

8. Mr X pleaded guilty to three charges of causing injury while driving with excess blood alcohol, one charge of causing death while driving with excess blood alcohol and failing to stop for Police when signalled.¹ He was sentenced to 11 months' home detention and disqualified from driving for three years.
9. Police conducted a criminal and employment investigation in relation to the officers' actions. No officers were charged. Two officers received an employment outcome. Police are conducting a debrief with all officers involved to discuss and learn from this incident.
10. Police notified the Authority who conducted an independent investigation.

Issues examined by the Authority

- Issue 1:** Were Police justified in initiating the pursuit?
- Issue 2:** Did Police comply with the fleeing driver policy?
- Issue 3:** Did Police deploy road spikes safely and in accordance with policy?
- Issue 4:** Was the Police media statement about the incident misleading?

The Authority's Findings

11. The Authority found that Officer A was not justified in commencing the pursuit.
12. However, having done so, there were critical points during the pursuit when Officer A's continuous risk assessment should have prompted a decision to abandon the pursuit, but did not:
 - when Mr X accelerated onto Commerce Street and Officer A's own speed registered 115kph in a 50kph speed zone;
 - when the pursuit turned into Redan Street; and
 - after the pursuit passed the cemetery at the top of the hill and the road spikes failed.
13. We also concluded that:
 - 1) Officer A was justified in signalling the Mazda to stop.
 - 2) Although the pursuit should not have been initiated, Police followed the correct procedures when commencing the pursuit.
 - 3) Police did not closely follow the Mazda in a dangerous fashion.

¹Forensic testing established that Mr X had 110 milligrams of alcohol per 100 millilitres of blood. The proportion of alcohol in the blood of a person in charge of a vehicle must not exceed 80 milligrams of alcohol per 100 millilitres of blood.

- 4) Officer A did not have sufficient time between abandoning the pursuit and needing to drive urgently to the crash scene to fully comply with all abandonment procedures required by policy.
- 5) Officer A gave appropriate information to Police Communications about the location and direction of the pursuit. However, his failure to give the correct reason for the pursuit affected the assessment and decision making of the dispatcher, pursuit controller and officers deploying tactical options.
- 6) Although we believe the pursuit should have been abandoned at an early stage, we cannot criticise the dispatcher for failing to exercise a responsibility that he did not have.
- 7) The pursuit controller made appropriate decisions based on the information he had.
- 8) Officer D should have ensured that Officer A was breath tested at the scene of the crash.
- 9) Officer D was justified in deploying the spikes in principle. However, he did not have time to safely and effectively deploy the spikes at the critical moment and should not have done so.
- 10) Officer D failed to complete the post-deployment of spikes report required by policy.
- 11) The media statement gave an incorrect impression that the pursuit was abandoned at an early stage, and that Police were not pursuing the Mazda on the rural road before the crash. Officer G should have taken greater care to approve an accurate account of events which could not be open to misinterpretation.

Analysis of the Issues

ISSUE 1: WERE POLICE JUSTIFIED IN INITIATING THE PURSUIT?

Reason for signalling the Mazda to stop

14. Officer A (a sergeant) was partnered with Officer B, a probationary constable who was working the third shift of her career. At about 11.45pm they conducted a check at Collards Tavern, approximately two kilometres north of Kaitaia's CBD. Officer A recognised Ms Y inside the Tavern, and her red Mazda Sport parked in the Tavern's carpark. At around 12.30am, Officer A also received information from his colleague Officer C to watch out for the Mazda, as it was likely the occupants were intoxicated. Officer B checked the Police database for information about the Mazda and established that Ms Y was disqualified from driving.
15. Prior to the Tavern closing at 1am, Officers A and B patrolled the area and stopped vehicles to check drivers' licences and conduct breath alcohol tests. At about 1.10am, they parked on the side of State Highway 1, about 800 metres south of the Tavern, watching passing vehicles to "*see if [drivers] were doing anything silly.*"

16. At about 1.17am, they saw two cars round the bend behind them, travelling towards Kaitia town centre. The first car was travelling at approximately 50kph in the 70kph speed zone. Both officers say the second car was travelling too fast and the driver had to brake hard to avoid colliding with the car in front. The second car was the red Mazda. The officers thought the driving was potentially dangerous and decided to stop the Mazda and speak to the driver.
17. Ms Y, who was in the back seat of the Mazda, denies that Mr X (who was in fact driving) drove above the speed limit or had to brake heavily. She says Mr X was driving carefully at the time so as not to draw Police attention to the car.
18. Officer A pulled out and caught up to the two cars at a roundabout in the 50kph speed zone. The first car turned left; the Mazda continued straight through. At this point the officers recognised the Mazda as the one they had received information about earlier, and Officer A recalled seeing the registered owner (Ms Y) in the Tavern. He radioed his colleague, Officer C, that he was behind the Mazda, referring to the driver as 'she,' because he assumed that Ms Y was driving. Officer A continued to do this throughout the incident.
19. Officer A activated his emergency lights to signal the driver to stop. He saw several people in the car. The Mazda continued at 40kph for a further 400 metres. Both officers said they thought the driver was looking for a safe place to pull over.
20. When the Mazda did not stop, Officer A activated his siren and advised NorthComms that he was following a car that was failing to stop. The dispatcher notified the NorthComms shift commander, who started walking to the dispatcher's desk to be briefed and take control of the pursuit as the pursuit controller.^{2,3}
21. Police have a power under section 114 of the Land Transport Act 1998 to stop a car and speak to the driver for the purpose of enforcing or administering the Act. Officer A acted on that power and signalled for the driver of the Mazda to stop because he was concerned about the Mazda's speed and the manner in which it was being driven. Despite Ms Y's recollection, we accept that some aspect of Mr X's driving was sufficiently remarkable to draw the officers' attention and raise concern. Once Officer A recognised the Mazda, he also suspected that the driver was intoxicated.

Decision to commence and continue the pursuit

22. When a driver has been signalled to stop and does not do so, the officer decides whether to actively pursue the offender.
23. After Officer A activated his siren, the Mazda continued to travel slowly for approximately 20 seconds, then accelerated away towards Commerce Street. At this point Officer B was reading the licence plate registration details to the NorthComms dispatcher.

² The dispatcher advises the shift commander when a pursuit has commenced, provides the pursuit warning, maintains radio communications with the units involved in the pursuit, and communicates instructions from the pursuit controller.

³ The pursuit controller supervises the pursuit and co-ordinates the overall response, including the appropriate tactical options. In most cases, the pursuit controller role is taken on by the shift commander in the Communications Centre.

24. Officer A was required by Police policy to undertake a risk assessment prior to deciding whether to accelerate and continue to pursue the Mazda.⁴
25. As part of this ongoing risk assessment, officers must consider the threat posed by the person or people they are pursuing, the necessity of responding, the exposure of Police and members of the public, and therefore the appropriate response in those circumstances. Policy states that the fact that a fleeing driver is fleeing does not in itself justify a pursuit. A pursuit should only be commenced and/or continued when the seriousness of the offence and the necessity of immediate apprehension outweigh the risk of pursuing.
26. Commerce Street is the main shopping street in Kaitaia. The first 600 metre section is relatively wide, with designated lanes for parking on both sides of the road and one pedestrian crossing. After this point the road turns slightly to the right and narrows considerably through the main shopping area. At intervals the pavement protrudes slightly into the road to create parking bays on both sides of the road. There are two pedestrian crossings and a raised concrete traffic island in this section of the street. The entire street is well lit, and in the early hours of the morning no shops are open apart from a petrol station at the far end of the street.
27. Several buildings along the length of Commerce Street have CCTV, meaning footage of much of the pursuit was captured.
28. Officer A explains he considered that the risk the fleeing driver posed to himself or herself, the passengers and any other road users outweighed the risk posed by the pursuit itself at that time of night. No traffic or pedestrians were around. The road was wide, well-lit, and dry. The Mazda was staying within its lane on the correct side of the road.
29. He believes if he did not stop the Mazda there was a strong likelihood the driver would revert to the unsafe driving he initially witnessed. It was therefore urgent to stop the driver. His recognition of the Mazda only confirmed that it was very likely that the driver was intoxicated, impaired and likely to continue to drive unsafely:

“At this stage there was no other persons on the road so it’s just himself and the ones in the car exposed to it so oh well if I don’t stop him, he’s going to continue driving like this so I made my choice to initiate the pursuit and continue after him onto Commerce Street.

....

So my thought was that driving like this before I’m even behind them if I didn’t pull in behind them are they going to continue driving like that and my thought was ‘yep, they’re gonna continue driving like that to wherever they’re going.’”

30. About 14 seconds after the Mazda accelerated away, Officer A advised NorthComms that he was travelling through Commerce Street at 115kph in a 50kph zone, and there were no other vehicles on the road. He believes he was driving through the first 400 to 500 metres of Commerce Street

⁴ Police policy provides a framework for officers to assess, reassess, manage, and respond to situations, ensuring the response 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.

at that time and was approximately 100 metres behind the Mazda when he recorded that speed on his radar. This is corroborated by CCTV footage of the pursuit.

31. We asked Officer A whether he thought travelling at that speed in the CBD of Kaitaia was dangerous in itself. He said:

“It’s fast but with the wide streets, the lighting, no other persons, I felt that I could continue at that. If anything changed then I would be slowing down or pulling off, but at that point I was fine to carry on.”

32. While the Authority accepts an intoxicated driver can pose a risk to themselves and others on the road, the officer did not adequately assess the risks. Officer A did not properly consider the added risk of the Police pursuing, which would likely put pressure on the fleeing driver and increase the chances of unsafe driving behaviour. The necessity to pursue did not outweigh the risks of the pursuit itself.
33. As outlined in paragraph 21 Officer A had good reason, based on the information received and what he had observed, to signal the Mazda to stop and give it every chance to do so safely, but he should not have pursued the vehicle when it failed to stop. The immediate risks associated with the pursuit were greater than those created by allowing the fleeing driver to drive away.
34. The Mazda initially continued to travel at low speed but Mr X then accelerated and drove along the main shopping street, requiring Officer A to travel in the CBD at 65kph over the speed limit to keep up. At that stage the risks substantially increased and Officer A should have recognised this and not pursued the Mazda.
35. Officer A had the car’s registration number, knew who the registered owner was and believed the driver was likely intoxicated, and therefore far less able to safely handle a speeding car under pressure. Officer A also knew that there were several passengers in the car, whose safety was dependent on the fleeing driver’s decision-making and driving skill.
36. Although the officers could not see any pedestrians or other vehicles on the street, and the chances of either being present at that time of night were low, the consequences of coming across one on this section of road could have been extremely serious. It would have been difficult for Mr X or Officer A to react quickly and safely to an unexpected hazard at that speed. The road itself was not safe for high speeds, with physical hazards in the road, as described in paragraph 26.
37. If Officer A had let the Mazda go, he had a strong line of inquiry to follow in order to hold the fleeing driver to account. We agree that the officers did not ‘know’ that Ms Y was the fleeing driver, in which case policy specifies that the offender should be apprehended through subsequent lines of inquiry (unless an imminent risk exists). However, Officers A and B did have a reasonable suspicion that Ms Y was the driver, based on what they had observed and information to hand, and they had a local address to make inquiries. This being the case, the safer approach would have been not to pursue, and for follow up inquiries to be made.

FINDINGS ON ISSUE 1

Officer A was justified in signalling the Mazda to stop.

Officer A was not justified in commencing a pursuit while the Mazda was travelling at a slow speed.

Officer A should have abandoned the pursuit when Mr X accelerated onto Commerce Street, and Officer A's own speed registered 115kph in a 50kph speed zone.

ISSUE 2: DID POLICE COMPLY WITH THE FLEEING DRIVER POLICY?

Pursuit progress

38. Although we have found that Officer A should not have started to pursue the Mazda, we will still assess the officers' actions during the pursuit.
39. Officers A and B pursued the Mazda down Commerce Street. Despite policy to the contrary, Officer A provided the radio commentary due to Officer B's relative inexperience. He acknowledged the pursuit warning given by the dispatcher, and advised they were turning right onto Redan Road, which follows a westward route over a hill and becomes the main road to Ahipara. This is reportedly a high-crash road.
40. About one minute after the start of the pursuit (the point at which Officer A activated his siren and radioed that the Mazda was failing to stop), the dispatcher prompted Officer A for the reason for pursuing. Officer A responded: *"From the pub Comms, looked a bit pissed and then I tried to stop her and she took off."*
41. Meanwhile, the dispatcher was briefing the pursuit controller, tracking the pursuit on a map, and searching for information about the Mazda on the Police database. He advised the pursuit controller that the pursuit warning had been acknowledged and the reason for the pursuit. He did not tell the pursuit controller that both the Mazda and Officer A had been driving at 115kph in a 50kph speed zone.
42. The Mazda continued up the hill, past the Police station and hospital. The road was poorly lit in those areas. Officer A acknowledged a radio announcement from Officer D that he was setting up road spikes approximately 1 kilometre ahead, and advised they were passing Dominion Road, travelling at 100kph in a 50kph zone.⁵
43. The dispatcher confirmed the description of the car, and registered owner's name, age and address information with Officer A. The dispatcher confirmed the Mazda was not reported as stolen.
44. At about 1 minute and 28 seconds after the pursuit started, the pursuit controller began to listen to the radio commentary. Officer A advised the Mazda appeared to have four occupants and it was approaching Norman Senn Street (approximately 300 metres from the cemetery). The

⁵ Tyre Deflation Devices (TDDs), commonly known as road spikes, are an approved Police tool used by officers to deflate the tyres of fleeing vehicles. They are essentially an extendable cord with spikes embedded at regular intervals along its length. See paragraphs 149-154 for relevant policy.

pursuit controller misheard this, believing Officer A said they were driving at “normal speed,” specifically 100kph in a 100kph speed zone.

45. Officer A slowed as he neared the cemetery driveway to avoid running over the road spikes thrown into the road by Officer D. The spikes were not properly extended and Mr X was able to swerve to avoid them.
46. Officer A advised over the radio that the Mazda had avoided the road spikes. He estimated the Mazda was now 300 metres ahead, approaching the 70kph speed zone at the bottom of the hill.
47. Officer D and his partner Officer E retrieved the road spikes and drove after Officers A and B in a marked Police ute, with lights and sirens activated, followed closely by Officers C and F also in a marked Police car.
48. The pursuit continued onto a long, straight rural road where the speed zone became 100kph. Officer A says he increased his speed and reduced his following distance to 200 metres. Approximately 2 minutes and 13 seconds after the pursuit began, Officer A advised his own speed as 140kph, the Mazda was staying within its lane and no other traffic was around. Approximately 20 seconds later Officer A advised that the Mazda was approaching the intersection with Okahu Road, and his speed had increased to 150kph.
49. Officer A could see the Mazda approaching a series of bends in the road, and judged the driver was not slowing sufficiently to navigate them safely. Officer A says he abandoned the pursuit just before the Mazda entered the first bend. He was approximately 200 metres behind the Mazda.
50. Officer A advised NorthComms he was abandoning the pursuit 2 minutes and 44 seconds after the pursuit began. Both Officers A and B say they slowed and Officer A turned off the emergency lights. The recording of Officer A’s radio broadcast indicates he did not deactivate his siren.
51. Hearing that the pursuit had been abandoned and seeing Officer A deactivate his emergency lights, the officers in the following Police vehicles say they slowed and deactivated their lights and sirens.
52. Almost immediately after abandoning, Officers A and B saw a blue flash as they were about to enter the first bend. Officer A says he realised the Mazda had hit a power pole and advised NorthComms of the crash. There is only one second between the end of Officer A’s radio announcement that he was abandoning the pursuit, and his advisory that the Mazda had crashed.
53. Officers A and B, and the two Police units following, drove under emergency lights and sirens to the scene of the crash.

54. Officer D took control of the scene and managed the emergency response. He did not arrange for Officer A to be breath tested for alcohol, as is required by policy.⁶ He explained it was an oversight on his part.
55. Fire and Emergency New Zealand and Ambulance services were called to extract and assist four of the five occupants who were trapped in the car. Mr X and the front seat passenger were airlifted to Middlemore and Auckland hospitals respectively with serious injuries. Ms Y and another rear seat passenger were taken by ambulance to Kaitaia Hospital with minor injuries. The left rear passenger, Justin Murray died at the scene.

Manner of driving during the pursuit

56. The overriding principle of the Police fleeing driver policy is that: *“Public and Police employee safety takes precedence over the immediate apprehension of a fleeing driver.”* The driving behaviour of the fleeing driver and the speeds reached during the pursuit form an important part of this ongoing risk assessment.
57. Both Officers A and B say that Mr X maintained good control of the car throughout the pursuit. Mr X kept the headlights on, stayed within the correct lane, did not swerve or brake heavily and slowed and indicated before turning right onto Redan Road. Officer A comments: *“To me he was driving sensibly. I mean he was driving at speed but his driving manner was okay.”*
58. We have watched CCTV footage of the pursuit through the length of Commerce Street, and part of Redan Road. The footage generally confirms the account of Officers A and B in terms of speed and following distance during this phase of the pursuit.
59. Once the pursuit moved into the rural stretch of road, speed increased considerably. The long, straight nature of the road gave Officer A the confidence to increase his speed to approximately 150kph near the end of the straight. Officer A must have been travelling faster than the Mazda for at least part of this phase, as he managed to close his following distance by 100 metres. Although this road is largely straight with a few undulations prior to the final bends, this is high speed and at the upper limit of safety in our view. We are also aware that this is a high crash road.
60. Officers D and E in the Police ute say they could see the flashing lights on Officer A’s car at Okahu Road intersection as they came around the corner prior to the 70ph speed zone at the beginning of the straight. This puts them approximately 1.3 kilometres behind. As their Police ute was only able to reach 100kph, it would have taken them and the Police car behind about 47 seconds to reach the Okahu Road intersection.
61. A witness disputes this. Ms U was parked at Okahu Road intersection, 700 metres from the eventual crash scene, and says she saw the Mazda and three Police vehicles pass by in quick succession. She estimates the Mazda was going at 150kph, and all three Police cars were following very closely, at similar speed, with lights and sirens activated. The first Police car was

⁶ Officer A stated in his Police interview that he had not consumed alcohol or prescription medicine in the 12 hours prior to the pursuit.

approximately 20-30 metres behind the Mazda. She feels it was dangerous and unnecessary to have three Police cars chasing the Mazda, particularly as they were approaching the set of bends in the road.

62. We accept Ms U genuinely had the impression that the Police cars were driving in close convoy, and dangerously close behind the Mazda. A 20-30 metre following distance at 150kph would not allow a car to stop short in an emergency.
63. The officers' evidence indicates the Police vehicles were not following the Mazda as closely as Ms U believes, and there was a considerable distance between Officer A's Police car and the next Police vehicle behind it, the Police ute.
64. Officer A's evidence is that he was approximately 200 metres behind the Mazda, travelling at 150kph, as the Mazda was approaching the first bend (see paragraph 49). He abandoned the pursuit at this point. Officer A would have been approximately 100 metres past the Okahu Road intersection at this point, which fits with Ms U's evidence that the first Police car had lights and sirens activated when it passed her.
65. There was necessarily greater distance between the Officer A's police car and the Police ute. Officers D and E had to pack up the road spikes before following behind Officer A. The Police ute was only able to achieve about 100kph, so could not accelerate to close the distance with Officer A's Police car ahead, which was travelling at higher speeds. Officers C and F were behind the ute and say they did not overtake at any point, although they remained close behind it.
66. Ms Y (travelling in the Mazda) says she did not look behind her towards the end of the pursuit but could see the pursuing Police car's red and blue flashing lights in the rear-view mirror. However, she says the Police car's emergency lights were not lighting up the entire cabin of the Mazda at the end of the pursuit as was the case when the Police car first signalled them to stop. This indicates the Police car was not as close behind.
67. Ms Y also recalls Mr X accelerating on the straight section of road towards Ahipara, making it less likely Officer A would be able to close the distance to such a degree as to be right behind the Mazda.
68. On balance, we are satisfied that it is unlikely that all three Police vehicles were following dangerously close behind the Mazda when it passed Okahu Road. However, we agree with Ms U's general concern that Police were pursuing the Mazda, especially on a dangerous section of road.
69. Officer A was still in pursuit when he passed Okahu Road. After this point, he deactivated his emergency lights and slowed briefly, but did not stop or deactivate his siren before realising the Mazda had crashed (see paragraphs 50-52).
70. Given the extremely short period of time between the decision to abandon and becoming aware of the crash, we accept Officer A did not have time to slow to a stop and deactivate his siren (as

required by policy) before he needed to start urgent duty driving to the crash which required him to use both his emergency lights and siren.⁷

71. An external observer would not have known that Officer A had announced abandonment of the pursuit over the radio as he almost immediately started urgently driving to the crash scene under emergency lights and sirens. By the time the other two Police vehicles passed the intersection where Ms U was, the crash had occurred and they too had reactivated lights and sirens to reach the crash scene.

Communication during the pursuit

72. Policy requires that the passenger in the lead vehicle, in this case Officer B, communicate with Police Communications during the pursuit. Officer B provided the Mazda's registration details at the start of the pursuit, but her inexperience meant that Officer A took over. He says he is used to working on his own and is experienced in providing pursuit commentary while driving. Overall, his radio communication was calm and clear.
73. Paragraphs 146-148 set out the communication requirements during a pursuit. Officer A gave appropriate information about the location and direction of the pursuit. He reported four speeds and their relative speed zones. We are satisfied that these were accurate.
74. He acknowledged the pursuit warning and provided a reason for the pursuit when asked (see paragraph 40).
75. He later explained to Police and the Authority that he gave the wrong reason for commencing the pursuit, stating that it was primarily his concern about the driver's behaviour that made him want to stop it. He believes it was dangerous driving. He is not sure why he gave Ms Y's assumed intoxication as his reason. He says:

"I'm not sure why I said that. I saw her at the pub earlier and I'm just assum[ing] that she was driving 'cos it was her vehicle. Again I'm not sure why I said that instead of the driving manner, why I initially tried to stop it."

76. Officer B also confirmed that the primary reason for the pursuit was the manner of driving, and the driver's potential intoxication was secondary.
77. Accepting this, and that it was a genuine error on Officer A's part, it was still a failing. Officer A should have advised NorthComms that it was the manner of driving observed that was his primary reason for the pursuit, in addition to the suspected intoxication of the driver. This information is important as it forms the basis for assessment and decision making by the dispatcher, pursuit controller and officers deploying tactical options, such as road spikes. None of these parties knew that the officers had witnessed unsafe driving, or that this caused Officer

⁷ Urgent duty driving is when a Police officer on duty is driving above the speed limit or against the natural flow of traffic and may not be complying with certain traffic rules. Police must use red and blue flashing lights and siren continuously, unless circumstances justify a tactical (unannounced) approach.

A to believe it likely the driver would drive dangerously again. This puts the situation in a higher risk bracket, particularly when coupled with suspected driver intoxication.

Should the pursuit have been abandoned earlier?

78. Under Police policy, the decision to commence, continue or abandon a pursuit must be continually assessed and reassessed in accordance with the Police risk assessment tool. The lead driver, passenger, pursuit controller or field supervisor can order the pursuit to be abandoned if they believe the risk to the public, Police and/or the driver outweighs the seriousness of the offence and the necessity of immediate apprehension.

Officer A

79. We have already found that Officer A should not have initiated the pursuit. However, having done so, there were critical points where his ongoing risk assessment should have prompted him to abandon.

80. In our view, he should have abandoned the pursuit when Mr X drove at high speed along Commerce Street. Other officers we spoke to in the course of our investigation say they were surprised that the pursuit was allowed to continue at that speed.

81. We consider that, once the pursuit turned onto Redan Street, the risk balance again indicated the pursuit should have been abandoned. Redan Road is a largely residential road that is poorly lit with parking on both lanes. The road tracks uphill, has several bends and passes a hospital. The nature of the road obscures oncoming traffic at several points, including traffic from the hospital entrance. It was unsafe to navigate this road at twice the speed limit, and Officer A should have abandoned the pursuit.

82. After the pursuit passed the cemetery at the top of the hill and the road spikes failed, Officer A again should have abandoned. By this stage:

- It was obvious the driver of the Mazda was not going to stop voluntarily.
- There were no other officers or tactical options positioned ahead of the Mazda; there were no other options to stop it apart from continuing to chase it.
- The road ahead was known to have a high crash rate.
- Police presence was clearly influencing the fleeing driver's behaviour.
- The fleeing driver was handling the car well despite its high speed.
- A reasonable line of inquiry existed to hold the fleeing driver to account.

83. There was simply nothing to be gained from continuing to pursue the Mazda. The road continues straight out to the beach where it is easy to find concealment, and the occupants of the Mazda had no reason to stop prior to reaching it. The speed at which Mr X was driving was the most dangerous aspect of the incident. It was by far the safest option to let the Mazda go, and allow Mr X to slow down of his own accord once he realised he was no longer being pursued.

Again, Officer A did not fully consider that his own actions in continuing to pursue at high speed were increasing the overall risks of the pursuit.

Command and control

84. Police Communications, specifically the pursuit controller, must actively monitor and manage the fleeing driver pursuit, and where appropriate order abandonment.
85. During the first minute and 30 seconds of the pursuit only the dispatcher was listening directly to the radio commentary. The dispatcher believed he had the ability to abandon the pursuit if he judged it necessary (in fact this was not explicit in Police policy at the time).
86. The dispatcher says he was unfamiliar with Kaitaia (including Commerce Street). He did not know Officer A's stated reason for the pursuit (an intoxicated driver) or that the Mazda had several occupants until later, after it had turned onto Redan Road.
87. On this basis, he says the risks of starting and continuing the pursuit, and the risk of allowing an intoxicated driver to continue and potentially harm themselves or others were finely balanced. He did consider telling Officer A to abandon the pursuit due to the speed, but decided to defer to Officer A's judgment, and wait for the pursuit controller to finish his assessment and make a decision. Although we believe the pursuit should not have started and should have been abandoned at an early stage we cannot criticise the dispatcher for failing to exercise a power he did not have.
88. The pursuit controller only heard the final minute and 22 seconds of the pursuit, and the announcement of the crash moments later.
89. He was working under some misapprehensions. He did not know about the high speed through Commerce Street, and believed that the pursuit was travelling at normal speed, 100kph in a 100kph speed zone as it was leaving town.
90. He says he took some time to carry out a risk assessment. The road conditions and the manner of driving were reportedly good. Officer A was giving calm and clear commentary. However, the pursuit was not an imperative one, the Mazda had at least four occupants and appeared to be accelerating. He was aware there were no officers ahead to assist or deploy other tactical options, so no viable plan existed to safely apprehend the offenders. There was a reasonable line of inquiry to follow as an alternative option.
91. The pursuit controller says he came to the decision to abandon the pursuit after Officer A gave his final speed report (150kph). However, Officer A announced he was abandoning the pursuit before the pursuit controller verbalised his decision. The crash happened seconds later.
92. We accept that the pursuit controller did not have the critical speed information which in our opinion should have meant he abandoned the pursuit straight away. It was reasonable that he took some time to receive a briefing and assess the situation. We agree with his assessment and decision to abandon.

FINDINGS ON ISSUE 2

Although the pursuit should not have been initiated, Police followed the correct procedures when commencing the pursuit.

Police did not closely follow the Mazda in a dangerous fashion.

Officer A did not have sufficient time between abandoning the pursuit and needing to drive urgently to the crash scene to fully comply with all abandonment procedures required by policy.

Officer A gave appropriate information to Police Communications about the location and direction of the pursuit. However, his failure to give the correct reason for the pursuit affected the assessment and decision making of the dispatcher, pursuit controller and officers deploying tactical options.

Officer A should have abandoned the pursuit when it turned onto Redan Street and when it passed the cemetery at the top of the hill and the road spikes failed.

Although we believe the pursuit should have been abandoned at an early stage, we cannot criticise the dispatcher for failing to exercise a responsibility that he did not have.

The pursuit controller made appropriate decisions based on the information he had.

Officer D should have ensured that Officer A was breath tested at the scene of the crash.

ISSUE 3: DID POLICE DEPLOY ROAD SPIKES SAFELY AND IN ACCORDANCE WITH POLICY?

93. Officers D and E were leaving the Police station on Redan Road when they heard Officer A advise that he had started a pursuit on North Road. Officer D anticipated that the fleeing driver would head towards Ahipara, so decided to set up road spikes adjacent to the cemetery where Redan Road becomes Pukepoto Road.⁸
94. He intended to use a low rock wall at the boundary of the cemetery as cover and concealment, and to set the spikes on the opposite side of the road so he could use the drag rope to drag them onto the road when the Mazda approached.
95. Officer D heard on the radio the pursuit had turned into Redan Road, and accelerated towards the cemetery driveway, 850 metres ahead. He announced on the radio he would set the spikes close to the cemetery entrance. He says he did not have the time to get onto the radio to request permission from the pursuit controller beforehand.
96. However, he was only able to pull his ute part way into the cemetery entrance as it was blocked by a bollard. He parked the ute five metres from the westbound lane of the road and turned the headlights off.
97. He estimates he had 200 metres of clear view back towards Redan Road. The road itself was unlit.

⁸ The road then becomes the Kaitaia-Awaroa Road near the point the speed zone increases from 50kph to 70kph.

98. Officer D estimates it took him and Officer E ten seconds to park the ute, and then retrieve the road spikes from their case. By this time he could see the fleeing driver's headlights and Officer A approaching. He did not have time to set up the spikes as he had intended.
99. In fact, he says he did not even have time to unspool the drag rope from the handle, which meant the road spikes could not extend by scissor action to full length when thrown, and he could not pull them back off the road after the Mazda passed. Seconds before the Mazda passed by, he threw the road spikes in their compressed form into the westbound lane from his position at the back of the ute. Road spikes are approximately 60 centimetres wide in compressed form.
100. The Mazda swerved part way into the opposite lane and avoided the spikes. Officer A also avoided them. The officers then retrieved the spikes and drove after Officers A and B.

Legal grounds for deploying spikes

101. Police policy states the legal grounds for the deployment of spikes is section 39 of the Crimes Act 1961.⁹ Section 39 empowers Police to use "*such force as is reasonably necessary*" to overcome force used in resisting arrest or the execution of a process, unless it can be achieved by reasonable means in a less violent manner. Failing to stop for Police and driving away does not amount to the driver using 'force,' so section 39 is not applicable to the use of road spikes to stop a fleeing driver unless a fleeing driver has used some force to resist arrest immediately prior to the deployment of spikes, such as using their car to ram a Police car. This was not the situation here.
102. The Authority considers that section 40 of the Crimes Act 1961 provides a more appropriate legal basis for the deployment of spikes, as it justifies the use of reasonable force to prevent the escape of a person who flees to avoid arrest.¹⁰ Failing to stop for Police when signalled to do so is an arrestable offence and a driver's decision to continue driving after being signalled to stop could be reasonably interpreted by an officer as an attempt to avoid arrest.¹¹ Although it is somewhat stretching the statutory language to regard the use of road spikes as the application of 'force' to prevent the escape, the Authority accepts that it is reasonable to do so in the absence of any other statutory power to lay spikes.
103. In order to rely upon section 40, the officer must believe on reasonable grounds that the person is actually fleeing to escape or avoid arrest (a purely objective test). If so, the degree of force used must be reasonable and proportionate, taking into account:
- the seriousness of the suspected offence for which they are liable to arrest and the public interest in bringing them to justice; and
 - the degree and severity of the risk that they are reasonably believed to pose if escape is not prevented.

⁹ Section 39 is set out in paragraph 137.

¹⁰ Section 40 is set out in paragraph 138.

¹¹ Section 114(6)(a) of the Land Transport Act 1998.

104. Officer D knew that the fleeing driver had failed to stop and that they were driving at 100kph along Redan Road. He suspected they were heading to Ahipara, where they would try to hide from Police. He did not know:
- why the driver had been signalled to stop; or
 - how many people were in the car.
105. Even though Officer D did not know the reason for the pursuit, he did know that the driver had committed an arrestable offence by failing to stop, and that the car was now travelling at twice the speed limit through a residential area. The driver therefore posed a risk to the occupants of the Mazda, to Police and to others on the road. The road continued a further 12 kilometres to Ahipara and was a high-crash road.
106. Road spikes are designed to deflate a vehicle's tyres slowly so the driver does not lose control. As such they are a relatively low use of force.
107. As there was no other immediate or less dangerous means available to stop the Mazda, it was reasonable for Officer D to decide to deploy road spikes to attempt to stop Mr X.

Police policy for deploying road spikes

108. The overriding principle when deploying road spikes is that public and Police safety takes precedence over the immediate apprehension of the offender. Police policy provides they must be deployed without any unjustified risk to any person.
109. Officers must be appropriately trained and certified to deploy road spikes, as Officer D was.
110. Generally, officers should get approval from the pursuit controller to deploy spikes for safety and coordination reasons. However, officers may deploy at their own discretion if their TENR assessment indicates an immediate response is required, and they are unable to get prior approval from the pursuit controller.
111. In this instance, Officer D says he did not have time or ability to get onto the radio, as Officer A was providing commentary which needed to take priority.
112. Officer D had approximately 1 minute and 44 seconds from the time he heard the failing to stop radio call to the time that the Mazda passed the cemetery driveway. The Authority accepts that this was a very short period of time to get into position and deploy the spikes, and the high speeds achieved by the fleeing driver through a residential area justified immediate action in principle. From a safety perspective, Officer D did find the opportunity to advise where he was setting up road spikes, which put both Officer A and the dispatcher on notice about his intentions (the pursuit controller had not yet plugged into the radio, and consequently was unaware that road spikes had been used until afterwards).
113. However, the broader question is whether Officer D had enough time to safely and effectively deploy the spikes. Police policy requires officers to choose a site far enough away from the target vehicle to give time for assessment and deployment.

114. When Officer D started driving towards the cemetery the timing was marginal for a safe deployment. The blocked driveway forced him to reassess his plans, forego the safe cover of the cemetery wall (his remaining alternative, to use the ute for cover is not recommended) and deploy the spikes so they were largely ineffective and not able to be retrieved before Officer A passed by.
115. On balance, going ahead with the deployment in these circumstances did not prioritise Officer D's own safety, and was unlikely to be achieve its purpose. Further, it required Officer A to swerve into the oncoming lane to avoid the spikes. As such, it did not comply with the overriding principle set out in paragraph 108.
116. Policy required Officer D to submit a Tyre Deflation Device report after deploying spikes. He did not do this and Officer D says he did not know this was a requirement, despite having deployed spikes several times in the past. Officer D is a supervisor and an experienced officer. It seems inexplicable that he was not aware of this requirement.

FINDINGS ON ISSUE 3

Officer D was justified in deploying spikes, in principle. However, he did not have time to safely and effectively deploy the spikes at the critical moment and should not have done so.

Officer D failed to complete the required post-deployment of spikes report required by policy.

ISSUE 4: WAS POLICE REPRESENTATION OF THE INCIDENT IN THE MEDIA MISLEADING?

117. At 8.52am on Saturday 10 October 2020, the Police Media Centre issued a media statement about the pursuit and crash, attributable to the Northland District Commander. The statement included the following wording:

“Police initiated a pursuit of a vehicle in central Kaitaia at about 1.20am however it was soon abandoned due to speed and the manner of driving. The fleeing vehicle has continued onto a rural road and crashed into a power pole...”

118. Ms Y, and Ms U (who witnessed the pursuit just before the crash) complained that this statement gave the false impression that the pursuit was abandoned much earlier than it was, while the Mazda was still in the Kaitaia township, and that Police were not pursuing the Mazda on the rural road just before the crash.
119. Officer G was the senior on-call officer on the night of the crash. He was alerted at 2.30am and made necessary notifications and enquiries.
120. He reviewed the event chronology generated during the incident by NorthComms, which contained minimal detail about the pursuit itself, other than the time and location the pursuit commenced, when and where it crashed and two speed updates.
121. At about 6am he was advised by detectives at the scene the pursuit had been abandoned between 300-500 metres prior to the bend where the crash occurred. Shortly afterwards he was

briefed by Officer D, and recorded in his notebook that: “[Officer A] abandoned the pursuit, only seconds later the crash was called in.”

122. At 6.58am Ms A from the Police Media Centre sent a draft media statement about the incident to Officer G and the District Commander to consider. It contained a number of inaccuracies.

123. Officer G made corrections and additions and approved the final version. He added or corrected the following information:

- the origin of the pursuit;
- that it was “soon abandoned;” and
- that “the fleeing vehicle had continued on to a rural road” before crashing.

124. At 9.19am (after the media statement had been released), Officer G submitted a Serious Incident Notification (an internal report). This included a more accurate summary of events:

“The vehicle has failed to stop for police and travelled at speed through central Kaitaia and out onto Kaitaia-Awaroa Road towards Ahipara. [Officer A] has decided to abandon pursuit due to the speed and manner of driving, he has advised COMMS. A few second later the fleeing vehicle has lost control on a bend and crashed into a power pole.”

125. We put Ms Y’s and Ms U’s complaints to Officer G. He says he did not intend to mislead the public or the Authority, and that the comment that the pursuit was “soon abandoned” was based on the fact the entire pursuit only lasted about two minutes. He also said he did not have the opportunity to speak to Officers A and B about what had happened, nor was a recording of the radio communications during the pursuit available to him to listen to.

126. We agree that, on the face of it, the Police media statement gives an incorrect impression about what happened, as per Ms Y’s and Ms U’s complaints. It implies the pursuit was abandoned at an early stage, then Mr X drove into the rural area without being pursued by Police before crashing.

127. The Authority considers that Officer G had enough information available when he amended and approved the media statement to notice that the sequence of events was not accurately portrayed, or was at least open to misinterpretation, and ensure that it was corrected before being released.

128. We note that Officer G submitted a Serious Crash Notification about 30 minutes after the media statement, which provided a full and accurate account of the pursuit and circumstances.

129. Officer G should have taken greater care to approve a media statement that conveyed a clear and accurate account of events and was not open to misinterpretation.

FINDING ON ISSUE 4

The media statement gave an incorrect impression that the pursuit was abandoned at an early stage, and that Police were not pursuing the Mazda on the rural road before the crash. Officer G should have taken greater care to approve an accurate account of events which could not be open to misinterpretation.

Subsequent Police Action

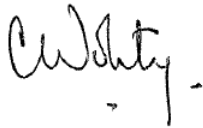
130. On 10 December 2020, Police updated their fleeing driver policy, placing more emphasis on undertaking a risk assessment before signalling a driver to stop, and making a decision at an early stage whether to start a pursuit if a driver does not comply and stop.
131. The policy now specifically provides that a dispatcher may abandon a pursuit where the reason for the pursuit is not provided by the pursuing officer or is insufficient to justify a pursuit.

Recommendations

132. The Authority and Police published a report in March 2019 entitled 'Fleeing Drivers in New Zealand – a collaborative review of events, practices, and procedures.' A detailed action plan to implement the recommendations in the report provided that Police should *“strengthen TDD training and identify opportunities for ensuring staff are confident and competent in using the devices”* as well as *“develop best practice for use of TDDs, drawing on international practice and experience.”* This work is ongoing and involves Police reviewing and updating TDD policy.
133. The Authority recommends pursuant to section 27(2) of the Independent Police Conduct Authority Act 1988 that by 31 October 2021 Police:
 - 133.1 change TDD policy to remove section 39 of the Crimes Act 1961 as the general justification for the deployment of TDDs;
 - 133.2 determine what other changes to TDD policy are needed to clarify deployment of TDDs under section 40 of the Crimes Act 1961 and develop a plan for the implementation of those changes; and
 - 133.3 consider whether Police should seek legislative change to provide a specific power to deploy TDDs.
134. On 15 October 2020 the Authority released a report about a fatal crash following a Police pursuit in Christchurch on 22 October 2019. In this report we commented on Police's progress in introducing technology, such as Automatic Vehicle Location (AVL) or telematics, to enable location of Police vehicles in real time.
135. The Authority recommends pursuant to section 27(2) of the Independent Police Conduct Authority Act 1988 that Police:

135.1 develop a plan for the progressive implementation and use of a system of technology enabling live capture of onboard diagnostic data from Police vehicles and retention of that data; and

135.2 provide the plan to the Authority by 31 December 2021, and thereafter provide quarterly updates on the implementation of that plan.

A handwritten signature in black ink, appearing to read 'Colin Doherty' with a small dash at the end.

Judge Colin Doherty

Chair
Independent Police Conduct Authority

12 August 2021

IPCA: 20-5153

Appendix – Laws and Policies

LAW

136. Under section 114 of the Land Transport Act 1998 Police are empowered to stop vehicles for traffic enforcement purposes.
137. Section 39 of the Crimes Act provides that Police officers can use reasonable force in the execution of their duties. Specifically, 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.”*
138. Section 40(1) of the Crimes Act 1961 provides for Police officers to use reasonable force to *“prevent the escape of that other person if he takes flight in order to avoid arrest.”*

FLEEING DRIVER POLICY

139. The overriding principle of the Police fleeing driver policy is that: *“Public and Police employee safety takes precedence over the immediate apprehension of a fleeing driver.”*
140. The pursuing officer[s] must carry out a TENR (Threat-Exposure-Necessity-Response) risk assessment when deciding to commence or continue a pursuit. A pursuit will only be commenced and/or continued when the seriousness of the offence and the necessity of immediate apprehension outweigh the risk of pursuing. The fact that a driver is fleeing does not in itself justify engaging in a pursuit.
141. The TENR assessment requires consideration of the following:
- 1) The threat, by any individual or action which is likely to cause harm to Police in the course of their duties.
 - 2) Exposure refers to the potential for harm (physical or otherwise) to people, places, or things. Exposure can be mitigated through assessment and planning.
 - 3) Necessity is the assessment to determine if there is a need for the operation or intervention to proceed now, later, or at all.
 - 4) Response must be a proportionate and timely execution of Police duties aided by the appropriate use of tactics and tactical options.
142. The TENR risk assessment must weigh up:
- “... the ongoing exposure to harm that the fleeing driver incident poses, or is creating, with the current threat that the fleeing driver poses and the necessity to respond.”*

143. Unless there is an immediate threat to public or staff safety, a pursuit must be abandoned if the identity of the offender becomes known, the fleeing driver does not pose an immediate threat to public or Police, and they can be apprehended later.
144. If the fleeing driver is not apprehended at the time of the fleeing driver pursuit, all viable lines of inquiry to identify and hold the fleeing driver accountable should be exhausted. An inquiry phase should be dealt with as a priority prevention activity.
145. If a fleeing driver was not driving in a dangerous or reckless manner prior to being signalled to stop, but now is, the Officer must determine as part of their risk assessment if they should continue to pursue the fleeing driver due to the potential impact of their presence.

Communications requirements

146. It is the responsibility of the lead vehicle driver, or Police passenger, to notify Police Communications as soon as practicable and when it is safe to do so, that a vehicle has failed to stop, the location, direction, fleeing vehicle description, and reason that it is being pursued (failure to stop is not a reason).
147. Police Communications transmits pursuit warning to all vehicles involved: *"{Call sign} if there is any unjustified risk to any person you must abandon pursuit immediately. Acknowledge."*
148. Police officers responsible for the fleeing driver communications should provide the Pursuit Controller with timely and uniform situation reports (when safe to do so).

TYRE DEFLATION DEVICES POLICY

149. Tyre deflation devices (TDD), commonly referred to as road spikes, can be used under section 39 of the Crimes Act 1961.¹²
150. Deploying a TDD is a tactical option to stop a fleeing driver in the safest possible manner, with the minimum force necessary. Prioritising safety over the immediate apprehension of a fleeing driver is critical to ensuring the safety of all, reducing trauma, and ensuring the trust and confidence of the public.
151. Deployment staff who are fully certified as a primary or secondary responder may deploy TDD:
- where no other, less dangerous means of stopping the vehicle are reasonably available;
 - where the deployment can be affected without unjustified risk to any person; and
 - on the authority of the pursuit controller, as per the Fleeing Driver policy; or

¹² The Authority considers that section 40 is a more appropriate legal justification for the use of road spikes, see paragraphs 101-103.

- by deployment staff who self-authorise a deployment, based on their TENR risk assessment, without approval from the pursuit controller.
152. Staff can deploy a TDD at their own discretion, but only in accordance with the TENR risk assessment if that indicates that an immediate response is justified, and when they are unable to gain prior approval from a pursuit controller. Potential situations are where non-deployment could have the gravest consequences including immediate risk of serious injury or loss of life. Officers who self-authorise a TDD deployment may have to justify their decision. They must notify the pursuit controller as soon as possible of a self-authorised deployment including the outcome.
153. Prior to deployment, officers should advise Police Communications of the intended deployment location.
154. The deployment site must always provide cover and an escape route for deployment staff to ensure safety. Police vehicles in the immediate deployment area should not be occupied in case the fleeing driver crashes into the Police vehicles.

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

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

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

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

WHAT ARE THE AUTHORITY'S FUNCTIONS?

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

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

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

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

THIS REPORT

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



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