road back towards Russley Road (as opposed to Memorial Avenue); and
  - on Avonhead Road (as opposed to Withells Road, which intersects with Avonhead Road further to the south), heading back towards Johns Road<sup>22</sup>.
98. These mistakes caused the dispatcher to have difficulty tracking the pursuit on the map. AOS Officer 5 also did not advise SouthComms that they had hit the BMW.
99. AOS Officer 5 said that he was having difficulty transmitting information in general, because the radio channel was busy during the time of the pursuit, and only one officer can transmit at a time.
100. Also at about this time, AOS Officer 3 entered the SouthComms control room with an incomplete understanding of what had happened at the Wairakei Road roundabout. He had heard that a vehicle and a person had been hit and the AOS Dog Handler was pursuing an offender, but believed that the pursuit was on foot. He then heard the vehicle pursuit commence on the main radio channel. He was unable to raise his squad members on the AOS radio channel, and was unable to see any live footage of the pursuit from CCTV cameras in the DCC.

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<sup>22</sup> Johns Road becomes Russley Road approximately 750 metres north of the Wairakei Road roundabout.

101. AOS Officer 3 could hear that the AOS Dog Handler was the pursuing driver, and was comfortable with the fact that SouthComms was controlling the pursuit. He had confidence that the AOS Dog Handler was a highly experienced and capable officer.
102. The pursuit controller asked AOS Officer 3 if he was taking over control of the pursuit, since the AOS were involved. AOS Officer 3 responded that he wasn't, since he was not sufficiently abreast of events. AOS Officer 3 said that he formed the impression that the pursuit controller was happy to retain control. AOS Officer 3 continued trying to raise his team on the AOS radio to obtain a situation update, but communication remained *"quite broken."*
103. He was unable to listen to the progress of the pursuit on the main communications channel because he had no headset. The pursuit controller updated him periodically.
104. AOS Officer 3 later told the Authority that he still expected his team to attempt to stop the BMW at an appropriate time if they deemed it safe to do so. However, he did not inform the pursuit controller that this was the intended tactic<sup>23</sup>.

#### *Attempted vehicle stop on Yaldhurst Road<sup>24</sup>*

105. The BMW turned left from Avonhead Road back on to Russley Road, narrowly missing a heavy stock truck, and accelerated southwards towards Yaldhurst Road. The single lane soon split into two. The AOS Dog Handler could see the BMW ahead weaving between cars as he changed lanes. He assessed that the speed and level of traffic would make an immediate attempt to stop the BMW unsafe.
106. AOS Officer 5 informed SouthComms that they were *"now on Johns<sup>25</sup> [Russley] Road."* Between approximately 4:49:00pm and 4:49:50pm he made three radio transmissions, advising that:
  - their speed was 110-120kph in a 80kph zone;
  - the BMW was staying within its lane and his driving was *"not too bad"*;
  - oncoming traffic was separated from the BMW by a median strip;
  - traffic was generally *"moderate"*; and
  - the speed limit decreased to 60kph on approach to the Yaldhurst Road intersection.
107. As the BMW and dog van approached the Russley Road and Yaldhurst Road intersection, the road had split into four southbound lanes. The traffic became heavy as it waited for the traffic lights to change.

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<sup>23</sup> The AOS commander should communicate the AOS tactic to the Communications Centre where operationally possible.

<sup>24</sup> In the vicinity of 408 Yaldhurst Road.

<sup>25</sup> Johns Road becomes Russley Road approximately 750 metres north of the Wairakei Road roundabout.

108. At 4:49:59pm AOS Officer 5 radioed that they had slowed to 20kph due to heavy traffic, but they had now taken the free left turn and were heading towards the central city on Yaldhurst Road.
109. The BMW and dog van sped up to 40-50 kph after rounding the corner. The wide left-hand shoulder was clear of parked cars. At this point, the AOS Dog Handler said he believed that he was still taking part in *“an AOS operation involving a non-compliant<sup>26</sup> vehicle stop.”*
110. The AOS Dog Handler could see vehicles on the road ahead of the dog van and the BMW, but *“the immediate area was clear.”* He judged that it was safe to attempt to stop the BMW:

*“I pulled out, accelerating hard on his driver’s side or right hand side of his vehicle... and turned into the driver’s side of his vehicle, attempting to push him to the left hand side of the road.”*

111. The AOS Dog Handler told the Authority that he made contact with the BMW *“by the right driver’s door,”* although he was aiming for the pillar between the passenger’s and driver’s windows. He said that he maintained contact with the BMW specifically to prevent it spinning off at an unsafe angle.

*“I believe he reacted to this and turned hard right and his vehicle spun around in front of my vehicle and ended up t-boned at the front of my vehicle.*

*I could see the driver and the passengers were okay and I continued to push the vehicle forward down the road, which was clear.*

*.... At this stage we were slowing to a stop...”*

112. Both officers believed that the BMW had come to a safe stop. As they started to get out of the dog van to apprehend the BMW’s occupants, the driver accelerated hard, performed a u-turn into the opposing lane and headed back towards the intersection with Russley Road.
113. As the BMW was turning, the AOS Dog Handler noticed that driver’s side doors of the BMW were both damaged. As he swung the dog van around to follow the BMW, he noticed that *“it was ‘crabbing’ along the road with the rear of the car to the left.”*
114. The dog van had also sustained damage to the front panel. The AOS Dog Handler later reported that the van was shuddering, an internal alarm was beeping and the wheel alignment was possibly out.
115. The AOS Dog Handler has subsequently advised the Authority that the dog van was still driving in a straight line at this point, and he judged that it was still safe to drive.

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<sup>26</sup> A ‘non-compliant stop’ describes when Police stop a vehicle by applying force. See paragraphs 333-334.

116. Still images from CCTV and a witness's dashboard camera show that the BMW then accelerated through the intersection on a green traffic light, with the dog van approximately 50-60 metres behind. The AOS Dog Handler said he was aware of the damage to the dog van and was unsure at this point whether he would be able to continue in pursuit.
117. Neither officer in the dog van can recall seeing a truck approaching on the other side of Yaldhurst Road while they attempted to stop the BMW. However, the driver of the truck and trailer unit said he was approximately 70 metres from the intersection when he saw the BMW come around the corner into Yaldhurst Road and speed up to approximately 80-90kph. The truck driver said the Police dog van was approximately 4-5 metres behind the BMW.
118. The truck driver then saw the Police van hit the rear right corner of the BMW, causing it to spin across the road in front of his truck.
119. The truck driver said that he *"slammed on brakes in the truck to avoid them. Luckily there was a break in the traffic ahead so...the BMW didn't crash into the traffic turning right on to Russley Road..."*
120. The BMW then went *"straight through the traffic lights which had turned green."* The Police van *"did a u-turn in front of me and continued following the BMW."*
121. At 4:50:31pm AOS Officer 5 advised SouthComms about what had just happened:

*"Comms, Dogs, he's just hit us. We're just having some vehicle trouble. He's back north on Yaldhurst heading out of town. His car is severely damaged, but he's still heading north on Yaldhurst. Current speed 100 in a 100k zone."*

122. At 4:50:44pm AOS Officer 5 transmitted:

*"Yeah Comms, Dogs. We're down to three wheels. We're still north on Yaldhurst back towards West Coast. Traffic. Hold on, we're slowing down to 80. Back down to 80, Comms."*

123. AOS Officer 5 later clarified to Police and the Authority that he did not mean to convey that either the dog van or the BMW had lost a wheel. He was attempting to describe the way the BMW was travelling, which was *"not in a perfectly straight line"* and *"appeared to be out of alignment with the rear of the car more to the left."*

## The crash

124. At approximately 4:51pm, the BMW crossed the centre line into the path of a Honda Jazz. The front of the Honda Jazz hit the BMW side-on, on the left front passenger door. After the impact, the BMW travelled front-first into a ditch at the side of the eastbound lane, while the

Honda Jazz came to rest in the eastbound lane, with its rear right wheel slightly over the centre line.

125. The occupants of the Honda Jazz, Mr Y and the drug courier received serious injuries. Mr X was unhurt.

126. The Authority has set out the various accounts of what happened seconds before the crash, and at the point of impact.

#### *AOS Dog Handler's and AOS Officer 5's account of the crash*

127. The AOS Dog Handler caught up with the BMW, but estimated that both vehicles were now only travelling at 70-80kph.

128. The AOS Dog Handler assessed the immediate situation and made the following observations:

- the driver of the BMW was not showing any sign of stopping for Police of his own accord;
- there were no other Police units in the area to assist (he hadn't heard any units indicate that they were on their way over the radio);
- similarly, there were no road spikes set up to stop the BMW;
- the roads were dry;
- they were now in a rural location with wide grass berms on either side;
- no other traffic was visible; and
- both vehicles were travelling at relatively low speed.

129. Based on these observations, the AOS Dog Handler judged that it was safe and appropriate for him to attempt to try to stop the BMW by hitting it a second time.

130. Staying on the correct side of the road, he moved out from behind the BMW by half a car width to see down the road ahead. He told the Authority that he did not see any oncoming traffic.

131. The AOS Dog Handler estimated that he was travelling at approximately 50kph immediately before the crash. He recalled:

*"At that time the silver BMW suddenly swerved and the rear of the car violently spun out and skidded down the road sideways and hit an approaching vehicle head on with the silver BMW's passenger side.*

*I do not recall there being any contact between my vehicle and the silver BMW vehicle and I do not believe I did make contact with the BMW."*

*“... I saw the Honda Jazz vehicle get hit and the silver BMW bounce off it onto the right hand road berm.”*

132. AOS Officer 5 says that he saw the skewed angle of the BMW worsen, then its forward track suddenly changed and the car started to move to the right and across the centre line in a big, slow, right-hand arc. *“It was at that point that I noticed a vehicle approaching in the on-coming lane. The vehicle, which I now know to be a Honda Jazz, had no time to react.”*
133. The AOS Dog Handler attempted to do a u-turn to drive behind the crashed vehicles, but mistakenly drove into the same ditch as the BMW. AOS Officer 5 hit his head, and was temporarily dazed.

#### *Mr P's account of the crash*

134. Mr P was driving his Honda Jazz eastwards along Yaldhurst Road, with Mrs Q in the front passenger seat, and Mrs P in the rear left passenger seat. Mr P said he saw flashing emergency lights up ahead, which they assumed to be coming from an accident scene. Mr P then realised that the flashing lights were getting closer.
135. After a few seconds he could see half of the Police vehicle's roof-mounted flashing lights. The remainder of the Police vehicle was concealed behind a car in front (the BMW). The BMW was over towards the left-hand side of its lane, with its left wheels just off the tar seal at the side of the road.
136. Both vehicles were travelling on a straight course, without swerving or weaving. The Police vehicle was *“really close”* behind the BMW, and Mr P thought *“that Police car is going to give it a nudge.”* However, he did not see the Police vehicle make contact with the BMW at any point.
137. When the BMW was less than 200 metres away it started sliding, back first, in front of Mr P's car. Mr P braked, and tried to steer his car into the BMW's central side panel, which he hoped would absorb the impact. He knew he wouldn't be able to avoid hitting the BMW.

#### *Mr N*

138. Mr N was standing in a driveway on Yaldhurst Road approximately 200 metres to the east of where the crash eventually occurred. He told the Authority that:
- he heard sirens and went to the end of the driveway to look down the road;
  - a grey saloon and the Police ute passed his position;
  - the grey saloon had damage to the front skirt and the left side skirt was missing;
  - when they went past him, both vehicles were being driven at about 100kph and the Police ute was within a foot of the grey saloon;

- the grey saloon was either in the centre or to the right of its lane. The Police ute was to the right, its front slightly overlapping the grey saloon;
- it looked like the driver of the grey saloon lost control before spinning 90 degrees onto the other side of the road and sliding to a stop [Mr N did not see the subsequent collision]; and
- two or three other Police cars were travelling approximately 300 metres behind the first Police ute.

### Mr X's version of events

139. Mr X recalls a different version of events. During an interview with the Authority, he stated that on the morning of 24 November 2014, he had taken strong pain medication and had also had *"a couple of cans"* of Jim Beam, which adversely affected him.

140. He picked up Mr Y's female friend (the drug courier) from the airport, but he didn't personally know her. As they were waiting in traffic on Wairakei Road, a *"four by four"* turned in front of him, hitting the front of his car which *"annoyed"* him. Then his car was surrounded by the AOS. He told the Authority:

*"I kind of freaked out with them all jumping out of the car 'cos I didn't know what was going on and I reversed into the car at the back, reversed into their four wheel drive vehicle, reversed again to make me a gap and I drove over the traffic island."*

*"And next minute [a Police officer] jumps back into his vehicle, the four by four and rams my vehicle on the traffic island." This caused the girl in the back to hurt her hip. "I thought they were trying to kill my passengers and that made me want to get out of there..."*

141. He said that he didn't hit the Police officer that was standing in front of his BMW because *"he dived out of the road and then I fled."*

142. Mr X admitted that he was trying to get away from the Police van. He tried to avoid members of the public and the Police van's siren meant that traffic was getting out of the way.

143. Mr X took a free left turn at the intersection of Russley Road and Yaldhurst Road because he didn't want to try and squeeze through the banked-up traffic, which he thought would be dangerous. After he turned the corner, the Police van pulled up beside him and tried to push him off the road. He turned his wheels to the right, but he was pushed around into the path of a truck travelling on the other side of the road.

144. From this point, the car drove with a *"crabbing motion."* As he travelled westwards on Yaldhurst Road he attempted to drive on the hard left-hand shoulder so that people could pass him safely. He was travelling at approximately 70-80kph.

145. His car then started to splutter because it had run out of petrol. At that point, *“the Police ute has come from behind again... and smashed the left hand of my car.”* Mr X said he was *“trying to turn the wheel so the car will come around so [he] could avoid [the Honda Jazz] but because of the flat tyre it just skewed straight into them.”*

146. Mr X told the Authority that he did not lose control of the BMW.

#### *Mr Y’s and the drug courier’s version of events*

147. Mr Y told the Authority:

- A car hit them from behind as they were waiting at the Wairakei Road roundabout;
- Men with machine guns got out of a *“black truck”* to their right, and surrounded the BMW;
- Mr X *“took off”*, and a policeman in front of them *“jumped out of the way;”*
- They travelled on the *“wrong side of the road... across the roundabout;”*
- Their maximum speed was 80kph;
- The BMW might have been *“clipped”* by a Police van after turning left on to Yaldhurst Road;
- As they drove back along Yaldhurst Road towards the West Coast, the BMW was handling well; and
- As they pulled over to the side of Yaldhurst Road, they were hit by the Police van, which sent them sideways across the road.

148. The drug courier told the Authority that after the Police attempted to stop their car on Yaldhurst Road, they were able to keep driving but she thought that they must have a flat tyre because the car was shaking. Mr X couldn’t control the car, and he was swearing about this. The car felt *“so wobbly”* and it was making a strange noise: *“tuk, tuk, tuk.”*

#### **Police actions after the crash**

149. Both officers got out of the dog van and ran over to the BMW.

150. The AOS Dog Handler presented his Glock at the occupants of the BMW to ensure they would not try to escape, and then left them under the control of AOS Officer 5.

151. The AOS Dog Handler then ran over to the Honda Jazz to assess the injuries of the three elderly occupants (Mr and Ms P, and Mrs Q). Other Police units, including Officer B, started to arrive at the crash scene and provided first aid to the injured occupants of both vehicles. At 4:52:07, Officer B advised NorthComms that a crash had occurred.

152. At 4:52:40 emergency services were called to the scene. The three occupants of the Honda Jazz were taken to hospital with significant injuries. Mr and Mrs P were hospitalised for 4 days, and Mrs Q was hospitalised for several weeks.
153. Mr Y and the drug courier were cut out of the BMW by emergency services and transported to hospital. Mr X, who was uninjured, was handcuffed and taken into custody.
154. As per standard procedure following a crash, all Police officers who drove vehicles during the incident were breath tested, and returned negative results.
155. The scene of the crash on Yaldhurst Road and the attempted vehicle stop and the Wairakei Road roundabout were secured and examined by the Serious Crash Unit.

### Video and camera footage

156. The Authority has been able to view video footage and still images of the pursuit captured by members of the public, Police officers and crime/traffic CCTV cameras.
157. A sequence of photos taken by a Police officer at the Wairakei Road roundabout shows the BMW boxed in between two AOS vehicles, and the dog van approaching from behind. The next images show the AOS officers getting out of their car. Subsequent events are not captured.
158. CCTV still images from a crime/traffic camera mounted above the roundabout at the intersection of Russley Road and Memorial Avenue show the pursuit travel around the roundabout as described in paragraphs 85 and 86. These images are time-stamped 4:47:11pm – 4:47:37pm.
159. Still images shot from a camera positioned to look back down towards Russley Road at the intersection with Yaldhurst Road show the BMW and dog van approach the intersection. At 4:50:24pm the BMW can be seen taking the free left turn into Yaldhurst Road eastbound, with the dog van approximately two metres behind at 4:50:24pm. Both vehicles appear to be travelling at low speed.
160. Several different cameras (both CCTV and dash cams belonging to members of the public) show the dog van pursue the BMW back through the intersection after AOS Officer 5 attempted to stop the BMW. Both vehicles are travelling westwards on Yaldhurst Road between 4:50:43pm and 4:50:47pm.
161. The images show that even after the traffic lights turns green, traffic waits to allow the BMW and dog van (which are approaching from behind) to travel through the intersection. Both vehicles are travelling at high speed, approximately 100 metres apart.
162. Dash camera footage supplied by a witness stopped at the traffic lights on Yaldhurst Road shows the BMW crossing the intersection in clear detail. The dog van and BMW approach from behind the witness's car. The dog van's flashing lights are reflected in the rear of the car stopped slightly ahead and to the left of witness's car.

163. As the BMW is driven through the intersection, the rear of the vehicle veers slightly to the left. The dog van is driven through the intersection approximately four seconds after the BMW. The witness then drives through the intersection and turns off Yaldhurst Road before any more footage of the pursuit is recorded.

### Mr X, Mr Y and the drug courier

164. Mr X was breath tested following the crash and returned a pass result, despite admitting drinking alcohol earlier that day.

165. On 24 November 2014 Mr X was charged with five counts of recklessly driving causing injury and one count of failing to stop for Police. He was initially charged with aggravated wounding in relation to his actions against AOS Officer 4, but the charge was subsequently amended to wounding with intent to injure.

166. On 7 June 2016, Mr X pleaded guilty to all charges. The Statement of Facts prepared for the criminal proceedings outlined that what happened immediately prior to the crash, from the point at which the AOS Dog Handler pulled out with the intention of performing a vehicle stop manoeuvre, was in dispute (see paragraphs 131 and 145-147 for the conflicting versions).

167. Mr X was sentenced to 3 years and 2 months' imprisonment, and was disqualified from driving for 18 months. He was ordered to pay \$750 each to Mr P, Mrs P, and Mrs Q.

168. The drug courier was found to be concealing drugs. On 28 November 2014 she appeared in the Christchurch District Court and pleaded guilty to one charge of possessing methamphetamine with intent to supply. On 17 February 2016, she was sentenced to 3 months' community detention and 2 years' intensive supervision.

169. Mr Y was not charged with respect to this incident.

### Police officers involved

170. Officers A and B had 24 and 21 years' police service respectively at the time of this incident. Officer B was promoted to the rank of Detective Sergeant in 2011, but had only recently become a supervisor in the Organised Crime Unit.

171. The AOS officers involved in this incident were all appropriately certified. The AOS Dog Handler had 25 years' experience as an AOS officer at the time of the incident.

172. AOS Officer 5 had seven and a half years' Police service at the time of the incident, but had only recently joined the AOS.

173. AOS Officers 3 and 4 had 24 and 22 years' Police service respectively at the time of this incident, including 18 and 16 years respectively as a member of the AOS.

174. AOS Officers 4 and 5 were assessed by an AOS medic at the scene of the crash, and then taken to a medical centre for assessment and treatment. AOS Officer 4 received five stitches for a laceration on his left shin. AOS Officer 5 was diagnosed with concussion. Both officers were able to return home that evening.

### Crash analysis

175. On the day of this incident the weather was fine and dry. It occurred late on a Monday afternoon, at the start of rush hour. Traffic was described by witnesses as “moderate” but it became heavy at intersections and roundabouts.
176. A crash investigator from the Police Serious Crash Unit examined the vehicles involved in this incident and the locations where significant contact between the BMW and Police vehicles occurred.
177. Mr X was driving a 1997 silver BMW saloon. It held a current warrant of fitness, but the vehicle licence had recently expired.

### Attempted vehicle stop near 408 Yaldhurst Road

178. The attempted vehicle stop on Yaldhurst Road occurred approximately 90 metres to the east of the intersection with Russley Road.
179. At this point, it is a two-lane chip sealed road. The eastbound lane is bordered by a cycle lane and separated from the westbound lane by a painted traffic island. The speed limit for this section of road is 60kph.
180. Analysis shows that the BMW was towards the left of the eastbound lane when the dog van made contact with its right rear corner and slid along the BMW, causing the BMW to rotate clockwise, and the right rear wheel to move out of alignment. Instead of pointing straight ahead, the wheel became angled towards the left front wheel. The BMW then rotated into a broadside (sideways) skid and was pushed by the dog van 23 metres down the road, towards the centre line. The BMW rotated 180 degrees during the contact.
181. The damage to the BMW’s right rear wheel caused it to “crab” as it was driven back along Yaldhurst Road in a westerly direction, and made the BMW difficult to control. Video footage also shows the BMW “fishtailing” as it is driven through the intersection with Russley Road.
182. The crash analyst noted that the driver of the BMW (Mr X) “would need to continually correct his steering to maintain his travel path, with the vehicle continually wanting to crab or move to the left...this damage would severely affect the handling of the BMW and it would be very unstable.”<sup>27</sup>

### The crash near 542 Yaldhurst Road

183. The crash occurred approximately 1.3 km to the west of the intersection with Russley Road. The speed limit for this section of road is 80kph.

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<sup>27</sup> Crash Investigation Report.

184. Calculations based on the tyre marks show that the Honda Jazz was travelling at approximately 23kph and the BMW was travelling at 36kph at impact. At the time of the loss of control, the BMW was travelling more than 89kph, and was tracking to the left of its lane.
185. The cause of the crash has not been able to be determined. In the crash analyst's view, one of three possible scenarios occurred:
- 1) Mr X attempted to correct his leftward travel path into the lane proper, but over-corrected and lost control, causing the vehicle to go into a clockwise rotation and broadside skid;
  - 2) Mr X saw the dog van approaching to overtake on his right side. To combat this manoeuvre, he attempted to steer right which caused the vehicle to oversteer and go into a sudden clockwise rotation; or
  - 3) The dog van made contact with the BMW in an attempt to carry out a vehicle stop manoeuvre. The existing damage to the right rear wheel caused the BMW to go into a clockwise rotation. However, the crash analyst considered this final scenario unlikely because the expected damage to the BMW was not present.

## The Authority's Investigation

### THE AUTHORITY'S ROLE

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186. 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 to
- 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.

187. The Authority's role on the completion of an investigation is to form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint.

### THE AUTHORITY'S INVESTIGATION

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188. As required under section 13 of the Independent Police Conduct Authority Act 1988, Police notified the Authority on 24 November 2014 of the incident.

189. The Authority commenced an independent investigation and spoke with Mr X, Mr Y and the drug courier; as well as Mr and Mrs P and Mrs Q's family; and other members of the public who witnessed this incident.

190. The Authority also spoke to officers from the Organised Crime Unit, AOS, Airport Police and Police communications; and viewed relevant CCTV and camera footage. The Authority visited the scene of the planned vehicle stop, pursuit and final crash on 26 November 2014.

191. The Authority also monitored the Police investigation and reviewed all documentation obtained and produced by the Police investigation team.

### ISSUES CONSIDERED

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

- 1) Did the Organised Crime Unit appropriately record, plan and execute the response to the information provided?
- 2) Did the Armed Offenders Squad comply with policy in preparing for deployment?
- 3) Was the Armed Offenders Squad's response at the airport and the Wairakei Road roundabout conducted according to policy and good policing practice?
- 4) Was the pursuit carried out in accordance with law and policy?



## The Authority's Findings

### ISSUE 1: DID THE ORGANISED CRIME UNIT APPROPRIATELY RECORD, PLAN AND EXECUTE THE RESPONSE TO THE INFORMATION PROVIDED?

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193. The information passed to Officer A just before 10am, and to Officer B approximately 45 minutes later, indicated to them that they needed to respond quickly to the imminent arrival of a suspected drug courier at Christchurch Airport.

#### Officer B

194. Officer B was designated by Officer A as the Officer in Charge of the Investigation (OC Investigation). This meant that Officer B had overall responsibility for how Police would respond to the information received, and which resources would be involved in the response. This included clearly defining the role the AOS would play in the operation.

195. When planning the overall operation, Officer B was accountable for ensuring that key tasks were not overlooked, appropriate roles and responsibilities were designated, and necessary resources were available. It was up to Officer B to plan how the offenders would be arrested once the BMW had been stopped by the AOS, and how any drugs or other evidence should be handled (see paragraphs 351-357 for further explanation).

196. Officer B and his team responded quickly to the information and directions given to them by Officer A, and formulated an initial plan under time pressure. As outlined in paragraphs 18 and 20, Officer B took the time to first establish accurate background information about Mr X, Mr Y and their vehicle, and was able to build up a profile of the courier's likely movements. He maintained contact with the surveillance team throughout the operation, and followed their movements via surveillance radio.

197. After considering the options, Officer B decided that a vehicle stop was the best way to apprehend the suspects and secure any available evidence. He requested the assistance of a suitable officer to search the drug courier and a drug dog to search the BMW.

198. The OC Investigation is required to record the details of all critical strategic decisions, as well as the factors which were considered or discounted. Officer B recorded some notes during the day, including his risk assessment (paragraph 24) but for the most part he didn't record his decision making process because he said he was pressed for time.

199. The Authority considers that, as time passed during the day without the arrival of the courier, Officer B had several opportunities to record his planning in his notebook or on his mobility device. Such opportunities presented when he was travelling to and from the airport, when he was waiting at the airport, and when he returned to Christchurch South Police station after standing down the AOS at 1pm.

200. The Authority has considered whether or not Officer B sufficiently liaised with other key sections of Police, or the airport, throughout the operation. This analysis is set out below.

#### *Liaison with AOS*

201. The Authority accepts that Officer B was justified in his decision to request AOS assistance to stop the BMW because he had identified that there was a reasonable risk that Mr X and his associates might be armed and pose a risk to the public and Police (see paragraph 20).

202. When Officer B requested AOS assistance, it was his responsibility to ensure that they were properly briefed, and that the role they would play was clearly defined and understood by both the OCU and AOS.

203. Officer B had a responsibility to turn his mind to the scenarios that might develop when the AOS attempted to stop the BMW within the airport's grounds; and how Police, including the AOS, should react. The vehicle stop was not an isolated operation which the AOS was solely responsible for executing. It was a tactic sitting within a wider Police response, for which Officer B retained full oversight.

204. For example, it was reasonably foreseeable that the occupants of the BMW would attempt to flee from the AOS when they tried to stop them. The Authority finds that it would have been best practice for Officer B to have discussed this possibility with the AOS to establish an agreed response (for example, whether a pursuit should be initiated).

205. It was also important for Officer B to clearly communicate to the AOS the limits of the operation – the circumstances in which Police would stop attempting to apprehend Mr X, Mr Y and the drug courier, despite the potential loss of drug evidence. These conversations did not take place.

#### *The decision to stand down the AOS*

206. Officer B directed the AOS to 'stand down' at approximately 1pm, when the drug courier had not arrived.

207. The AOS is a part-time squad, meaning that team members hold normal jobs within the Police, but deploy as an AOS officer when required. When the AOS 'stand down' from a deployment, the AOS officers return to the Police station, change out of their AOS uniform and body armour, and go back to their day-to-day roles.

208. Officer B told the Authority that this decision was based on the fact that the BMW had not driven near the airport, which caused him to conclude that the pick-up of the courier was not going to happen.

209. Officer A was happy with Officer B's decision to stand the AOS down when they spoke upon Officer B's return to Christchurch South Police station after 1pm. The surveillance team were still following the BMW, and Officer B considered that it would be an easy process to redeploy the AOS if the BMW looked like it was heading for the airport.

210. AOS Officer 1 later told the Authority that, upon receiving Officer B's direction to 'stand down', he understood that Police had probably missed their opportunity to apprehend the courier, and AOS services were no longer required.
211. Given that Officer B did not know whether the drug courier would be arriving in the morning or the afternoon, a better approach would have been to have put the AOS on 'stand-by,' meaning that the AOS team would have remained on duty and would have been ready to act. It was quite possible that the courier would arrive later in the day, and that AOS assistance would still be required.
212. If kept on 'stand-by,' the AOS team would not have to go through a full redeployment and re-briefing process. As the officers do not go back to their day jobs, the AOS would also have had time to develop their planning and preparation for the vehicle stop while waiting to act.
213. It would appear that Officers A and B misunderstood what was involved in the redeployment of the AOS. Officer B redeployed the AOS at 3:20pm that afternoon, and then sought to stand them down again. This time, AOS Officer 3 advised against this course of action, and the AOS remained deployed.

#### *Liaison with DCC and SouthComms*

214. Officer B did not inform either the DCC or SouthComms about the operation. While not a policy requirement, it would have been good practice to have done so for the following reasons:
- 214.1 Both the DCC and SouthComms were in a position to provide tactical support to the operation, especially if it did not go as planned. The DCC has access to all communications information, and can act in an incident response capacity. Having a wider range of Police units and resources under its command, the DCC could have been in a position to re-task these resources to assist with the operation and subsequent pursuit.
- 214.2 It is likely that the shift commander at SouthComms would have been better able to control the pursuit that occurred after the failed vehicle stop had he received a background briefing about the operation at the airport, the risks associated with Mr X and Mr Y, and the tactics that had been planned (see the discussion in paragraphs 272-276).

#### *Liaison with the Airport*

215. Officer B chose the airport to stop the BMW and search Mr X, Mr Y and the drug courier to ensure that they did not have time to dispose of or hide drug evidence (see paragraph 25).
216. However, Officer B did not contact the airport company to advise them of his plans. Officer B was therefore unaware of any scheduled airport operations (such as building or carpark maintenance work) which might have interfered with the safe execution of his plan. He was

also unable to utilise the airport's extensive CCTV network to assist in the surveillance of the suspected offenders.

217. In addition, Officer B did not contact and inform the Police officers based at the airport, despite the use of the Airport Police's base being integral to Officer B's plan to search the occupants of the BMW. The Airport Police may have found themselves responding to public reports of an armed incident at the airport without knowing that it was a Police operation.
218. There is no evidence to indicate that Officer B considered other locations to carry out the stop, for example the roads leading away from the airport where speed was limited.
219. The Authority has no information to show that Officer B considered the significant disruption that an unexpected armed incident would cause to people travelling, working or otherwise depending on the smooth running of Christchurch Airport. Such an operation risked compromising Christchurch Airport's international and domestic reputation as a safe, secure and controlled transport hub.
220. In the Authority's view, it was not essential to stop the potentially armed offenders within the airport environment grounds. In fact, doing so added complication given the different routes by which it was possible to enter and exit the airport. The airport location was chosen by Officer B for its convenience to the officers conducting the operation, without appropriate consideration to its suitability from a wider, public perspective.

## Officer A

221. Officer A was not directly involved in planning and executing the operation. However, as Officer B's supervisor, he had a responsibility to retain oversight of Officer B and his operational planning. This was especially important given that Officer B was new to his role within the OCU (see paragraph 15).
222. Officer A took 45 minutes to brief Officer B. This delay put Officer B under unnecessary pressure to plan a timely response. In addition, Officer A did not pass on to Officer B the assessment he had made of the initial information, or his reasoning and judgment that a vehicle stop was the best response option and why (see paragraphs 11-12 and 17).
223. Had Officer A provided more active oversight, he may have picked up on Officer B's omissions, and recognised that he had not considered the impact of the operation on the public in his planning, or the practicalities around the deployment, then stand-down, of the AOS. Officer A told the Authority that he was surprised that SouthComms had not been informed about the operation, and that it was standard practice to liaise with the Airport Police when the OCU was operating there.

## FINDINGS

A vehicle stop was the appropriate tactic to stop the BMW and secure the occupants.

Officer B conducted his initial response planning in a timely manner, but he failed to discharge all the duties and responsibilities of the Officer in Charge of the Investigation. His decision to stand the AOS down was premature. In addition, Officer B did not:

- a) develop and record his operational planning and decision making process, despite having opportunities to do so;
- b) properly brief the AOS about the role he expected them to play within the operation, or agree a plan of action should the occupants of the BMW decide to flee;
- c) advise the DCC and SouthComms about the operation;
- d) advise Christchurch Airport and the Airport Police about the planned operation;
- e) appreciate the implications of conducting the operation at Christchurch Airport, or consider an alternate location.

Officer A failed to provide adequate oversight. He did not pass information to Officer B in a timely manner, nor did he actively supervise Officer B.

## ISSUE 2: DID THE ARMED OFFENDERS SQUAD COMPLY WITH POLICE POLICY IN PREPARING FOR DEPLOYMENT?

224. The initial ability of the AOS to prepare for deployment was limited by time, and also by a lack of available information about the drug courier's intended movements. As the day went on, their ongoing preparation and tactical planning was limited by Officer B's decision to stand the first AOS team down, meaning the operation effectively became two separate deployments.

### Operational planning

225. As required by policy, both tactical commanders (AOS Officers 1 and 3) started to complete AOS Operation Record documents at the beginning of each deployment (see paragraphs 330-331).

226. This document requires the tactical commander to consider various aspects of the deployment while planning a response. This involves clarifying the aim and the mission, and assessing the location of the operation, the risks and opportunities associated with the offenders and other relevant circumstances while considering the various tactical options available to him or her.

227. The document also prompts the tactical commander to include considerations such as communications, external resources, time constraints, and the impact of the operation on the public as part of their tactical planning.

228. Both tactical commanders were under time pressure to formulate their plan, and consequently some of this process was completed mentally, and not written down.

229. AOS Officers 1 and 3 turned their mind to how the vehicle stop could be successfully carried out at the airport, based on the information provided to them by Officer B.
230. The plan to block the BMW at the exit barrier was developed on the basis of AOS Officer 1's study of a map at the airport, and reconnaissance undertaken once the AOS teams arrived. However, the tactical commanders did not properly consider the possibility that the BMW would flee from the vehicle stop, or plan how they would deal with this scenario. For example, the Nissan Patrol did not have the performance capability to pursue the BMW if it became necessary to do so.
231. Proper consideration of this possibility might have led the AOS team to clarify with Officer B whether the AOS were expected to conduct a pursuit, and whether other Police resources (including SouthComms, DCC and Airport Police) had been briefed and were ready to provide support if Mr X decided to flee.
232. Irrespective of this, it would have been good practice for AOS Officers 1 and 3, as the tactical commanders, to have informed SouthComms and the DCC of their deployment, which they did not do.
233. The AOS Operation Record specifically prompts the tactical commander to consider any adverse impacts of the operation on people, the political environment or public perception of Police. If such impacts are identified, the tactical commander should consider if they are justified in the circumstances, or how the impacts might be mitigated.
234. The adverse implications of an armed AOS operation at Christchurch Airport, as discussed above in paragraph 219, should have been obvious to AOS Officers 1 and 3 had they properly turned their minds to this aspect of the tactical planning process.
235. As previously discussed, this operation had the potential to significantly disrupt airport operations, which would have had a profound effect on vulnerable members of the public at the airport, as well as the international and commercial interests of Christchurch. Despite the urgency of the situation, the suitability of the airport location, and the adequacy of liaison with Christchurch Airport management and Airport Police, should have been questioned by AOS Officers 1 and 3, and raised with Officer B.

## FINDINGS

A vehicle stop was the only reasonable tactic to use in the circumstances.

AOS Officers 1 and 3 did not adequately address and plan for the possibility that the BMW would flee from the AOS vehicle stop team.

AOS Officers 1 and 3 should have advised SouthComms and the DCC of their deployment.

AOS Officers 1 and 3 did not adequately consider the implications and adverse impacts of undertaking an armed vehicle stop at Christchurch Airport as part of their tactical planning.

## ISSUE 3: WAS THE ARMED OFFENDERS SQUAD'S RESPONSE AT THE AIRPORT AND THE WAIRAKEI ROAD ROUNDABOUT CONDUCTED ACCORDING TO POLICY AND GOOD POLICING PRACTICE?

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### The Airport

236. During both deployments, a team of Police vehicles (including a Police dog van) travelled to the airport to carry out the vehicle stop. The AOS forward commanders (AOS Officers 2 and 4) appropriately briefed their teams at the airport and ensured that the AOS officers had been read their Fire Orders<sup>28</sup>. The AOS teams intended to stop the BMW as it came out of the pick-up area by blocking it from leaving the airport.
237. During the second AOS deployment, AOS Officer 4 chose to position himself in the front passenger seat of the first Police vehicle, the Nissan Patrol, which was contrary to policy, and could have compromised his ability to command the AOS team's response.
238. Aside from general concerns about the decision to conduct the vehicle stop at the airport (see Issue 2), the Authority also considers that the specific location chosen to stop the BMW within the airport grounds meant that there was a heightened risk that the plan would fail.
239. The plan depended on the surveillance team observing Mr X and Mr Y pick up the unknown drug courier, and communicating this fact to Officer B. Officer B would then advise AOS Officer 3 by mobile phone that the vehicle stop could go ahead. AOS Officer 3 would then order AOS Officer 4 to conduct the stop at his discretion.
240. This three-stage chain of communication had to be completed before the BMW (having left the airport pick-up zone) travelled approximately 250 metres to the point opposite the Air New Zealand engineering carpark where the AOS team were waiting.
241. Based on this plan, the timing was exceedingly tight, and in the Authority's opinion, was unlikely to have given the AOS team enough time to deploy successfully. The Authority has already noted that there was no contingency plan for a fleeing driver situation.
242. The surveillance team, AOS and Officer B's team were all listening to the surveillance radio channel. This radio channel could have been used to more efficiently pass messages and orders between the teams, rather than having the three-stage chain of communication.

### Wairakei Road roundabout

243. As described in paragraph 66, AOS Officer 4 judged that an opportunity to safely secure the BMW had presented itself on the approach to the Wairakei Road roundabout. The AOS team appropriately adapted their plan to the layout of the road in order to attempt to block the BMW.

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<sup>28</sup> See paragraphs 324-328.

244. AOS officers then got out of their vehicles with guns raised at Mr X and told him not to move. Mr X immediately reversed into the Police car behind him, then drove forward into AOS Officer 4, and accelerated away.
245. As noted earlier, the Authority finds that it was reasonable for both AOS teams to consider the possibility that the driver of the BMW, when stopped, might attempt to flee. However, the Authority accepts that Mr X's violent response to the attempted vehicle stop was not reasonably foreseeable. Although known to Police, Mr X did not have a history of violence towards Police.
246. In interview with the Authority, the AOS Officer 3 explained that other tactical options for securing and immobilising the BMW could not safely be used in the circumstances. The Authority accepts this.

## FINDINGS

Generally, appropriate tactics were used by the AOS at Christchurch Airport and the Wairakei Road roundabout.

Communication tactics between the surveillance team, OCU and AOS could have been planned more efficiently during the planned vehicle stop.

The AOS team appropriately adapted their tactics to stop the BMW at the Wairakei Road roundabout. Mr X's violent response at the roundabout was not reasonably foreseeable by the AOS.

## ISSUE 4: WAS THE PURSUIT CARRIED OUT IN ACCORDANCE WITH LAW AND POLICY?

247. When Mr X drove into AOS Officer 4 at the Wairakei Road roundabout and accelerated away (see paragraphs 69-73), Police had to consider how to respond. The focus was now on a fleeing offender who had intentionally injured a Police officer. The operation to stop and secure suspected drug dealers was no longer the primary focus.
248. The AOS team had been briefed to stop the BMW for the purpose of searching it, and the occupants, for drugs. However, no clear direction had been given to the AOS by Officer B about what they should or should not do if the BMW managed to flee from the vehicle stop.
249. Neither tactical commander (AOS Officer 1 and AOS Officer 3) had planned for this contingency themselves, or clarified this with Officer B. As such, it was unclear whether the AOS team was expected to go after the BMW and stop it 'at all costs,' or allow it to drive away (on the assumption that the surveillance team would continue monitoring it).
250. Immediately after Mr X had hit AOS Officer 4 and driven away from Police, the AOS Dog Handler had to decide how to respond, based on the actions of Mr X as he saw them, his appreciation of the threat posed by Mr X, and the circumstances and environmental conditions at that time. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment, and it is explained in more detail in paragraphs 318-322 of the report.

251. At the start of the operation, the AOS Dog Handler believed that Mr X and Mr Y were “*dangerous offenders*” who were probably armed because of their drug dealing activities and gang connections (see paragraphs 55-56). Mr X’s actions at the Wairakei Road roundabout escalated his risk perception, so that he now believed that Mr X posed a serious risk to the public and to Police officers, and needed to be stopped. The AOS Dog Handler’s Perceived Cumulative Assessment (PCA) was that Mr X presented a threat of grievous bodily harm or death (see paragraphs 318-322).
252. At this point, the AOS Dog Handler believed that he was the only Police vehicle in the AOS team able to immediately respond to the situation, since the rest of the AOS team were tending to AOS Officer 4, or were stuck in the damaged and un-driveable Police car (see paragraph 78). The AOS Dog Handler did not know whether there were any other Police vehicles nearby to immediately support him, and had limited radio communications (see paragraph 74).
253. For these reasons, the AOS Dog Handler decided to commence a pursuit of the BMW. The pursuit lasted approximately six minutes before the BMW crashed into the Honda Jazz.

#### **Was the AOS Dog Handler justified in commencing a pursuit of the BMW?**

254. Police officers are empowered to stop a vehicle if they reasonably believe that a person in the vehicle has committed an offence punishable by imprisonment under section 9 of the Search and Surveillance Act 2012 (see paragraph 338).
255. Under current Police fleeing driver policy, officers may commence a pursuit when a driver who has been signalled to stop by Police fails to stop and attempts to evade apprehension (see paragraphs 338-342 for the relevant policy section).
256. As described in paragraph 75, the AOS Dog Handler believed that a Police officer had been seriously hurt or killed by Mr X in his attempt to get away from Police. Consequently, it was reasonable for the AOS Dog Handler to believe that Mr X had committed a serious offence which would be punishable by imprisonment, and try to stop the vehicle.
257. Immediately after the BMW sped away from Police at the roundabout, the AOS Dog Handler pulled out to follow, and turned on his lights and sirens to signal the driver to stop. Mr X did not stop, and continued to accelerate down Memorial Avenue. The AOS Dog Handler was therefore justified in commencing a pursuit.
258. Officers are required by the fleeing driver policy to conduct a risk assessment prior to commencing a pursuit. If the apparent risk to the public, the occupants of the fleeing vehicle, or Police are too great, a pursuit should not be initiated.
259. The AOS Dog Handler considered the weather, the condition of the roads, the level of traffic on the roads, and the threat posed by the occupants of the BMW. The weather was fine and the roads were dry. Although rush hour was imminent, traffic was not heavy in the immediate

area. The AOS Dog Handler saw that he would be able to drive the correct way around the roundabout to follow the BMW.

260. The AOS Dog Handler considered that Mr X posed a significant risk to the public, based on his aggression towards AOS Officer 4 and the possibility that he was armed (see paragraph 77). This, to his mind, weighed heavily in favour of pursuing and stopping the BMW.

## FINDING

The AOS Dog Handler was justified in commencing a pursuit of the BMW, and complied with law and policy in doing so.

### Did communication between the pursuing officers and SouthComms comply with Police policy?

261. The Police fleeing driver policy requires officers who commence a pursuit to provide notification of this to the communications centre. The policy requires the dispatcher to then provide a safety warning. After acknowledging this warning, officers must provide information about their location and direction of travel to the dispatcher (see paragraphs 343-344).
262. The dispatcher is then required to request information from the pursuing officers about the reason for the pursuit, vehicle description, 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.
263. As described in paragraph 79, AOS Officer 5 advised the dispatcher that they were in pursuit, and of their location and direction of travel. Approximately 18 seconds later, the dispatcher provided the pursuit warning, which AOS Officer 5 acknowledged. He also advised the dispatcher that the officers in pursuit were AOS officers, and that the AOS Dog Handler and vehicle were certified to take part in a pursuit.
264. As required by policy, the dispatcher requested AOS Officer 5 to provide a reason for the pursuit. He responded that the BMW had not stopped when directed to by Police, and that it was "a surveillance AOS job." This did not provide the dispatcher or the pursuit controller with sufficient information to fully understand the serious context of the pursuit.
265. The pursuit controller said that it was not until Officer B told him that the occupants of the BMW were thought to possess methamphetamine that he "was satisfied that the officers involved believed there was sufficient reason to stop the vehicle, and when it didn't, that they were justified in pursuing it." The pursuit controller was told this approximately two minutes after the pursuit started.
266. The pursuit controller remained unaware of the events leading up to the pursuit, including why the AOS had been involved and the fact that AOS Officer 4 had been hit by the BMW. In the Authority's view, this was important contextual information for the pursuit controller to

consider as part of his ongoing risk assessment and judgement about whether to allow the pursuit to continue.

267. During his interview with the Authority, AOS Officer 5 said that he presumed that SouthComms had been informed about the joint OCU/AOS operation by those in charge. Regardless of this assumption, the Authority believes that AOS Officer 5 should have informed SouthComms of Mr X's dangerous behaviour at the Wairakei Road roundabout.

268. Both AOS Officer 5 and the AOS Dog Handler commented that there were periods when they couldn't transmit over the radio because it "*bleeped out on several occasions.*" Digital radio only permits one transmission at a time. If another transmission is already in progress, an officer wanting to transmit over the radio needs to wait until the radio channel is clear.

269. AOS Officer 5 covered some essential information in his pursuit commentary, such as location, speed and the level of traffic. However, even taking radio difficulties into consideration, there was some key information that he did not provide, or provided inaccurately (see paragraphs 82 and 96-97). This caused the dispatcher some confusion, and did not properly convey the aggressive nature of Mr X's driving.

270. AOS Officer 5 did not advise SouthComms that:

- The BMW had travelled the incorrect way around the Wairakei Road roundabout;
- Both vehicles passed through red traffic lights and stop signs without stopping;
- The dog van made contact with the BMW on Avonhead Road; and
- The BMW made a dangerous turn in front of a stock truck on Russley Road.

271. AOS Officer 5 did radio SouthComms about the attempted vehicle stop eastbound on Yaldhurst Road. However, the radio transmission set out in paragraph 121 implied that the BMW had deliberately hit the Police van, which was incorrect, and gave SouthComms an inaccurate picture of what had taken place. The subsequent radio message in paragraph 122 indicated that the Police van was now driving on three wheels, which was also not the case.

### *Command and control of the pursuit*

272. The pursuit controller's ability to manage and control the pursuit was compromised by the fact that SouthComms had not been advised earlier in the day about the potential operation and AOS involvement; and also by problems with the AOS radio channel which drew AOS Officer 3's focus away from the unfolding pursuit on the main radio channel.

273. As described in paragraphs 91-92, the pursuit controller was unsure whether or not he was controlling the pursuit because he had been told it was connected to an AOS operation. He attempted to clarify the position with AOS Officer 3 over the radio, but could not get through to him.

274. AOS Officer 3 was also having difficulty understanding what was happening due to poor radio contact with his team. It was for this reason that he declined to take control of the pursuit when he entered the communications centre (see paragraph 100).
275. The result was that, through no fault of his own, the pursuit controller was not able to provide fully informed, effective command and control of the pursuit. Had he been briefed about the nature of the operation at the airport and the potential for a pursuit, he could have prepared himself by thinking about the possible risks, and would have been in a stronger position to provide more meaningful support to the AOS Dog Handler (such as coordinating patrol units already in the vicinity of the airport to set up road spikes or road blocks).
276. Additionally, AOS Officer 3 should have provided the pursuit controller with a short briefing on the context of the pursuit when he entered SouthComms. He should also have informed the pursuit controller that he believed that his officers intended to carry out a vehicle stop on the fleeing BMW (see paragraph 104).

## FINDINGS

AOS Officer 5 complied in part with his communication obligations under Police policy. However, he failed to advise SouthComms about some high-risk aspects of Mr X's driving and described other events inaccurately, which gave SouthComms an incorrect picture of what was occurring.

AOS Officer 3 should have provided the pursuit controller with a short briefing on the context of the pursuit when he entered the SouthComms centre.

The pursuit controller's ability to control the pursuit was compromised by the fact that SouthComms had not been told about the operation.

### **Did the AOS Dog Handler and pursuit controller comply with Police policy in relation to their ongoing risk assessment and the option of abandonment?**

277. The fleeing driver policy requires Police to abandon a pursuit if at any stage the risk to the safety of the public and the Police outweighs the immediate need to apprehend the driver. Pursuing officers and the pursuit controller must continually assess the relevant risk factors to determine whether it is justifiable to continue the pursuit.
278. In addition, the fleeing driver policy states that a pursuit must be abandoned if the offender's identity becomes known and they can be apprehended later, as long as there is no immediate threat to public or staff safety or the fleeing driver's location is no longer known.
279. In the Authority's view, there were two occasions when the pursuit should have been abandoned.

### *Identification of offenders*

Police policy states that a pursuit must be abandoned if the offender's identity becomes known and he or she can be apprehended later, as long as there is no immediate threat to public or Police safety, or the fleeing vehicle's location is no longer known (see paragraphs 349-350).

#### *Pursuit controller*

280. The pursuit controller was unaware of the context of this pursuit and that the fleeing vehicle contained more than one 'offender': the fleeing driver; and an unidentified drug courier, who was the focus of the original operation.

281. Based on his limited knowledge, the 'offender' in the pursuit controller's mind was the fleeing driver. When Officer B confirmed that the identity of the fleeing driver was in fact known, the pursuit controller should have ordered the pursuit to be abandoned.

#### *AOS Dog Handler*

282. As described in paragraph 89, the AOS Officer 5 told the dispatcher that the fleeing driver's identity was unknown, because both he and the AOS Dog Handler believed that Mr X may have been replaced by a new driver when surveillance lost view of the BMW briefly at the airport.

283. The AOS Dog Handler was also aware that a second offender, the drug courier, was probably in the BMW and that person's identity was unknown.

284. The Authority accepts that there was sufficient doubt in the AOS Dog Handler's mind about the identity of the two offenders for it not to be incumbent upon him to abandon the pursuit after Officer B's radio transmission.

### *After the attempted vehicle stop near 408 Yaldhurst Road*

285. The attempted vehicle stop on Yaldhurst Road undertaken by the AOS Dog Handler is discussed in greater detail below. However, paragraphs 113-114 and 121-122 detail that both the AOS Dog Handler and AOS Officer 5 were aware that the BMW and the dog van had sustained significant damage during the attempt and that this damage was affecting the steering of both vehicles.

286. At the time, AOS Officer 5 radioed that they were "*having some vehicle trouble*" (see paragraph 121). The AOS Dog Handler later reported that the BMW was "*'crabbing' along the road*", while he also believed that the wheel alignment in the dog van was possibly out. He subsequently said that the dog van was still driving in a straight line and he thought that it was safe to continue.

287. The Authority's view is that it was too dangerous to continue a high-speed pursuit in these circumstances. With the steering potentially compromised, it was possible that the driver of either vehicle could have lost control, endangering themselves, the vehicle's occupants and other road users.

The officers should have abandoned the pursuit when AOS Officer 5 radioed SouthComms that the BMW was damaged and was travelling northwards on Yaldhurst Road (see paragraph 121). Other Police units could then have been directed to make enquiries. Given the obvious damage to the BMW, it was unlikely that the offenders would have been able to travel a great distance.

## FINDINGS

The pursuit controller should have abandoned the pursuit after Officer B confirmed that the fleeing driver's identity was known over the main radio channel.

There was sufficient doubt in the mind of the AOS Dog Handler about the identity of the two offenders to justify his decision not to abandon the pursuit after Officer B's radio transmission.

Due to the damage to both vehicles, the AOS Dog Handler should have abandoned the pursuit after the attempted vehicle stop.

### **Did the officers comply with Police policy with respect to speed and manner of driving during the pursuit?**

288. The AOS Dog Handler told the Authority that he undertook regular risk assessments during the pursuit, but relied on AOS Officer 5 to communicate information about the BMW's speed and manner of driving to SouthComms.
289. The building rush hour traffic limited the speeds that the dog van and the BMW were able to reach during the pursuit, keeping them at an acceptable level. The maximum speed reached was 120kph in an 80kph zone, in a free-flowing section of Russley Road. Within a short period of time both vehicles were required to slow to 20kph in order to take the left-hand turn into Yaldhurst Road.
290. As described in paragraphs 85-86, CCTV footage shows that the dog van and the Nissan Patrol followed the BMW on the wrong side of the road around the roundabout at Russley Road and Memorial Avenue. The officers themselves cannot recall driving on the wrong side of the road.
291. Police should not follow a fleeing vehicle onto the wrong side of the road unless there are exceptional circumstances. Where circumstances justify it, Police should only cross the centre line if the risk to other road users is minimal.
292. The manoeuvre itself was captured on CCTV footage and carried out at a relatively low speed (approximately 30kph) due to traffic congestion. The Police vehicles were on the wrong side of the road for a short distance (approximately 50 metres). Oncoming traffic could see the police vehicles and had stopped for them. For these reasons, the Authority finds that the manoeuvre was completed with relatively low risk to other road users.

### *Vehicle stop manoeuvre*

293. The Authority accepts that the contact between the dog van and the BMW on Avonhead Road was accidental. However, the attempted vehicle stop east-bound on Yaldhurst Road was a deliberate use of force by the AOS Dog Handler intended to bring the BMW to a stop so that occupants could be apprehended (see paragraphs 110-112).
294. Sections 39 and 40 of the Crimes Act 1961 empower an officer to use the minimum level of force necessary in order to carry out an arrest, or apprehend a person who is fleeing to avoid arrest (see paragraphs 316-317). The AOS Dog Handler explained to the Authority that he believed:
- the circumstances were serious enough to justify his attempt to forcefully stop the BMW under these sections;
  - he was still tasked and authorised to carry out a vehicle stop (see paragraphs 55 and 76).
- As an experienced AOS officer, he was trained in all aspects of the vehicle stop manoeuvre (see paragraphs 333-337).
295. A vehicle stop is undertaken by suitable trained AOS officers and involves a team of vehicles for safety reasons.
296. Any attempt by a single Police vehicle to forcefully stop a fleeing offender is extremely dangerous and is an option of last resort in the gravest of circumstances, such as a hostage situation.
297. The fleeing driver policy makes provision for an AOS commander to authorise suitably trained AOS officers to conduct a vehicle stop during a pursuit. However, such authorisation is only given in life-threatening situations involving a mobile armed offender, and then only when a team is available (see paragraph 337).
298. The vehicle stop had been approved by the AOS Commander as part of the operation to stop and secure suspected drug dealers at the airport. As discussed in paragraph 247, the subsequent pursuit was a completely new scenario requiring its own assessment and response.
299. There was no clear evidence that the occupants of the BMW were armed and deliberately threatening members of the public. In the Authority's view, it was not necessary to stop the BMW immediately. By this stage, Mr X's identity had been confirmed by Officer B over the radio meaning he could be apprehended at a later time without exposing road-users, the BMW's occupants and the Police to further risk.
300. The AOS Dog Handler knew that he did not have the support of other trained AOS officers to complete the tactic safely. The Authority finds that his attempt to push the car from the side was fraught with risk, including the possibility that the offender's car would skid or flee into the path of other traffic, as in fact happened.

301. The AOS Dog Handler's precaution in waiting to conduct the stop at comparatively low speed, on what he believed was a clear stretch of road, did not mitigate the risks. For whatever reason, he did not see the oncoming truck (see paragraph 117), and the truck driver had to undertake emergency braking to avoid the BMW.
302. The AOS Dog Handler did not have authorisation to undertake a vehicle stop by himself in the context of the pursuit. The Authority does not consider the circumstances were sufficiently grave to warrant the AOS Dog Handler's attempt to forcefully stop the vehicle himself.

#### *Police actions immediately preceding the crash on Yaldhurst Road*

303. The Authority prefaces its comments below by stating that Mr X was in the most part responsible for the set of circumstances that led to the crash, as he should not have fled from Police, and should have pulled to the side of the road when he realised his car was "crabbing" (see paragraph 144).
304. As set out in paragraphs 127-138, there are varying accounts of the moments before the crash. The AOS Dog Handler and AOS Officer 5 say that the dog van did not deliberately or accidentally make contact with the BMW, causing it to cross the centre line into the path of the Honda Jazz.
305. Mr P said that he did not see the dog van make contact with the BMW.
306. Mr N also did not see any contact between the two cars, but formed the impression that the two cars were being driven approximately "a foot" apart<sup>29</sup> (see paragraph 138).
307. Conversely, Mr X and Mr Y said that the dog van did make contact with the BMW, which caused the crash (see paragraphs 145 and 147). Mr X said that he turned the wheel to avoid the Honda Jazz, but a flat tyre caused him to skew into the other vehicle and crash.
308. The crash analyst's evidence is inconclusive about whether the dog van made contact with the BMW immediately prior to the crash, but he considered it unlikely (see paragraph 185).
309. The two other possible crash scenarios put forward by the crash analyst involve driver error by Mr X. The crash analyst also formed the view that the BMW's steering was "severely affected" and "unstable" immediately prior to the crash.
310. The Statement of Facts, upon which basis Mr X pleaded guilty on all charges, acknowledged that what happened immediately before the crash was in dispute (see paragraph 166).
311. Due to the conflict in evidence, the Authority is unable to determine on the balance of probabilities whether the dog van made contact with the BMW immediately prior to the crash.

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<sup>29</sup> The crash analyst considered that Mr N's impression that the two vehicles were travelling very close together is likely to be an illusion caused by the speed at which they were travelling past the stationary observer. The human eye would be unable to identify a distance of about one metre apart at the speed at which the vehicles were travelling at that time (approximately 30 metres per second).

## FINDINGS

The Police vehicles were justified in driving on the wrong side of the road for a short distance in order to continue pursuing the fleeing driver in the specific, exceptional circumstances.

The AOS Dog Handler was not justified in attempting to stop the BMW by forcefully pushing it off the road.

The AOS Dog Handler did not check his surroundings carefully enough to ensure that no other road users were nearby before conducting the vehicle stop manoeuvre.

The Authority is unable to determine whether the dog van made contact with the BMW immediately before the crash.

## Subsequent Police Action

312. The Canterbury OCU has updated its practices since this incident:

312.1 It now has better communication with Christchurch Airport and Airport Police, and has a plan in place for managing operations at the airport.

312.2 Major operations are managed at Detective Senior Sergeant level, and operational planning and log-keeping practices have been updated. The officer in charge of the OCU will be advised of all incidents where AOS assistance is sought.

312.3 SouthComms and the DCC will be advised of operations.

312.4 Closer links between staff working in AOS and OCU roles has improved understanding of AOS operating practices and tactics.

312.5 An officer is appointed to oversee the health of safety of officers and the public during major operations.

313. It is now standard practice for Canterbury AOS to advise SouthComms about all deployments.

## Conclusions

314. The Authority has concluded on the balance of probabilities that:

- 1) A vehicle stop was the appropriate tactic to stop the BMW and secure the occupants.
- 2) Officer B conducted his initial response planning in a timely manner, but he failed to discharge all the duties and responsibilities of the Officer in Charge of the Investigation. Officer B's decision to stand the AOS down was premature. In addition, he did not:
  - a) develop and record his operational planning and decision making process, despite having opportunities to do so;
  - b) properly brief the AOS about the role he expected them to play within the operation, or agree a plan of action should the occupants of the BMW decide to flee;
  - c) advise the DCC and SouthComms about the operation;
  - d) advise Christchurch Airport and the Airport Police about the planned operation; or
  - e) appreciate the implications of conducting the operation at Christchurch Airport, or consider an alternate location.
- 3) Officer A failed to provide adequate oversight. He did not pass information to Officer B in a timely manner, nor did he actively supervise Officer B.
- 4) A vehicle stop was the only reasonable tactic to use in the circumstances.
- 5) AOS Officers 1 and 3 did not adequately address and plan for the possibility that the BMW would flee from the AOS vehicle stop team.
- 6) AOS Officers 1 and 3 should have advised SouthComms and the DCC of their deployment.
- 7) AOS Officers 1 and 3 did not adequately consider the implications and adverse impacts of undertaking an armed vehicle stop at Christchurch Airport as part of their tactical planning.
- 8) Generally, appropriate tactics were used by the AOS at Christchurch Airport and the Wairakei Road roundabout.
- 9) Communication tactics between the surveillance team, OCU and AOS could have been planned more efficiently during the planned vehicle stop.
- 10) The AOS team appropriately adapted their tactics to stop the BMW at the Wairakei Road roundabout. Mr X's violent response at the roundabout was not reasonably foreseeable by the AOS.

- 11) The AOS Dog Handler was justified in commencing a pursuit of the BMW, and complied with law and policy in doing so.
- 12) AOS Officer 5 complied in part with his communication obligations under Police policy. However, he failed to advise SouthComms about some high-risk aspects of Mr X's driving and described other events inaccurately, which gave SouthComms an incorrect picture of what was occurring.
- 13) AOS Officer 3 should have provided the pursuit controller with a short briefing on the context of the pursuit when he entered the SouthComms centre.
- 14) The pursuit controller's ability to control the pursuit was compromised by the fact that SouthComms had not been told about the operation.
- 15) The pursuit controller should have abandoned the pursuit after Officer B confirmed that the fleeing driver's identity was known over the main radio channel.
- 16) There was sufficient doubt in the mind of the AOS Dog Handler about the identity of the two offenders to justify his decision not to abandon the pursuit after Officer B's radio transmission.
- 17) Due to the damage to both vehicles, the AOS Dog Handler should have abandoned the pursuit after the attempted vehicle stop.
- 18) The Police vehicles were justified in driving on the wrong side of the road for a short distance in order to continue pursuing the fleeing driver in the specific, exceptional circumstances.
- 19) The AOS Dog Handler was not justified in attempting to stop the BMW by forcefully pushing it off the road.
- 20) The AOS Dog Handler did not check his surroundings carefully enough to ensure that no other road users were nearby before conducting the vehicle stop manoeuvre.
- 21) The Authority is unable to determine whether the dog van made contact with the BMW immediately before the crash.

## Recommendation

315. The Authority recommends that the New Zealand Police develop policy requiring:

- the Armed Offenders Squad to notify the Police Communications Centre and the relevant District Command Centre of all deployments;
- the Organised Crime Unit to notify the Police Communications Centre and the relevant District Command Centre when it intends to deploy the Armed Offenders Squad as part of an operation.



**Judge Sir David Carruthers**

Chair  
Independent Police Conduct Authority

4 August 2016

**14-1009**



## Applicable Laws and Policies

### USE OF FORCE

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#### Law on the use of force

##### *Use of force by Police officers*

316. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. Specifically, it provides that officers may use *“such force as may be necessary”* to overcome any force used in resisting the law enforcement process unless the process *“can be carried out by reasonable means in a less violent manner.”*
317. Section 40 of the Crimes Act 1961 provides that a Police officer may use necessary force in order to prevent a person from fleeing to avoid arrest, unless the escape can be prevented by reasonable means in a less violent manner.

#### General guidance on the use of force

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

- environmental conditions.

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

321. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are:

- cooperative;
- passively resisting (refuses verbally or with physical inactivity);
- actively resisting (pulls, pushes or runs away);
- assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or
- presenting a threat of grievous bodily harm or death to any person.

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

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

## CARRIAGE AND USE OF FIREARMS

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### Authorisation to carry firearms

323. The Police Manual provides that a Police constable may carry firearms when their perceived cumulative assessment of a situation is that it is in, or likely to escalate to be within, the death/grievous bodily harm range.

### Use of firearms

324. Police General Instruction F061 (Fire Orders) provides for the use of firearms by Police officers to defend themselves or others if they fear death or grievous bodily harm and cannot reasonably protect themselves or others in a less violent manner.

325. The Crimes Act provisions are mirrored in General Instruction F061 in the 'Police Firearms' chapter of the Police Manual. General Instruction F061 instructs members of the Police to always be aware of their personal responsibilities in the use of firearms, reminds them of the relevant sections of the Crimes Act and also sets out the circumstances in which the use of lethal force is justified.

326. General Instruction F061 directs that an offender is not to be shot until all of the following conditions have been satisfied:

- “they have first been asked to surrender (unless it is impractical and unsafe to ask them)
- it is clear that cannot be disarmed or arrested without first being shot
- further delay in apprehending the offender would be dangerous or impractical.”

327. In operational situations where firearms are issued, General Instruction F061 also requires that an officer’s attention is drawn to the fire orders printed in their notebook *“if time and circumstances permit.”*

328. Police policy also requires officers to notify their immediate supervisor and the Police Communications Centre of their decision to deploy with firearms.

## ARMED OFFENDERS SQUAD

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### Deploying the AOS

329. AOS squads are maintained in each Police district to deal with people who are, or are believed to be, armed and a danger to themselves, the public or police. The AOS may be deployed for risk situations or duties where the potential use or possession of firearms is likely.

### Tactical commander's responsibilities at an AOS incident

330. An AOS Operation Report is completed by the tactical commander for each deployment. This records the nature of the call-out, and the deployment planning undertaken by the tactical commander.

331. Officers conducting AOS operations are expected, where practicable, to consider the adverse impacts an armed operation might have on the community, and how that impact could be minimised.

332. During an AOS incident, the tactical commander is responsible for establishing an AOS base and commanding and directing the AOS in the forward area. This includes applying TENR and deciding on the use of tactics.

### Vehicle stop

333. The AOS may compel a vehicle to stop. There are two types of vehicle stop:

- 1) Compliant stop
- 2) Non-compliant stop

334. The vehicle configuration for both stops remains the same, but the amount of force used to stop the offender differs depending on the actions of the offender when the stop begins. In most cases, a compliant vehicle stop would be attempted in the first instance.

335. Where possible before executing a vehicle stop, a plan should be made using all available intelligence about offenders, vehicles and intended route. Contingency planning for possible scenarios, such as a vehicle pursuit, should be addressed.

336. Staff should be fully briefed on their duties and actions, however a vehicle stop is a fluid operation and, if possible, regular updates should be given to staff. Ideally, a rehearsal should be carried out.

337. In situations involving a fleeing mobile armed offender, an AOS Commander may authorise a vehicle stop<sup>30</sup>. This can only be done where there is no other practical method of containing the offender or neutralising the threat. Only AOS or Special Tactics Group officers can undertake the vehicle stop when:

- responding to a life threatening incident;
- trained in its use; and
- undertaken in accordance with standard operating procedures.

## FLEEING DRIVER

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### Legislative authority for pursuits

338. Police may stop a vehicle without a warrant under section 9 of the Search and Surveillance Act 2012 to arrest a person when they have reasonable grounds to suspect that a person is unlawfully at large or has committed an offence punishable by imprisonment, and reasonable grounds to believe that the person is in or on the vehicle. Where such a vehicle fails to stop, the Police may begin a pursuit.

### Fleeing driver policy

#### *Overriding principle*

339. 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*

340. Under the Police fleeing driver policy, the pursuing officers 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.

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<sup>30</sup> This policy is part of Police Fleeing driver policy.

341. The assessment<sup>31</sup> 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.”

342. 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

343. When a pursuit commences, the communications centre must be notified. The communications centre must provide the following warning to the pursuing officers:

*“If there is any unjustified risk to any person you must abandon pursuit immediately”*

344. The pursuing officers must acknowledge the pursuit warning; and 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

345. 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.

346. 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.

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<sup>31</sup> Fleeing driver policy has been updated since this incident. The risk assessment carried out by pursuit officers is now based on TENR (Threat, Exposure, Necessity, Response).

347. 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 pursuit warning and communicate instructions from the pursuit controller.

348. 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. The tactical commander will act as pursuit controller during an AOS/STG specialist operation until transfer of command to the communications centre is given (unless operational circumstances dictate otherwise).

### Abandonment

349. The driver of the primary unit or the pursuit controller can abandon a pursuit.

350. A pursuit must be abandoned when (among other criterion):

- an offender's identity becomes known and apprehension can be effected later, so long as there is no immediate threat to the public or staff safety or the fleeing vehicle's location is no longer known; or
- any of the risk assessment criteria conditions change, such as road or weather conditions, that mean the risks of continuing with the pursuit outweigh the need for immediate apprehension of the fleeing driver.

## OFFICER IN CHARGE OF AN INVESTIGATION

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351. The Officer in Charge of a Police team formed to investigate organised crime (OC Investigation) is the focal operation command post, and must plan, implement and control investigative strategies to ensure the investigation is thorough and conducted with professionalism.

352. The OC Investigation must ensure, amongst other things that *"the resource needs of the investigation are identified and all resources allocated to it are managed appropriately."*

### Investigation plans

353. The OC Investigation must begin planning how the investigation will be conducted from the first moment that they are informed of the incident.

354. An investigation plan describes the investigation process and records the OC Investigation's strategies for the direction of the investigation.

355. The investigation plan will take different formats as the investigation progresses. During initial stages where urgent or immediate action is required, the plan may be recorded in a notebook or even mentally for speed. Subsequent investigation plans will be recorded in a formal investigation plan document.

356. The value of an investigation plan is to ensure that tasks to be completed are not overlooked, and helps demonstrate that all reasonable lines of enquiry have been followed.

357. An investigation plan (amongst other things):

- records the outcomes of the appreciation of the enquiry conducted by the OC Investigation;
- sets out roles, responsibilities, timeframes and objectives;
- provides a vehicle to record the management of individual aspects of the investigation, e.g. an arrest strategy, strategy for dealing with exhibits;
- documents the progress of the investigation; and
- includes a timescale for the implementation of each task identified.

## SEARCH AND SURVEILLANCE ACT

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### Section 9: Stopping vehicle to find persons unlawfully at large or who have committed certain offences

358. A constable may stop a vehicle without a warrant to arrest a person if the constable has reasonable grounds—

(a) to suspect that a person—

(i) is unlawfully at large; or

(ii) has committed an offence punishable by imprisonment; and

(b) to believe that the person is in or on the vehicle.

### Section 20: Warrantless search of places and vehicles in relation to some Misuse of Drugs Act 1975 offences

359. A constable may enter and search a place or vehicle without a warrant if he or she has reasonable grounds—

(a) to believe that it is not practicable to obtain a warrant and that in or on the place or vehicle there is—

(i) a controlled drug specified or described in Schedule 1 of the Misuse of Drugs Act 1975; or

(ii) a controlled drug specified or described in Part 1 of Schedule 2 of the Misuse of Drugs Act 1975; or

(iii) a controlled drug specified or described in Part 1 of Schedule 3 of the Misuse of Drugs Act 1975; or

(iv) a precursor substance specified or described in Part 3 of Schedule 4 of the Misuse of Drugs Act 1975; and

(b) to suspect that in or on the place or vehicle an offence against the Misuse of Drugs Act 1975 has been committed, or is being committed, or is about to be committed, in respect of that controlled drug or precursor substance; and

(c) to believe that, if the entry and search is not carried out immediately, evidential material relating to the suspected offence will be destroyed, concealed, altered, or damaged.

## About the Authority

### WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

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

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

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

### WHAT ARE THE AUTHORITY'S FUNCTIONS?

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Under the Independent Police Conduct Authority Act 1988, the Authority:

- receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

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



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