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Whaia te pono, kia puawai ko te tika

**Police response to the actions of**

**Rhys Warren**

*July 2018*

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## Introduction

1. At around 10:30am on Wednesday 9 March 2016, Rhys Warren fired the first of a series of four shots at a Police officer and a Police-marked spotter plane, who were removing cannabis plants near his house.
2. The Armed Offenders Squad (AOS) responded and cordoned the house. At approximately 3:30pm, a team of AOS officers entered the house. Mr Warren fired three shots at Police, seriously injuring three AOS officers. Police fired 46 shots towards Mr Warren as they evacuated the house. At approximately 5pm, Mr Warren shot a fourth AOS officer who was positioned on a cordon outside the house.
3. At approximately 9am on Thursday 10 March 2016, Mr Warren surrendered to Police.
4. The Police notified the Independent Police Conduct Authority of the incident, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings and recommendations.
5. The Authority has examined issues relating to the:
  - planning and execution of the cannabis removal operation (Operation Dee);
  - initial Police response to the first shots fired by Mr Warren;
  - briefing and deployment of the AOS;
  - tactical decision making by AOS commanders;
  - justification for Police firing at Mr Warren;
  - communication, control and command exercised by Police during the incident; and
  - adequacy of the welfare provided by Police to the injured officers and their families.

## Executive Summary

6. The Independent Police Conduct Authority has found that the tactical decision-making and control and command exercised by Police in response to shots fired near Kawerau on 9 March 2016 was highly flawed and placed Police officers at risk. The Authority also found that Police were justified in shooting at Rhys Warren in the circumstances.

Shooting 46 rounds of bullets at Tangata Whenua Rhys Warren most ever shot at any one shooting throughout the country in NZ history and the Authority found the police justified in the shooting as opposed to Tangata Whenua Rhys Warrens 3 shots

7. At approximately 10:50am, the Armed Offenders Squad (AOS) was called to two adjacent rural properties on Onepu Spring Road in response to a report from a Police officer that an unidentified person was firing shots at both him and a Police-marked spotter aircraft during a cannabis removal operation.

IPCA reports states that an officer reported a shot was fired at a plane and himself. This assertion was incorrect as police did not ascertain correctly or accurately if any person was at the house let alone if anyone had fired a gun at the plane or himself.

8. By 1pm, AOS officers moved into position around the two properties and started appealing to any occupants to come out. After receiving no response, over the next two-and-a-half hours the AOS Commander made a series of tactical decisions that culminated in a team of six officers and a Police dog entering a house owned by the family of a Mr Rhys Warren in order to arrest any occupant.

Tangata Whenua Rhys Warren slept from 8.30 am until he heard the smashing of the windows ??? 3.30pm and the loudspeaker calling William Warren, as we know William is not Tangata Whenua Rhys Warren therefore he never answered as he was still waking up from the night out pig hunting. The no response from Tangata Whenua Rhys Warren lead to an AOS assault on the house

9. Mr Warren was waiting in a bedroom and fired three shots at the advancing officers, seriously injuring three of them. Three officers fired a total of 46 shots towards Mr Warren as they evacuated the house. Later that afternoon, Mr Warren shot a fourth officer who was positioned on a cordon near the house.

This case was corrupt from the beginning when Officer Gab reported a gunshot fired at the spotter plane from 158 Onepu Springs Road, there was no proof that anyone was seen shooting at the plane, or coming out of the house to shoot at the plane, no proof of evidence just hearsay., Officer Gabb alerted the AOS Armed Offenders Squad on hearsay evidence.

Tangata Whenua Rhys Warren 3 shots in the house had 2 bullets recovered. 1 bullet was found in bedroom 1 and the 2<sup>nd</sup> bullet found in the hallway cabinet, which leaves 1 bullet to shoot 3 officers in the house and another in the back yard surveilling the house. As we know 1 bullet could not cause the damages that had occurred for each officer. We would like to suggest friendly fire wounded all officers.

## Executive Summary

10. Due to the seriousness of what had occurred, the Acting District Commander assumed control and command of the incident from a detective sergeant at the scene. Senior Police staff at Police National Headquarters in Wellington monitored events and made arrangements for specialist tactical resources to travel to the scene to help resolve the incident. Mr Warren surrendered peacefully to Police the following morning. He has since been convicted of two counts of attempted murder, three counts of using a firearm against a law enforcement officer and wounding with intent to cause grievous bodily harm. He has been sentenced to preventive detention.

Tangata Whenua Rhys Warren is now serving 25 years lock up with preventative detention, he will never be released, and we are very blessed that he is still alive to tell the tale of the AOS assault on the house.

Three shootings took place in the house

Officer White was injured by his scope which was shattered by a bullet, evidence shows in the trial that the bullet was not conclusive of being fired by Tangata Whenua Rhys Warren gun.

Officer Mauheni was following Officer White when he was shot in the head entry point of the bullet was from the left side entering from back to the front, this evidence was confirmed from Dr Ventaraman Balakrishnan

With Tangata Whenua Rhys Warren firing from the right side of the passageway the evidence rules out his gun.

Officer Flinn was shot in the knee whilst he was near the hallway cabinet, as we know a bullet was fired by Tangata Whenua Rhys Warren which hit the of the door jam of bedroom 1 then took a chunk of plaster out of the wall before lodging into the back of the cabinet. Again no proof of evidence was submitted that Tangata Whenua Rhys Warren had shot Officer Flinn knee.

Officer Marsh wounded on the hand from the firing of all the bullets fired  
Officer Marsh was situated outside in the backyard of the Address.

The attempted murder charge in relation to Officer Marsh, the crown alleges that Tangata Whenua Rhys Warren shot with a police issue Glock pistol.

There is no solid evidence whatsoever to support this claim.

- 1 The Glock they alleged Tangata Whenua Rhys Warren used was not tested to see if it had been fired.
- 2 The forensic expert Mr Weavers could not rule out any other police officer or police issue Glock pistol either scientifically or by accounting for the number of rounds of the AOS Members as the AOS did not keep a log of any rounds fired.

## Executive Summary

3 Police state that The Glock magazine found inside the house had 2 rounds missing this is incorrect. the IPCA did not research this aspect and can only be construed that the IPCA was complicit in concealing the fraud against tangata whenua Tangata Whenua Rhys Warren.

11. The Authority has found that the AOS officers should never have entered the Warren family's house, and that there was poor general understanding amongst officers at all levels about how control and command should have operated during different phases of the Police response. The lack of proper oversight was a strong contributing factor to the flawed tactical decisions.

Police reacting to flawed tactical decisions at all levels of control and command during different phases of the Police Response, smashing windows and doors of the, then, newly renovated house. Effectively, we claim, the Police REACTED UNLAWFULLY, despite having "state of the art technology, tele-communications, and an arsenal of "armed human and armoured vehicles resources" at their disposal. AND In those circumstances, (now admitted in Your Report), of Police communications breakdown, they invaded the home at 158 Onepu Springs Road, by tactless reactive (knee jerk) guesswork – the outcome of which was, they gained unlawful forced entry, by unlawful smashing of doors and windows, which unlawfully provoked firing of 46 shots, outside and inside the house, the most ever fired by Police in New Zealand (in confusing circumstances)

12. The three AOS officers who fired at Mr Warren made a lawful decision based on the circumstances that they perceived at the time. They fired to defend themselves and their fellow officers from an imminent threat of death and in order to manage the safe evacuation of wounded officers.

Tangata Whenua fired 3 shots as oppose to 46 shots from the AOS. The AOS fired to kill Tangata Whenua Rhys Warren and he hid behind a sink and bench top laid on the floor while the 46 shots barraged towards him that saved his life. Tangata Whenua Rhys Warren defended himself with the only three shots that was fired from his rifle. We need to remember that 2 of his shots ended up in bedroom 1 and in the cabinet.

13. However, the previous decisions which led the AOS officers to be in this position were highly flawed. Better decision making is likely to have prevented these officers from having to make the decision to use their firearms in the first place. Just as importantly, it would have prevented the officers from being in a position of considerable risk.

Its inexcusable what happen that day police and the AOS, blaming communication breakdown between all officers, the only person suffering now is Tangata Whenua Rhys Warren serving 25 years and preventative detention. A corruption from the police through to the ranks of District Commissioner to Whakatāne Police entire suite of nine, Detectives, (an overkill), and ground staff Sergeants and Constables, including Police tampering of material evidence to missing evidence throughout the trial assured Tangata Whenua Rhys Warren was never to see the light of day.

## AUTHORITY CONCLUSIONS

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14. The Authority has concluded that:

- 1) Police National Headquarters should have scrutinized each Police district's operation orders, and required them to meet minimum standards on a range of operational matters, including the preparation of a broad community impact assessment.
- 2) Operation Dee was not planned or executed with sufficient care in the Bay of Plenty Police District. Officers B and C did not follow correct procedure when entering 160 and 158 Onepu Spring Road to search for cannabis plants, by failing to notify NorthComms prior to conducting the search, and failing to carry out a risk assessment.
- 3) The Police response to the first shots fired at Officer B and the spotter plane was, for the most part, timely and appropriate. It was partially hindered by the fact that staff in NorthComms and at the DCC did not know that the National Cannabis Crime Operation was taking place, and staff on the operation had not logged in.
- 4) It was appropriate for officers at the scene to arm themselves in response to the firearms threat. In doing so, the officers followed Police procedures and turned their minds to the Police fire orders.
- 5) The deployment of the AOS to attend this incident was justified.
- 6) Both Rotorua and Tauranga AOS were consistently and adequately briefed by Officers A and B.
- 7) The use of the aggressive cordon tactic exposed officers to a high level of risk. Greater consideration should have been given to a less risky deployment tactic.
- 8) The use of tear gas in 158, after 160 had been cleared, would have been justified and in accordance with Police policy.
- 9) The use of the Police dog to search 160 prior to the AOS officers entering complied with Police policy.
- 10) The AOS Commander should have considered using a Police dog to search 158 instead of undertaking a CTR.
- 11) The AOS Commander, AOS Forward Commander and AOS Officer 3 should have considered that creating broken glass during the Close Target Reconnaissance was likely to impact on the use of Police dogs at 158.
- 12) The AOS Commander cannot be criticised for failing to direct the Police dogs to search 158 after the CTR, and before the entry of the officers.
- 13) CTR is not a tactical option available to AOS, and should not have been conducted at 5 either 158 or 160.
- 14) The decision to enter 158 was ill-considered and wrong.

- 15) The step-by-step assessment of tactical options by the AOS Commander and AOS Forward Commander was rushed and lacked due consideration. Some tactics adopted were unsafe.
- 16) All of the shots fired by AOS Officers 5, 6 and 7 involved the use of reasonable force in defence of themselves or of their fellow officers, and were therefore lawful under section 48 of the Crimes Act 1961.
- 17) The NorthComms shift commander and Officer A, as the initial Incident Controller, exercised good control and command from the time the first shots were fired, until the AOS arrived.
- 18) Area and District staff were informed of the incident and responded appropriately. In particular, the EBOP Area Commander's decision against immediately going to the scene was justified in the circumstances.
- 19) There was general confusion about where control of the incident lay once the AOS arrived.
- 20) Officer A did not know that he was accountable for AOS tactics and decision-making as the Incident Controller.
- 21) The AOS Commander should have consulted with Officer A and obtained approval for the tactics employed. The disconnectedness between the AOS Commander and Officer A (as Incident Controller) meant that objective scrutiny of tactical decisions did not occur.
- 22) The command structure of the Rotorua AOS was not well understood outside of the squad.
- 23) Officer E acted under the authority of the AOS Commander, and not in his own capacity as an Inspector, while at the scene. However, his tasking of staff created the perception that he was in a specific position of control and command, which reinforced general confusion.
- 24) The NCCC should not have made unilateral operational decisions without including the Local Controller and DCC.
- 25) Control and command concepts, and their practical application, were not clearly understood by Police at all levels during this operation.
- 26) Police provided good welfare support to the injured officers and their families.

## AUTHORITY RECOMMENDATIONS

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15. The Authority has recommended that New Zealand Police:
  - 15.1 Identify and introduce additional relevant training for Police staff at all levels focusing on the following:



6 ) the control and command structure during an incident managed within a District where different response groups are deployed, including the role of District Command Centres during such events;

b) the control and command structure of incidents where the National Command and Co-ordination Centre provide logistical and/or operational support;

c) the control and command structure of incidents when the National Command Centre takes control and command responsibilities;

d) ensuring officers undertaking a tactical commander role, irrespective of their rank or the level of command, understand the requirement to consult and obtain the approval of the controller of the Police operation about proposed tactics, and that the consultation, and the approval given, is recorded in the Incident Controller's log; and

e) ensuring that all officers have a comprehensive understanding of the different roles undertaken during a critical event, and use appropriate terminology accurately and consistently.

15.2 Urgently review and finalise the Command Centre Operating Guidelines document, to ensure it aligns with the Control and Command policy and includes the following elements:

a) clarification of the control and command capability of the National Command and Co-ordination Centre and District Command Centres;

b) specification of the role of the National Command and Co-ordination Centre in critical events; and

c) inclusion of specific guidance about how District Command Centres will ensure clear line control and communications between individuals, command groups and external agencies holding key control and command roles so as to ensure clarity of role and function of all participants.

15.3 Review radio and communications protocols to ensure that the transition of control and command between different response levels is clearly, widely and consistently recorded and known by all staff involved in a critical event.

15.4 Ensure there is a desk file in each District Command Centre that aligns with the Command Centre Operating Guidelines and Control and Command policy and provides information on the various roles of a District Command Centre during a critical event.

15.5

Develop an induction package for staff moving to work in a District Command Centre and ongoing training, including the CIMS model, to ensure consistency in the way District Command Centres operate, particularly during critical events.

## Background

16. This section of the report provides a summary of the incident and the evidence considered by the Authority. When quoting or describing the accounts of any officer, complainant or witness, the Authority does not intend to suggest that it has accepted that particular account.
17. Analysis of the evidence and explanations of why the Authority has accepted, rejected or preferred that evidence is reserved for the 'Authority's Findings' section.
18. An index of officers and civilians referred to and a glossary of terms can be found at the end of this report.

## SUMMARY OF EVENTS

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### National Cannabis Crime Operation

19. The events of 9-10 March 2016 took place during the annual Police National Cannabis Crime Operation (NCCO). The broad purpose of the operation is to target offending connected with the cultivation and distribution of cannabis. This includes using aircraft to spot and destroy cannabis plants. The operation has several different phases to coincide with the growing cycle of cannabis plants. The 2015/2016 operation was code-named 'Operation Dee.'
20. The annual operation is overseen by the NCCO National Coordinator, based at Police National Headquarters (PNHQ), but is planned, co-ordinated and carried out by Police within each Police district. The NCCO National Coordinator sets the overall focus for each year's operation. He is also responsible for providing and distributing the national assets used by each Police district, such as aircraft and their pilots, fuel and chemical sprays. Specifically, the NCCO National Co-ordinator allocates the number of flying hours for each district, and when the district will have access to these resources.
21. Each participating Police district decides the priority they will give to the NCCO within their district, and consequently the scope of the work they will carry out and amount of resources they wish to commit to the operation. Each district's operation co-ordinator prepares a set of operation orders to reflect these decisions. These orders were not reviewed prior to finalisation by the NCCO National Coordinator at the time of this incident.
22. Officer A planned and ran the annual NCCO operation in the Bay of Plenty Police district since 2010. He was responsible for planning and controlling the logistics of the operation, preparing the operation orders and overseeing their execution.
23. The operational orders prepared by Officer A were distributed to the Bay of Plenty District Commander, two senior district crime managers, a sergeant involved in the operation and the

NCCO national co-ordinator. The Authority received conflicting information about whether the



Area Commanders were provided with a copy. The operation orders largely replicated previous years' orders.

24. Between 4 and 18 March 2016, a team of eight Police officers carried out the 'search and destroy' phase of the operation in the Bay of Plenty Police District. This phase uses a fixed-wing aircraft (spotter plane) to spot cannabis plantations concealed in crops or scrub, and to direct the ground crew to the location so the plants can be seized and destroyed.

### Events leading to the Police response

25. On the morning of Wednesday 9 March 2016, Officers B and C were the ground crew working with the spotter plane (a Police-marked, fixed-wing aircraft), to locate and destroy cannabis plants in the Kawerau area.
26. Both officers were wearing Police-issued blue overalls and high-visibility vests. Due to the hot weather and the nature of the job they were doing (which involved crawling through scrub to reach cannabis plants), they were not wearing stab-resistant body armour (SRBA) or carrying firearms or Tasers. Bushmaster M4 rifles, ballistic body armour and Tasers were locked in their marked Police SUV.
27. Officers B and C had radio communication with each other and the spotter plane, but were not connected to the Tauranga Police radio channel. Consequently, they were reliant on the spotter plane to relay any communication to their supervisor, Officer A, and to the wider Police radio network, including the Northern Police Communications Centre (NorthComms) based in Auckland.
28. None of the officers working on Operation Dee had logged in to the Communications and Resource Deployment (CARD) system at NorthComms.<sup>1</sup> According to Officer A, this was to avoid confusing NorthComms staff, since the NorthComms staff could not contact Operation Dee officers on the main radio channel.
29. The NorthComms shift commander was unaware that Operation Dee was taking place, or where the officers involved were operating. Although the District Commander said that the District Command Centre (DCC), based at Rotorua, was aware that Operation Dee was taking place somewhere in the Eastern Bay of Plenty Area, staff at the DCC at the time were not aware the operation was occurring.
30. Officer A explained that he had not advised NorthComms or the DCC about the operation in order to maintain the security of the operation, and to maintain flexibility, since planned operational activities frequently changed due to weather conditions or the results of earlier cannabis finds.

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<sup>1</sup> Units register their call signs with the Police Communications Centre at the start of their shift. This allows Communications staff to know which units are available to deploy, and where particular officers and assets are positioned.



31. At 10.10am, the spotter plane directed Officers B and C to investigate a potential cannabis plot a short distance from 160 Onepu Spring Road (160). The officers drove into the driveway of 160, got out of the SUV, loudly announced that they were Police officers, but received no response. They located and started to cut down the cannabis plants, pursuant to section 20 of the Search and Surveillance Act 2012.<sup>2</sup>
32. The spotter plane then directed Officer B to move to the adjacent property, 158 Onepu Spring Road (158), where the crew of the spotter plane could see another group of cannabis plants in some blackberry bushes near to the house. There was no fence between the two properties, and Officer B was able to walk across to 158, passing within “2-3 metres” of the back of the house. He saw a dog running loose at the front of the property.
33. Officer B called out “Police” twice as he passed the back windows, but received no response and believed that the house was unoccupied.
34. Officer B found a tunnel in the blackberry bushes on the northern side of the property, crawled through, and started to cut down the cannabis plants. Meanwhile, Officer C was directed to drive 200 metres back up Onepu Spring Road to a point near the intersection with Thompson Road, to investigate another cannabis plot.

### **Shots fired at Police**

#### *Initial shots and response*

35. At 10.32am, Officer B heard a bang, which he thought could be a gunshot. He crouched down, removed his high visibility vest, and radioed Officer C and the spotter plane, advising that he had heard a shot. The spotter plane turned back to fly over the area and try to locate the source of the shot, and advised Officer A about the situation.
36. At 10.37am, Officer B raised his head above the line of the blackberry bushes, and heard a second shot, which he thought sounded like a shotgun being fired. He saw a plume of smoke rising from the back of the house, approximately 20 to 30 metres from his position in the blackberry bushes. He then heard from the same direction the sound of a door slamming.
37. Officer B radioed this information to the spotter plane, and advised that the shot seemed to have been directed upwards towards them. The spotter plane immediately gained height to stay out of firing range and started circling above 158 and 160. Officer B judged that the safest option for him at this point was to stay concealed in the blackberry bushes.
38. Officer C returned to the parked SUV, armed himself with a rifle, put on his ballistic body armour, and reminded himself of the Police fire orders. He drove the SUV forward 50 metres to a slight right-hand bend in the road, from which position he could observe the road in front of 158 and 160. He could also see the rear of 158, where a line of tall trees separated the grounds of the house from an open field.

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<sup>2</sup> This section is set out in paragraph 390.

39. At 10.39am, Officer A notified NorthComms over the Tauranga radio channel that “shots had been fired at Police.” However, he did not identify himself or provide any other contextual information. Officer A started driving towards Officer C’s position.
40. The NorthComms dispatcher heard Officer A’s radio message, but was unable to identify who was speaking or where the officer was. The NorthComms shift commander contacted Officer D, the senior sergeant in the District Command Centre (DCC), who was able to identify Officer A as the officer who had reported the shots. Both the NorthComms shift commander and Officer D contacted Officer A by cell phone, and received a basic briefing. The NorthComms shift commander became the Incident Controller.
41. Officer D contacted Officer E, the officer in charge of the Rotorua AOS, to inform him about the incident. Officer E and other senior AOS officers decided to activate the squad.
42. Officer D advised the Acting District Commander and the National Command and Coordination Centre (NCCC) about the incident and the immediate response. The Acting District Commander told the Authority that he understood that some shots had been fired into the air from an address, but not necessarily in the direction of Police officers. At this stage, he treated it as a “business as usual” incident, and one of several serious incidents which were occurring in the district that morning. He noted that the AOS were going to respond.
43. The Eastern Bay of Plenty (EBOP) Area Commander was meeting with his management team in Whakatane when they were advised that “a shot” had been fired at the spotter plane near Kawerau.<sup>3</sup> He directed the sergeant in charge of the Kawerau Police station, Officer F, to go to the incident, assess the situation, and report back to him.

#### *The AOS activate and further shots are fired*

44. The Bay of Plenty Police District operates two Armed Offenders Squads, based in Rotorua and Tauranga. On 9 March 2016, the Rotorua AOS took the lead in responding to emergency callouts in the District.
45. Rotorua AOS started to assemble in their squad rooms, along with members of the Police Negotiation Team (PNT). At the time of the incident Officer E, despite being in charge of the Rotorua AOS, was acting as an observer during operations, as he had not yet completed his AOS qualifications (he has since done so). The Rotorua squad included several very experienced senior sergeants, who took the AOS Commander role when the squad was deployed, and were responsible for making all operational and tactical decisions.
46. The initial information available to the AOS Commander was very limited. The AOS Commander attempted to call Officer A to obtain more information, but was unable to reach him.

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<sup>3</sup> Police districts are divided into Areas, under the command an Area Commander. The Eastern Bay of Plenty Area, which includes Kawerau, is one of four Areas in the Bay of Plenty Police District.

47. Officer E, the AOS Commander, the AOS Forward Commander, eight squad members and three PNT officers started travelling to the scene.
48. AOS Officer 1, a team leader from the Tauranga AOS squad, heard about the incident over the Tauranga Police radio channel, and judged that some members of his squad who were available could reach the scene more quickly than the Rotorua AOS.
49. After receiving approval from the officer in charge of the Tauranga AOS (Officer G), and advising the Rotorua AOS and Officer A, AOS Officer 1 and four other AOS officers (including a Police dog handler) started to travel to the scene.
50. The NorthComms shift commander and Officer A set the Safe Forward Point (SFP) at the intersection of State Highway 30 and Onepu Spring Road, approximately 1.5 kilometres from Officer B's position. The DCC directed all available local staff to go to the SFP to assist.
51. At 10.48am, Officer B heard a third shot which sounded "*different*", as if it was directed towards him. He reported this to the spotter plane, who relayed this to Officer A. At this point, Officer B decided that he needed to leave the area immediately in case the person with the gun was looking for him.
52. He burrowed out of the blackberry bushes towards Onepu Spring Road, climbed over a fence and ran back towards Officer C's location, where two general duties Police officers from Whakatane were now also positioned. The spotter plane remained circling above 158 and 160.
53. Officer B armed himself with a rifle, put on ballistic body armour and reminded himself of the Police fire orders. The officers then positioned themselves so they could observe the road frontage and the rear of 158.
54. At approximately 11am, Officer A arrived at the SFP. He directed the general duties officers who had also arrived there to arm themselves, consider the Police fire orders and take up outer cordon positions at both ends of Onepu Spring Road to prevent traffic from passing 158 and 160.
55. At 11.16am, Officer A took over the Incident Controller role from the NorthComms shift commander. He drove forward to Officer B's position with a Police dog handler and some general duties officers. The spotter plane continued circling above 158 and 160.
56. Meanwhile, Officer F arrived at the SFP and phoned the EBOP Area Commander, telling him that they had sufficient resources, cordons were in place and they were waiting for the AOS to arrive. The EBOP Area Commander asked whether he was needed at the SFP, but was told that this was not necessary.
57. The EBOP Area Commander was aware that Officer A had taken command at the scene, and had confidence in Officers A's and F's ability to manage the situation. The EBOP Area Commander continued with his planned meetings, but kept a Police radio and his mobility device with him so he could monitor the situation.



12 58. At 11.26am, all of the officers at the cordon point near Thompson Road heard a fourth shot.

Officer B told the Authority that the general consensus was that it sounded like a shotgun. He said:

*“...that fourth shot, was when I was back on the cordon, so as I got there he’s still there, he’s still shooting at the plane, so we were comfortable, okay, so he’s here. We had a lockdown [with] cordons by then, we were comfortable that if anyone left that address, we would know about it and that is where we pretty much, we just waited.”*

59. Officer A directed Officer B and another officer to move to a position in a field approximately 250 metres behind the properties at 158 and 160 and keep them under observation.

60. Officer A returned to the SFP to provide radio updates and to await the arrival of the AOS. A local Police officer had identified Mr X, a member of the Warren family who resided in the area, as a possible occupier of 158. Officer A forwarded this information to NorthComms, the DCC and the AOS.

61. The DCC made enquiries about Mr X in the Police database. Records showed that Mr X had previously been violent towards Police and was thought to have access to weapons. This information was passed to the AOS.

### AOS arrive at the scene

62. On the way to the scene, the Rotorua AOS Commander spoke to AOS Officer 1 and agreed that, upon arrival, the Tauranga AOS officers would go to Officer C’s cordon position near Thompson Road, await the Rotorua AOS and be ready to apprehend the offender if he tried to leave either property.

63. At 11.45am, the Tauranga AOS officers arrived at the SFP. Officer A showed them an aerial map of the area, and told them that:

- ▣ four shots had been fired;
- ▣ Officer B had been at the back of 158/160 when the shots had been fired, and had seen smoke after one of the shots and heard a door slam;
- ▣ Officer B and another officer were now positioned at an observation post behind 158, and other cordons had been put in along Onepu Spring Road;
- ▣ the spotter plane had been circling continuously above the properties since the first shots had been fired; and
- ▣ neither Officer B nor the crew of the spotter plane had seen anyone leave the cordoned area.

64. AOS Officer 1 told the Authority: *“So as far as I was concerned, no one had left from that address from the time the shots were fired.”*

65. At approximately 12pm, the Tauranga AOS officers moved to the cordon near Thompson Road, having read the Police fire orders.
66. The officers at the cordon reported that they had not seen anyone leaving either 158 or 160.
67. At 12:20pm, the Rotorua AOS and PNT arrived at the SFP. As the Incident Controller, Officer A showed the AOS Commander, Officer E and the PNT Sergeant an aerial photograph taken by the spotter plane. The AOS Commander told the Authority that Officer A gave him the following information:
- ▣ an officer was *“at the back of 158 and 160”* when he heard *“what he believed to be gunshots coming from behind him ... from the rear of 158 Onepu Spring Road”*;
  - ▣ the offender’s identity and exact whereabouts were unknown, but he was *“believed to be in [the] vicinity of those two addresses”*;
  - ▣ the offender had fired four shots at the spotter plane, which was still flying above the area; and
  - ▣ cordons were in place on either side of the scene on Onepu Spring Road, (as well as a closer cordon point near the intersection with Thompson Road), and officers were at an observation post at the back of the property.
68. The AOS log recorded that the following information was also included in this briefing:
- ▣ the firearm was potentially a shotgun; and
  - ▣ no movement had been seen since the shots had been fired.
69. The AOS Commander recalled that the cannabis operation staff were *“... not 100%, but they were pretty confident”* that the offender was in the vicinity of 158 and 160. There was no information that the possible offender had been seen in any other location. It had not been confirmed that the offender had intentionally fired directly at Officer B.
70. At 12.40pm, the AOS Commander briefed the Rotorua AOS officers that:
- ▣ they were going to drive towards 158 and 160, collect the Tauranga AOS officers, form a cordon around the two properties and appeal to the offender to surrender;
  - ▣ the offender was potentially Mr X, who presented risks to Police (see paragraph 61);
  - ▣ it was not known if there were other people at either address; and
  - ▣ the offender was potentially armed with a shotgun.
71. The AOS Commander confirmed how the teams of AOS officers would position themselves, and the specific tasks they would perform when they had formed the cordon. He confirmed

that they had legal authority to enter the house if necessary,<sup>4</sup> and to use force in certain circumstances.<sup>5</sup> The AOS Commander repeated the Police fire orders to the squad.

72. The AOS Commander and Officer E positioned themselves in the AOS Command truck, where they could monitor the radio (including the encrypted AOS radio channel) and liaise with the PNT officers and other Police officers at the SFP. Officer E sent the EBOP Area Commander a text message to advise him that the AOS had arrived and he would keep him updated.
73. The AOS Forward Commander (the AOS officer responsible for overseeing the AOS tactical response in the field) and team leaders planned how they would make their approach to the properties in order to form the cordon around them.
74. Aerial maps showed that the houses were surrounded by open paddocks, apart from scrub on the right (northern) side of 158. The AOS Forward Commander decided that the Tauranga AOS officers could use this scrub as cover and covertly move into position along the back of the two properties. However, he decided that there was insufficient cover for the Rotorua AOS officers to covertly move into position around the front and sides of 158 and 160.
75. Consequently, the AOS Forward Commander planned to use an *'aggressive cordon'* tactic,<sup>6</sup> which involved driving along Onepu Spring Road to the front of the properties, with Tasers and other non-lethal tactical options ready in case they were confronted by an offender.<sup>7</sup> The officers assigned to form the cordon along the front of the properties would then use the parked vehicles as cover.
76. The AOS Forward Commander briefed the Rotorua AOS officers about the plan. He told the Authority that the plan had been approved by the AOS Commander. Conversely, the AOS Commander told the Authority that he was not told how the officers planned to move forward to their cordon positions, and *"would have questioned"* the use of the tactic, since it was *"alleged someone in that vicinity has fired a shot."*
77. At approximately 12.55pm, the AOS Forward Commander and Rotorua AOS officers drove five Police cars forward from the SFP to meet the Tauranga AOS officers at the cordon near Thompson Road. They waited while the Tauranga officers walked in and took up their position at the back of the two properties. The Rotorua AOS officers then drove forward and parked, two cars abreast, across both lanes of the road, approximately 30 metres from the front of 158.

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<sup>4</sup> The AOS would rely on section 8 and section 18 of the Search and Surveillance Act 2012 (see paragraphs 388 and 389).

<sup>5</sup> See paragraphs 396-398.

<sup>6</sup> This tactic involves putting in a cordon in an assertive and decisive manner, in situations where it is not practical or reasonable to get into cordon positions discreetly or unobserved, and the risks of doing so outweigh other risks. We understand it is variously referred to as an 'aggressive' or 'hard' cordon. As the officers interviewed by the Authority used the former term, the Authority will also use this term.

<sup>7</sup> In this case, the Rotorua AOS was armed with a 'sponge round' or XM1006. This is a less than lethal 40mm projectile with a high density sponge nose that can be fired at an offender by a specially trained AOS or STG using a 40mm launcher, in order to incapacitate the offender.

78. The fifth Police car, containing two AOS officers, stopped in the entrance to the driveway at 15

160 and these officers moved into position on the left (southern) side of 160.

79. By 1pm, the combined squads had surrounded both properties, and the spotter plane left the airspace. The AOS officers used a loud hailer to appeal to any occupant of either address to come out and surrender to Police, and threw rocks onto the roofs of both properties to attract the attention of any occupants. One of the rocks broke a window at the front of 158. No movement was detected from either property.

80. AOS Officer 1, positioned at the back of 158, heard what he thought was a door slamming. He reported this to the AOS Commander, and this information was recorded in the AOS log.

81. Meanwhile, the AOS Commander considered how the operation might progress, and other tactical options that could be used. He asked Officer B to return to the SFP to brief him directly about what he had seen and heard. Officer A and Officer E were also present at this briefing.

82. Officer B told the Authority that he was asked to repeat his story several times, and was "*pretty adamant*" that the person had shot at Police from the back of 158.

83. Officer A said he got the impression that the AOS Commander and Officer E did not believe that the offender was still in house. By contrast, he felt that AOS Officer 1 "*clearly understood that the offender was still contained.*"

84. The AOS Commander said that the information provided by Officer B reinforced his belief that they needed to persist with the 'cordon, contain and appeal' approach at this stage.

### *Tear gas considerations*

85. At an early point in the AOS response, the AOS Commander considered using tear gas as a potential tactical option.<sup>8</sup>

86. According to the AOS log, at 1.12pm the AOS Commander and Officer E rang Officer G to discuss the possibility of using tear gas. There are different accounts of what was said during this conversation.

87. The AOS Commander recalled that, based on the information they had at that stage, he did not think they met the threshold to put tear gas into the house (158) because they could not clearly determine if someone was inside (it was possible that the offender

had left the property prior to the arrival of the AOS). Further, he was concerned that there could be innocent family members in the house. He said:

*“After a discussion with [Officer E] and our Forward Commander, we [agreed] that we did not have sufficient or meet the sufficient threshold to gas the property or the main 158 dwelling, ‘cos we did not believe, there [was] nothing to confirm that the alleged offender was still in that main dwelling.”*

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<sup>8</sup> The relevant policy is set out in paragraphs 415-418.

16 88. The AOS Commander said that he fully briefed Officer G, and Officer G agreed with him that the circumstances did not meet the threshold and gas was not an option.

89. Officer E agreed with the AOS Commander’s account of this conversation, adding that Officer G said *“there were a number of other inquiries”* that could be made regarding who might be at the address before using new tactics. These included researching land ownership and utilities billing information, talking to neighbours, and trying to locate Mr X.

90. Officer G told the Authority that the AOS Commander and Officer E *“never asked me my opinion on whether they should or shouldn’t use gas.”* Rather, they said they were *“considering gas as an option”* and *“asked me for my advice.”*

91. Officer G said he advised them that *“there’s no hurry for gas”* and that they could try to find out more information about who was potentially in the house, if anyone. He understood that Officer E would call him back if they were going to use tear gas.

92. Officer G also said that he recalled some discussion between the Rotorua AOS officers about a *“legal justification”* but he *“didn’t quite understand what they were talking about because clearly in my view there was legal justification to use gas.”*

### **Reconnaissance and clearance of 160 Onepu Spring Road**

93. Meanwhile, at about 1pm, the DCC received information that Rhys Warren, rather than Mr X, might be a person of concern for Police because of his *“previous violent behaviour”*. Officer D forwarded this information to the AOS Commander.

94. At 1.35pm, PNT Officer 1 made further enquiries, which confirmed that Mr X lived at 158 Onepu Spring Road. PNT Officer 1 obtained phone numbers for Mr X’s cell phone and the landline, and also what was thought to be a current cell phone number for a relative and occupier of the same house, Ms Y.

95. At 1.48pm, PNT Officer 1 was told that Rhys Warren was currently *“more unpredictable”* than Mr X.

96. At this point, with no response to their appeals, and at the suggestion of the AOS Forward Commander, the AOS Commander decided that they needed to limit their area of focus by eliminating 160 Onepu Spring Road from the cordoned area. Much of the

information that Police had received so far pointed to Mr X as the most likely suspect, and to 158 Onepu Spring Road as the address of interest.

97. The PNT Sergeant had tried to phone a person thought to be linked to 160, but had been unable to make contact.
98. At approximately 1.40pm, at the direction of the AOS Commander, the AOS Forward Commander told AOS Officer 2 to formulate a plan to clear 160. AOS Officer 2 decided that he needed to do a Close Target Reconnaissance (CTR) to locate an access point for the house, prior to entering and clearing it.
99. AOS Officer 2 described his proposed plan over the AOS radio channel, and received<sup>17</sup> approval from the AOS Commander.
100. AOS Officer 1 and other Tauranga AOS officers told the Authority that they were confused and did not know what a 'CTR' was, having never received training in it. The Tauranga AOS officers also heard the Rotorua AOS officers refer to the tactic as a 'CQR' and 'CCR', which added to their general confusion about what was about to happen. It has since been clarified that this is not a tactic that AOS officers are authorised to use.<sup>9</sup>
101. At 1.52pm, radio silence was called. While the other remaining AOS officers maintained the cordon around the house, AOS Officer 2, three other AOS officers and AOS Dog Handler 1 circumnavigated the house checking windows, and identified the back door as the best place to enter the property. With approval from the AOS Commander, they forced the door open and cleared the property using a mirror and a Police dog.<sup>10</sup> They also cleared some smaller outbuildings before advising that the property was all clear at 2.10pm.
102. The AOS officers reset the cordon to exclude 160. They continued to appeal to anyone in 158.
103. The DCC and PNT officers continued to make enquiries about potential occupants of 158.  
Unconfirmed information indicated that an elderly lady owned 158, and that the landline number was registered to Ms Y. Information from government agencies confirmed links between Mr X and the address.
104. At 2.22pm, at the AOS Commander's request, Officer E directed some general duties officers to go to an address in Kawerau thought to be linked to the Warren family. Neither Mr X nor Rhys Warren were at the address, but the occupant gave Police a current cell phone number for Ms Y. Officer F rang Ms Y, but she would not provide any information about who might be at 158.
105. Between approximately 2.20pm and 2.30pm, PNT Officer 1 made a series of ten phone calls to 158's landline. The majority of these calls rang for approximately 15-20 rings without being answered. Four of the calls cut out after four rings. PNT Officer 1 could not tell if the phone was being deliberately hung up or the line was being pulled out of the wall. This information was relayed to the AOS Forward Commander and the AOS officers on the cordon.

106. At around this time the AOS Commander and the AOS Forward Commander had a cell phone conversation about the possibility of using tear gas. The Forward Commander told the Authority that they were still not sufficiently certain that the armed offender was in the house to justify using tear gas. Instead, they decided to progress towards entering 158 and searching it.

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<sup>9</sup> The relevant policy is set out in paragraphs 412-414.

<sup>10</sup> The Police dog enters and searches a building under the voice command of its handler, who remains outside. See paragraph 423.

107. Officer A was not included in this discussion, nor was he advised about the tactical decisions made.
108. The AOS Forward Commander directed AOS Officer 3 to plan a CTR for 158, during which the AOS officers would check for signs that a person was in the house, the possible points of entry and any other relevant information. AOS Officer 3 said he asked the AOS Forward Commander about using tear gas, but was told that it was not justified.
109. The house's windows were covered by net curtains, which impeded visibility into the house.

AOS Officer 3 suggested smashing the glass out of the windows and pulling out the curtains as the team moved around the house, so they could see in properly. AOS Officer 3 also planned to leave some of his team members posted at the broken windows, aiming their rifles into the house. This was to make sure that an offender did not move back into an area of the house that had already been visibly checked and deemed safe by the officers. The AOS Forward Commander agreed with this plan.
110. AOS Officer 3 communicated his CTR plan to the AOS Commander over the radio and received approval. However, AOS Dog Handler 1 and AOS Dog Handler 2 did not hear the entirety of the plan.
111. AOS Dog Handler 1 was unaware that any of the windows were going to be broken. AOS Dog Handler 2, who was to be part of the CTR team, understood that only the first window on the right hand side of the house was to be broken, and that this would not necessarily impede Police dogs operating inside the property.
112. At 3pm, radio silence was called. AOS Officer 3 and a team of four AOS officers (including AOS Dog Handler 2 and his Police dog) used a ballistic shield as protective cover to move along the right hand side of 158.
113. The AOS officers broke the glass from two windows on the right side of the house and pulled the curtains out. AOS Officer 3 called out to any person inside the house to come out. AOS Officer 4 climbed a short ladder and looked through the empty window frame into the living room. He could also see part of the kitchen and the beginning of the hallway leading to the back of the house. He aimed his rifle into this area.
114. The rest of the team continued to the back of the house. The glass in two bedroom windows was broken. Each time, AOS Officer 3 called out to anyone who might be in the address.
115. Finally, the officers removed a piece of cardboard that had been used to mend a broken window pane in the back door. AOS Officer 5 was left standing in the porch, with his rifle raised towards the back door, while AOS Officer 3, the two remaining AOS officers and the Police dog retreated back behind the Police cars.
116. The AOS officers did not detect any movement or other signs of life in the house, however one of the officers saw a box addressed to Mr X through one of the bedroom windows. AOS Officer 3 also found a .303 cartridge in the bowl of an outside toilet next to the back door of the house.





117. AOS Officer 3 reported the information he had gathered back to the AOS Forward Commander and the AOS Commander, including the discovery of the .303 cartridge. This information was recorded in the AOS log. AOS Officer 3 told the Authority that, having found the .303 cartridge, he asked the AOS Forward Commander again about using tear gas, but the AOS Forward Commander remained of the view that using tear gas was unjustified.
118. AOS Officer 3 was directed to develop a plan for entering and searching 158, while the officers resumed voice appealing.
119. At 3.16pm, Officer E rang Ms Y's cell phone. She would not disclose who was at the house, but said that if Mr X's white truck was not there, then he was not at home.
120. The AOS Commander knew that a white truck was not parked at 158, and he considered the possibility that Rhys Warren might be inside the house. He radioed relevant information about Rhys Warren to the AOS Forward Commander and the rest of the AOS officers. Rhys Warren was known to Police, and considered to be violent and dangerous.

### **AOS officers plan to enter and clear 158 Onepu Spring Road**

121. AOS Officer 3 told the Authority that part of his initial clearance plan was to use two AOS Police dogs to support the entry team. Police dogs could be used to search the house for a person under the voice command of their handlers, who would remain at the entry point with the rest of the AOS entry team.<sup>11</sup>
122. However, AOS Dog Handlers 1 and 2 told AOS Officer 3 that the amount of broken glass inside and outside of the house (which was the result of smashing out some of the windows), meant that Police dogs could not be effectively used inside the house during the clearance. The glass would cut their feet and the Police dogs may not perform as required.
123. AOS Officer 3 selected a clearance team, including:
  - ☐ AOS Officer 5 (who was still covering the back section of the house);
  - ☐ AOS Officer 6;
  - ☐ AOS Officer 7;
  - ☐ AOS Dog Handler 1 (without his Police dog); and
  - ☐ AOS Dog Handler 2 (with his Police dog).
124. AOS Officer 4 would remain at his current position at the living room window.
125. AOS Officer 3 planned that the clearance team would move along the right side of the house, collect AOS Officer 5, and enter the house through the back door. AOS Dog Handler 2 said he would carry his Police dog into the house (thereby avoiding the broken glass) ~~after the rest of~~

<sup>11</sup> The relevant policy is set out in paragraphs 421-423.

the team had entered. The officers would move slowly through the house and clear each room. The Police dog could be used as a means of incapacitating any offender in the house if required.

126. After discussing the make-up of the entry team and the placement of the remaining AOS officers with some of the team leaders, the AOS Forward Commander agreed to the entry plan.
127. The plan was relayed over the radio to the AOS Commander, who approved it. AOS Officer 3 then gave a detailed briefing to his team, including how the team would evacuate from the house if necessary.
128. AOS Officer 1 said that he had misgivings about his colleagues entering 158, especially since tear gas had not been put into the house first. However, he said that he trusted the experience of his commanding officers, and that the time to make any comments had passed.
129. At approximately 3.30pm, radio silence was called and the officers moved to the back door of the house, using a ballistic shield for cover. They forced the back door open, and moved through the kitchen and lounge area towards the hallway.

### Rhys Warren shoots at the AOS officers

130. In the moments before Rhys Warren fired at the AOS officers inside 158, the team had just completed clearing the kitchen, lounge, and bedrooms one and two, and were preparing to advance down the hallway towards the bathroom and bedrooms three and four.
131. AOS Officer 3 was in the hallway, in front of the doorways to bedrooms one and two, watching the space in front of him, with his rifle raised. AOS Dog Handler 1, armed with a Glock pistol, was positioned behind him.
132. AOS Officers 6 and 7 (both armed with rifles) were behind these officers. AOS Officer 5 was in bedroom two, pointing his rifle towards a closed wardrobe door.
133. AOS Dog Handler 2 (armed with a Glock pistol) and his Police dog were at the beginning of the hallway, behind the other officers.
134. At 3.38pm, Mr Warren fired three shots from an Enfield-brand bolt-action rifle towards the advancing AOS officers from the end of the hallway (near the entrance into bedroom four).<sup>12</sup>  
Each AOS officer has given the Authority their own account of what happened, and the sequence of events is summarised below.
135. AOS Officer 3 had started moving along the right side of the hallway towards bedroom three when he felt the *"hair on the back of [his] neck"* stand up. He took the safety catch off his rifle,  
heard a single *"bang"* and saw a *"big flash"*, and he fell to the  
ground

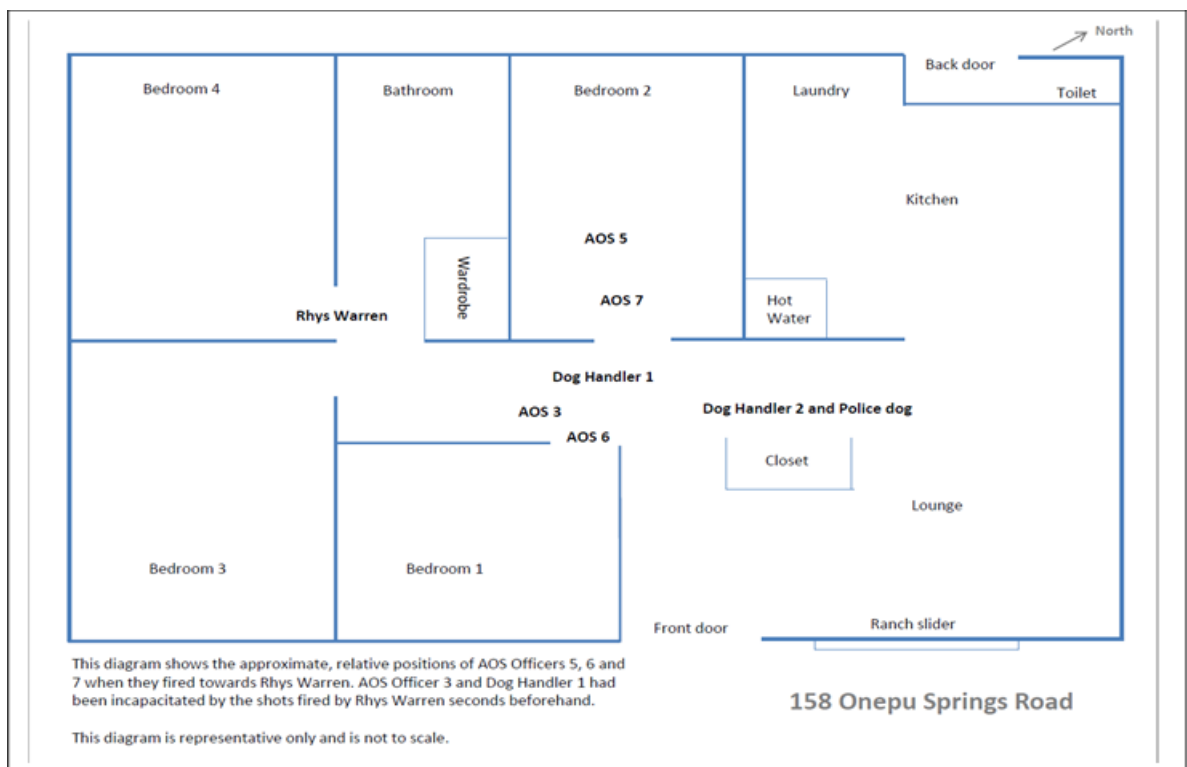
<sup>12</sup> Enfield-brand, model No4, Mark I\* bolt-action rifle, designed to fire .303 British calibre cartridges.

136. It is now known that the first shot fired by Mr Warren hit and shattered the sighting scope<sup>21</sup> on top of AOS Officer 3's rifle. Pieces of the fractured scope and bullet hit AOS Officer 3 and AOS Dog Handler 1 in the face and head. AOS Officer 3 and AOS Dog Handler 1 collapsed to the ground, and AOS Dog Handler 1 lost consciousness.

137. Both AOS Officers 6 and 7 heard a loud explosion and felt the shockwave from the shot travel through them. AOS Officer 7 heard a second explosion.

138. AOS Officer 6 saw that the two officers ahead of him were now on the ground, screaming and groaning. He realised that *"someone had attacked [them] with a firearm."* He saw the silhouette of a figure at the end of the smoky hallway, and a muzzle flash as a subsequent shot was fired. He felt a *"punch"* in his leg as he was hit by something.

139. When AOS Officer 7 saw the two officers in front of him drop, he fired a shot towards the end of the hallway where he had seen a *"gun and an arm"* reaching around from the right. He then took a step into bedroom two, to join AOS Officer 5 (refer to the diagram below).



140. AOS Officer 5 had heard a single report and AOS Officer 3 scream. He turned to his left and saw AOS Dog Handler 1 fall *"straight back like a Kauri tree"* and bounce on the floor. AOS Dog Handler 1 had *"blood all over his face"* and AOS Officer 5 realised that they had been shot.

141. AOS Officer 5 heard AOS Dog Handler 2 call *"shots fired, man down!"* over the radio, and heard AOS Officer 7 fire a single shot towards the far end of the hallway. AOS Officer 5 turned to face the same direction, and started to shoot downwards through the bedroom wall. He told the Authority that his intention was to force the offender to *"go to ground,"* thereby limiting the offender's ability to keep firing at Police.

142. AOS Officer 7 also started firing through the wall towards the offender's likely position. AOS Officer 5 took this opportunity to step behind AOS Officer 7 into the hallway, and stand over AOS Dog Handler 1 to protect him from further shots. AOS Officer 5 looked down and saw that AOS Dog Handler 1 was exhaling blood and had his eyes closed.
143. Believing that AOS Dog Handler 1 was *"dying"*, AOS Officer 5 yelled, *"keep firing, keep firing!"* He grabbed AOS Dog Handler 1 under both arms and started to drag him down the hall. Unknown to the officers, the Glock pistol belonging to AOS Dog Handler 1 was left behind on the hallway floor.
144. Meanwhile, due to the smoke and disorientation of the gunshots, AOS Officer 6 believed that he was the only officer still standing in the hallway and able to protect the two officers who were on the ground in front of him.
145. He saw the offender's silhouette disappear into the right-hand space at the end of the hallway and believed that the offender was most likely re-loading his or her firearm, and intended to shoot at the officers again.
146. To prevent this, AOS Officer 6 started to fire his rifle towards the silhouette.
147. AOS Officer 3 had not lost consciousness after falling to the floor. He had seen AOS Dog Handler 1 on the ground and believed that he had been killed. He became aware of the distinctive sound of officers firing their rifles, and assumed *"that they were engaging the offender."* He was able to pull himself up onto his knee, and point his rifle towards the end of the hallway.
148. AOS Dog Handler 2 ran forward from his position and helped AOS Officer 5 drag AOS Dog Handler 1 down the hallway, through the kitchen and out of the back door. AOS Officer 3 was able to follow them out without assistance.
149. AOS Officer 7 saw the other officers evacuating the hallway. He stopped firing and entered the hallway to follow them out. AOS Officer 6 also stopped firing once the other officers passed him, and was the last officer to leave the house. Subsequent scene analysis has established that Police fired 46 shots in total (see paragraph 192).
150. The Tauranga AOS officers, who were still positioned behind the house, ran forward to help with the evacuation. AOS Dog Handler 1 was dragged behind the Police cars parked on Onepu Spring Road, and was given first aid. An ambulance was called from the SFP to evacuate the injured officers.
151. The AOS Commander directed Officer E to pass critical information about what had happened and the status of the injured officers to the Acting District Commander, Officer G, and the DCC.



## The Acting District Commander takes control and command

152. The DCC notified the NCCC that officers had been shot. The NCCC started monitoring events and ensured that the Police Commissioner (who was overseas) and executive management team were informed.
153. At 3.45pm, the Acting District Commander (and the DCC) took overall control and command of the incident from Officer A, becoming the 'Local Controller'.<sup>13</sup>
154. The Acting District Commander remained at the District Headquarters in Rotorua, and started to organise available staff into key operational roles, including the provision of welfare arrangements for the injured officers and their families.
155. The DCC started to keep a record of actions and decisions in the district's Real-time Intelligence for Operational Deployment (RIOD) site. They were unaware that the NCCC could not access this log.
156. The EBOP Area Commander was en route to the SFP when he was informed by phone that officers had been shot. Upon his arrival at the SFP, the EBOP Area Commander spoke to the Acting District Commander by phone, who directed the EBOP Area Commander to act as his Forward Commander, relieving Officer A.
157. At 3.50pm, the EBOP Area Commander arrived at the SFP, and spoke to Officers A and E (as the AOS Commander was busy). The injured officers were about to be flown by helicopter to Whakatane and Rotorua hospitals for treatment.
158. At 4pm, the Assistant Commissioner: Response and Operations arrived in the NCCC in Wellington. At this stage, he had limited information about what had happened, where the injured officers were, and exactly what specialist resources might be required immediately and in coming hours should the operation become prolonged. He undertook the following actions in support of the district-based command:
- a) In consultation with other senior officers, he decided to activate the Auckland and Wellington-based Special Tactics Groups (STG).
  - b) Arrangements were made for the New Zealand Defence Force (NZDF) to provide helicopters to transport STG officers to the scene, and for light armoured vehicles (LAVs) to travel from Palmerston North towards Kawerau.
  - c) AOS squads in nearby Police districts were directed to ready themselves to go to the scene, and to act as cover for the wider Bay of Plenty Police District.
  - d) The National Intelligence Centre and public affairs staff (who manage communication with the media) were also activated.

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<sup>13</sup> The relevant policy is set out in paragraphs 424-430.

159. The activation of these resources was not communicated directly to the Acting District Commander, the EBOP Area Commander or the DCC. Instead, the fact that these resources had been activated became apparent to them through a series of subsequent requests and phone calls from staff at the NCCC:

- a) At approximately 4.50pm, the Acting District Commander and DCC became aware that the LAVs were coming when they were asked to organise a Police escort for the LAV convoy.
- b) Shortly afterwards, the DCC was asked to arrange safe landing sites for the NZDF helicopters carrying STG officers.
- c) Later that evening, the DCC was asked to arrange accommodation for out-of-district AOS officers.

#### **A fourth AOS officer is shot**

160. Meanwhile, the Rotorua and Tauranga AOS officers left holding the inner cordon around 158 re-arranged themselves to ensure that the offender remained contained inside the house.

161. AOS Officer 1 was concerned that he could not see enough of the right hand side of the building from his current position, and decided to move further around to his right, taking a prone position behind a pile of dirt which had been excavated to make a fire pit. He was satisfied that he could see both the north-east and north-west sides of the house from this position.

162. AOS officers re-commenced appealing using the loud hailer, and PNT officers resumed making phone calls to the landline, with no response.

163. At 4.53pm, Mr Warren fired at AOS Officer 1 with the Police-issued Glock pistol that had been left behind in the house (see paragraph 143). A bullet passed through AOS Officer 1's left hand and became lodged in the magazine of his rifle.

164. AOS Officer 1 was able to walk to the cordon point near Thompson Road (see paragraph 34), from which point he was driven to the SFP. He was then taken to Whakatane Hospital for treatment.

#### **Events after the shootings**

165. Over the next few hours, Police were able to obtain Mr Warren's cell phone number from a family member he was contacting by text messaging. By monitoring these messages, Police established that Mr Warren was uninjured.

166. The EBOP Area Commander and the Acting District Commander remained in regular phone contact and, with the support of the DCC, made arrangements relating to logistics, welfare and the cordon positions held by general duties officers. The DCC started to look for staff to relieve the officers who had been at the scene since the beginning of the incident.



167. At approximately 6.30pm, the EBOP Area Commander was informed by the Acting District Commander that the NCCC had directed Police to evacuate all members of the public within a one kilometre radius of 158 Onepu Spring Road. However, both the EBOP Area Commander and the Acting District Commander decided that this would be too dangerous for civilians and Police, since Mr Warren was thought to be armed with a high-powered rifle. There were also insufficient officers at the scene to coordinate an evacuation.
168. Instead, at the EBOP Area Commander's direction, local officers telephoned people living near 158 Onepu Spring Road to check on their welfare, and to advise them to stay indoors. A no-fly zone was imposed over the area.
169. Between 7pm and 7.30pm, the Tauranga and Waikato AOS arrived and took over from the Rotorua AOS. Officer G took over command of the AOS officers.
170. At 7.18pm, the Assistant Commissioner called the EBOP Area Commander, advising him that the STG were on their way (although some had already arrived) and outlining the overall operational strategy (cordon, contain and appeal).
171. The Assistant Commissioner also specified that the STG Commander would take tactical command. The EBOP Area Commander understood from this conversation that he did not have control over the tactical aspect of the Police response.
172. AOS and STG officers remained in position around the house for the rest of the night. Senior officers at national and district level took shifts to fill key control, command and support roles throughout the night.
173. Late in the evening, the Taupo Area Commander made phone contact with some members of Mr Warren's whānau whom he knew. He travelled to the SFP and spoke with whānau gathered at the public cordon.
174. At approximately 2.30am, Police negotiators finally made phone contact with Mr Warren, and spoke with him sporadically over the next few hours. The NCCC was able to listen in to these phone calls, but the DCC was not.
175. At approximately 6am, at the request of Mr Warren's whānau, the Taupo Area Commander spoke to Mr Warren by phone. Mr Warren agreed to come out of the house.
176. At 9.10am, Mr Warren surrendered to Police and was taken into custody.
177. During a subsequent search of the house, Police found two rifles (designed to fire .308 and .303 calibre cartridges respectively) in the hallway and bedroom three.<sup>14</sup> AOS Dog Handler 1's Glock pistol and magazine were hidden behind the hot water cylinder. An unloaded sawn-off shotgun and a .22 rifle mechanism were found in the garage. The ownership of rifles and shotgun was not recorded, and Mr Warren did not have a firearms licence.
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<sup>14</sup> A loaded Rossi-brand, top-break rifle, designed to fire cartridges of .308 Winchester calibre and an unloaded Enfield- brand, model No4 Mark I\* bolt-action rifle, designed to fire cartridges of .303 British calibre.

## **26 Post-incident events**

178. The firearms and equipment belonging to the injured officers, and the officers who fired at Mr Warren, were seized and secured as evidence. The firearms used by Police were tested and found to be in good working order.

179. All officers directly involved in the incident were formally interviewed.

180. These officers were also stood down from work and received support in accordance with the Police 'Trauma policy'.

### *Police officers involved*

181. The officers involved in this incident were current in all the relevant certifications.

182. All four officers shot by Mr Warren received significant injuries:

- ▣ AOS Dog Handler 1 received a serious brain injury which required surgery and extensive rehabilitation.
- ▣ AOS Officer 3 received burn and shrapnel injuries to his face and right index finger, requiring multiple surgeries.
- ▣ AOS Officer 6 received injuries to his left knee, requiring surgery to remove embedded fragments.
- ▣ AOS Officer 1 received serious injuries to his left ring finger, which required surgery.

183. All of the injured officers have since returned to full duties.

### **Police investigation**

184. The Police conducted a criminal investigation into Mr Warren's actions. He was charged with two counts of attempted murder, three counts of using a firearm against a law enforcement officer and wounding with intent to cause grievous bodily harm.

185. On 24 March 2017, he was found guilty on all charges in the Hamilton District Court. On 11 August 2017, he was sentenced to preventive detention.

### *The Institute of Environmental Science and Research examination*

186. The Institute of Environmental Science and Research (ESR) examined the scene. The examination noted the position of all Police equipment left at the scene, as well as bullet cartridges and fragments, fragments of the damaged scope from AOS Officer 3's rifle (see paragraph 136), and damage to the house where Mr Warren and Police exchanged fire.

ESR scientists were able to reconstruct the trajectory of shots fired inside the house by Mr

Warren and Police.

188. Mr Warren fired three shots from the southern end of the hallway. The first shot hit the<sup>27</sup> scope of AOS Officer 3's rifle.
189. ESR were not able to establish the order of the two subsequent shots. However, one shot passed through the left wall of the hallway, and became embedded in a piece of furniture placed against the wall of bedroom one.
190. Another shot hit the left wall of the hallway at an oblique angle near bedroom one's doorframe. The bullet came to rest in a cabinet positioned at right angles to the hallway, behind bedroom one. The fragments removed from AOS Officer 6's knee most likely came from this shot.
191. ESR were unable to determine the location from which Mr Warren fired the Glock pistol at AOS Officer 1.
192. The AOS officers collectively fired 46 shots towards the southern end of the hallway, bedroom three and bedroom four.
193. One shot was fired from the doorway of bedroom two.
194. Twenty shots in total were fired from the doorway of bedroom one, and from two positions at the northern end of the hallway.
195. Twenty-five shots were fired from two positions in bedroom two, through the wall and wardrobe towards the southern end of the house.
196. Fifteen of those shots were fired from a position near the window on the western side of the house into the bathroom, linen cupboard (backing on to the wardrobe in bedroom two) and hallway.
197. The remaining ten shots were fired from a position in front of the wardrobe in bedroom two, through the linen cupboard. All but one of the bullets fired through the linen cupboard were stopped by stored linen.



## 22 The Authority's Investigation

### THE AUTHORITY'S ROLE

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198. 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.
199. 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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200. Police notified the Authority on 1 June 2016 of this incident. The Authority commenced an independent investigation.
201. The Authority visited the scene, spoke with Ms Y and also to members of the public living near  
158 Onepu Spring Road. Mr Warren was invited to speak to the Authority, but declined. The  
Authority saw no value in taking this further.
202. The Authority conducted 48 interviews of Police officers, staff and contractors involved directly in the incident, Operation Dee and post-incident reviews. Officers holding leadership positions in the Bay of Plenty Police District and PNHQ were also interviewed.
203. Additionally, the Authority monitored the Police investigation throughout and reviewed the documentation produced by the Police investigation team.

### Assessment criteria

204. The Authority has assessed Police actions and decision making against relevant law and Police policies.<sup>15</sup>
205. 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. The Authority has applied this  
framework when assessing all tactics used during this incident.

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<sup>15</sup> The relevant law and policy is set out in paragraphs 388-434.

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

- 1) Was Operation Dee appropriately planned and executed?
- 2) Was the initial response to the first shots fired properly considered and appropriate in the circumstances?
- 3) Was the AOS adequately briefed?
- 4) Was the AOS justified in using the 'aggressive cordon' tactic to move into position outside the target houses?
- 5) Did the AOS properly consider the available tactical options before entering 158 Onepu Spring Road?
- 6) Were officers justified in firing at Rhys Warren?
- 7) Did Police comply with all requirements in respect of communications, and command and control during the incident?
- 8) Did Police provide adequate welfare to the injured officers and their families?

### <sup>30</sup> **The Authority's Findings**

#### ISSUE 1: WAS OPERATION DEE APPROPRIATELY PLANNED AND EXECUTED?

207. As described in paragraphs 19-21, the NCCO is a nation-wide operation, but the planning and execution of the operation is devolved to each Police district.
208. Each Police district prepares their own set of operation orders, which is a formal written document setting out how the district plans to carry out each phase of the operation (based on their own operational priorities), and the level of district resources they wish to commit.
209. At the time of this incident, each district's operational orders were not scrutinised by the NCCO National Coordinator or anyone else at PNHQ. Nor were they subject to national requirements regarding:
- ▣ alignment with the purpose of the national operation;
  - ▣ oversight by the district's leadership team (District and Area Commanders);
  - ▣ health and safety (including the role and responsibilities of a Safety Officer);
  - ▣ minimum staff numbers;
  - ▣ notification to the relevant Communications centre, the DCC, and the NCCC;
  - ▣ contingency planning;
  - ▣ carriage of firearms and other tactical options;
  - ▣ assessment of the impact of the operation on the community;

- AOS support; or
  - the application of risk assessment practices, particularly when entering private property to search for drugs or other items (with or without a warrant).
210. As a result, each district had wide room to manoeuvre in its planning and execution of Operation Dee.
211. The Bay of Plenty has the second highest cannabis production among Police districts in New Zealand, and production is known to be linked to three main gangs. Until approximately four years ago, the 'search and destroy' phases of the operation were conducted by a core group of specially-trained staff from throughout the Bay of Plenty Police district, including AOS officers. These officers acted as spotters in the aircraft, and ground crew to carry out refuelling and spray preparation tasks, equipment haulage, searches and removal of cannabis plants.
212. As the operation moved through the Bay of Plenty, each Area would contribute between 10 and 50 additional officers to support the core ground crew in their search and destroy activities, and to conduct planned search warrants. The operation's co-ordinator, Officer A, told the Authority that this was an effective model.
213. However, in approximately 2013, the District's leadership team decided that each Area would become responsible for carrying out their own search warrants, subject to the availability of staff and other resources. This work would no longer coincide with the presence of the core group in the Area. In some cases, Areas chose not to carry out search warrant work at all. The Authority understands that this decision was taken because the resources previously contributed were required for 'business as usual' Police work. Additionally, the AOS no longer had a planned involvement in the operation.
214. With these changes, the focus of the operation became the location and destruction of cannabis, without specifically targeting the associated criminal behaviour (as was envisaged by Police National Headquarters, see paragraph 19).

### Execution of Operation Dee

215. The operation orders for Operation Dee were a replication of those used for previous cycles of the NCCO in the Bay of Plenty Police District. This approach meant that the orders did not necessarily cater for the current circumstances and real-time intelligence available in the District at the time.
216. The District's leadership team discussed Operation Dee in a general way on several occasions, but critically the operational orders were not scrutinised and approved by the District's leadership team and were deficient in a number of areas.
217. The distribution of the orders was limited to the District Commander (who was on leave on 9 March 2016), two senior district crime managers, a sergeant involved in the operation and the NCCO national co-ordinator. The Authority received conflicting information about whether the Area Commanders were provided with a copy.

218. There appears to have been minimal communication within the Bay of Plenty Police District about how the operation would be carried out in practice. The Area Commanders

only had a broad knowledge of the dates that the group would be operating in their Area. None of this information filtered down to local staff. For example, on 9 March 2016, Officer F (the officer in charge of Kawerau Police Station) had no idea that cannabis recovery activities were being carried out close to his area of responsibility.

219. The operational orders were silent or provided minimal information about matters listed in paragraph 209. This was a high-risk operation. While the likelihood of being confronted by angry growers was deemed unlikely by Officer A, the link between cannabis growing and gang activities made the consequences of such a confrontation potentially serious.

220. Operational practices had built up over time which did not take adequate consideration of best practice and staff safety, for example:

- a) NorthComms were not informed that Operation Dee was taking place. Operation staff deliberately did not log on to the Computer Assisted Resource Deployment system, which would have assisted NorthComms to contact and locate officers in an emergency (see paragraphs 27-29 and 40). The Authority does not accept Officer A's explanation that it would have been too difficult or confusing for NorthComms to manage the operation because the officers were not primarily using a general radio channel. It would have been possible to manage the confidentiality and security of the operation by limiting knowledge of the operation.
- b) Although the District Commander said that the DCC was aware that Operation Dee was taking place somewhere in the Eastern Bay of Plenty Area, staff at the DCC were not aware the operation was occurring. The AOS leadership were also unaware that the operation was taking place, and the whereabouts of the officers involved. It would have been best practice to ensure both were advised, should the need for urgent assistance arise.
- c) Officers did not wear officer safety alarms, which would have allowed their location to be tracked in case of emergency.

221. The Authority notes that Officers B and C did not follow correct procedure when entering 160 and 158 Onepu Spring Road to search for cannabis plants under section 20 of the Search and Surveillance Act (see paragraphs 31 and 32).<sup>16</sup>

222. Firstly, NorthComms should have been notified prior to conducting the warrantless search.

While the officers themselves did not have radio contact with NorthComms, the Police officer in the spotter plane could have done this, and provided the necessary details about the intended search.

223. It also does not appear that the officers carried out a risk assessment before going on to the properties, to assess possible risks to themselves or the potential impact on any people at the address.

224. Since this incident, Police have made substantial changes to the planning and execution of future NCCOs (see paragraphs 382-383).

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<sup>16</sup> The relevant law and policy is set out in paragraphs 390-395.



## FINDINGS

Police National Headquarters should have scrutinised each Police district's operation orders, and required them to meet minimum standards on a range of operational matters, including the preparation of a broad community impact assessment.

Operation Dee was not planned or executed with sufficient care in the Bay of Plenty Police District. Officers B and C did not follow correct procedure when entering 160 and 158 Onepu Spring Road to search for cannabis plants, by failing to notify NorthComms prior to conducting the search, and failing to carry out a risk assessment.

### ISSUE 2: WAS THE INITIAL RESPONSE TO THE FIRST SHOTS FIRED PROPERLY CONSIDERED AND APPROPRIATE IN THE CIRCUMSTANCES?

225. As described in paragraphs 35-37 and 51, upon hearing what he believed to be gunshots, Officer B immediately radioed the spotter plane, who passed this information to Officer A.
226. Officer B and the officer in the spotter plane could do little more at this stage than provide regular situation updates to Officer A. It was too unsafe for Officer B to try to leave the blackberry bushes for approximately 15 minutes. The spotter plane continued to circle over the houses to keep watch over Officer B and to ensure that no other person left the properties without Police knowledge.
227. The planned cannabis operation had become a firearms incident. Officer A immediately contacted NorthComms to let them know about the suspected gunshots (see paragraphs 39 and 40). Unfortunately, it took staff in NorthComms and the DCC extra, unnecessary time to find out who was reporting the firearms incident, and where to send assistance. This was due to:
- a lack of contextual detail in Officer A's initial reporting;
  - the fact that none of the cannabis operation staff had logged on with NorthComms; and
  - the fact that the operation was taking place was unknown to NorthComms and the staff in the DCC.
228. After notifying NorthComms, Officer A was responsible for ensuring that his officers were safe, and that both 158 and 160 were contained, the public were being kept away, and arriving staff were armed and had read the Police fire orders.<sup>17</sup> Officer A carried out these responsibilities to the best of his ability, given the resources available to him.
229. The NorthComms shift commander was responsible for ensuring that the AOS had been alerted, which Officer D had done. Police policy requires that, when time and circumstances permit, all forward operations against armed offenders must be carried out by the AOS and

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<sup>17</sup> The relevant policy is set out in paragraphs 404-408.

the PNT. As the officers had a reasonable belief that someone had fired at Police, it was appropriate for Rotorua AOS to be called to deal with the incident. Due to their closer proximity to the scene, it was also appropriate for an advance team of Tauranga AOS officers to travel to the scene, with the permission of their commanding officer (Officer G), and the approval of the AOS Commander (see paragraph 62).

## FINDINGS

The Police response to the first shots fired at Officer B and the spotter plane was, for the most part, timely and appropriate. It was partially hindered by the fact that staff in NorthComms and at the DCC did not know that the National Cannabis Crime Operation was taking place, and staff on the operation had not logged in.

It was appropriate for officers at the scene to arm themselves in response to the firearms threat. In doing so, the officers followed Police procedures and turned their minds to the Police fire orders.

The deployment of the AOS to attend this incident was justified.

## ISSUE 3: WAS THE AOS ADEQUATELY BRIEFED?

230. Due to their different times of arrival, the Tauranga AOS officers, and the Rotorua AOS and PNT officers, received separate briefings from Officer A about what had happened. The contents of these briefings are set out in paragraphs 63 and 67-69. The AOS Commander also spoke directly to Officer B after the squad had cordoned the two houses (see paragraphs 81 and 82).
231. Both squads were provided with the same essential information:
- ☐ four shots had been fired;
  - ☐ the shots were thought to have come from the rear of 158/160, and smoke had also been seen;
  - ☐ cordons were in place, and the spotter plane was still circulating; and
  - ☐ no movement had been seen since the shots had been fired.
232. The Rotorua AOS were told that the offender's firearm was thought to be a shotgun, which was relevant to the level of risk the AOS officers would be exposed to when they moved closer to the house.
233. This information was in line with what was known by the officers already at the scene, and, in conjunction with intelligence information already provided about the possible identity of the offender (see paragraphs 60 and 61), the AOS Commander was able to formalise his plan to cordon, contain and appeal to the offender (see paragraph 70 and 71).

Both Rotorua and Tauranga AOS were consistently and adequately briefed by Officers A and B.

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ISSUE 4: WAS THE AOS JUSTIFIED IN USING THE 'AGGRESSIVE CORDON' TACTIC TO MOVE INTO POSITION OUTSIDE THE TARGET HOUSES?

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234. After considering the immediate surroundings of 158 and 160, the AOS Forward Commander and other Rotorua AOS team leaders considered their options in approaching the houses. As described in paragraphs 73 to 75 the AOS Forward Commander decided that an 'aggressive cordon' tactic was the best option for the Rotorua officers who would be cordoning the front and left (southern) side of the property.<sup>18</sup> The possibility of moving into position undetected had been considered and discounted due to a lack of cover directly in front of the properties.
235. The tactic relies on good planning and coordination for success, since by making themselves known to a potentially armed offender, Police are taking a calculated risk. The Rotorua AOS officers prepared lethal and non-lethal tactical options for use should an armed offender confront them as they drove in and parked in front of 158 and 160. At that stage, they believed that Mr X was the most likely person to have fired the shots. He was known to be unpredictable and violent towards Police, and the AOS Forward Commander was mindful of this.
236. There is conflicting evidence on whether the 'aggressive cordon' tactic was approved by the AOS Commander, who expressed concerns about it to the Authority (see paragraph 76).
237. The Authority has visited the scene of the incident, and has concerns about the level of risk that the Rotorua AOS officers took by driving within 30 metres of the frontage of 158, when it was suspected that someone in the immediate vicinity was shooting towards Police with what was believed to be a shotgun.
238. While the land in the front and to the left side of the houses was open and exposed, greater consideration should have been given to a less risky strategy, and in particular to establishing a safer distance between the AOS officers on the front and left cordon and the target houses.
239. For example, the officers could have used State Highway 34 to make an approach to the houses from the southern end of Onepu Spring Road, avoiding the need to drive directly past the house. The Authority understands that it would have taken approximately five minutes to drive this route (driving above normal road speed using emergency flashing lights and sirens). AOS Officer 2 told the Authority that he suggested this to the AOS Forward Commander, but was told it would take too long.

<sup>18</sup> See footnote six for explanation of the 'aggressive cordon' tactic.

36240. While not ideal, the Authority considers that the front of 158 and 160 could have been adequately watched from the left and right-hand sides of the cordon, with Police dogs positioned on either side to respond to an attempt by an offender to flee.

241. The Authority is of the view that the manner in which the AOS officers moved into their cordon positions (apart from the rear cordon), and the close proximity of the cordon to the front of 158, demonstrated an overly-assertive, somewhat provocative approach which was imprudent in the circumstances. A more measured, safer approach was possible. This is a recurring theme throughout the rest of the AOS response.

#### FINDING

The use of the aggressive cordon tactic exposed officers to a high level of risk. Greater consideration should have been given to a less risky deployment tactic.

#### ISSUE 5: DID THE AOS PROPERLY CONSIDER THE AVAILABLE TACTICAL OPTIONS BEFORE ENTERING 158 ONEPU SPRING ROAD?

242. The information known to the AOS Command after receiving briefings from Officer A and Officer B is set out in paragraphs 67-69, 80 and 82. This information was supplemented as the operation progressed.

243. The AOS have a range of options for dealing with the possible presence of an armed offender, other than entering a building where he or she is thought to be. These include:

- ▣ continuing to cordon, contain and appeal;
- ▣ using tear gas; and
- ▣ using Police dogs.

244. The consideration given to these options is discussed below. The Authority has also considered the use of CTR, which was not a tactical option available to the AOS.

#### *Cordon and containment*

245. Standard Police practice when dealing with an armed offender is to cordon the area and verbally appeal to the offender in order to negotiate a surrender (if the offender's actions permit).

246. This was the approach adopted by the first officers at the scene, and then by the AOS officers.

The information provided to the AOS Commander by Officers A and B indicated that the armed offender had been contained in the immediate vicinity of 158 or 160. This was supported by the fact that the last shot had occurred after the first cordons had been put in place, and while the spotter plane was still circling. There were no reports of an armed offender anywhere else in the vicinity.

247. It was appropriate for the AOS and PNT officers to attempt to make contact with the offender, and to persist with those efforts.
248. Equally, when they received no response and were unable to detect movement in either house, the AOS was justified in considering other tactical options.

### *Tear gas*

249. Both the AOS Commander and the AOS Forward Commander told the Authority that they considered using tear gas at several points during the AOS response, both early on (see paragraphs 85-92) and after 160 had been eliminated from the cordon, prior to taking the decision to enter 158 (see paragraph 106). In addition, AOS Officer 3 said he questioned the AOS Forward Commander about using tear gas (see paragraphs 108 and 117).
250. However, they both told the Authority that they did not consider that they had met the “threshold” set out in their Manual of Best Practice to justify the deployment of tear gas, because they did not have a sufficient level of certainty or ‘belief’ that the armed offender was in the house.<sup>19</sup>
251. The AOS Commander explained:

*“... I’ve always been guided by [standard operation procedures], you know, operating procedure. And it’s my understanding that ... [you need] to suspect that a person has committed an offence, and that we believe they’re inside that address ....”*

252. The AOS Forward Commander told the Authority:

*“... you have to have reasonable grounds to believe an offender’s in the address, they talk about suspicion of an offence, belief that the person’s in there. So we had suspicion that an offence had been committed, but not the belief, in my mind, that someone was in that house, that the person responsible was in that house.*

*... we just needed the slightest bit of evidence that someone was in that house, whether it be a noise, a curtain moving or anything, for me to reach that threshold that we should have used gas.”*

253. The officers explained that they also needed to weigh the risks associated with the use of tear gas to any person in the house as part of their decision making. The officers were concerned about the presence of an ‘innocent’ person inside the house who was too afraid or unable to make themselves known to Police, due to their youth or advanced age. This person would be exposed to the effects of the tear gas, which could be more serious for the very young, old, or unwell. In addition, this person would be at risk of being fatally hit by gas canisters as the AOS fired them into the house through its windows.<sup>20</sup>

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<sup>19</sup> The relevant policy is set out in paragraph 418.

<sup>20</sup> The relevant policy is set out in paragraph 417.

254. The AOS Commander and Officer E believed that Officer G agreed with their assessment that they were not justified in using tear gas on the information available. Officer G disagreed, and said it was clear to him that Police had the legal justification to use tear gas (see paragraph 257). There was similar confusion amongst several AOS officers the Authority spoke to regarding the decision not to use tear gas.
255. The Authority has spoken to a senior AOS commander (who was also an STG commander) about the interpretation of the law and the Manual of Best Practice guidance in relation to tear gas. In his view, the guidance is “*subjective*” and part of the list of tactical options which could be used at any point in an operation.
256. The Authority accepts that both the AOS Commander and AOS Forward Commander genuinely believed that they were bound by a set of operational requirements which precluded the use of tear gas into 158. However, the Authority does not agree with their interpretation, and considers that the use of tear gas was a tactical option available to them after 160 was found to be empty.
257. The legal justification for using tear gas in this circumstance can be found in section 39 of the Crimes Act 1961.<sup>21</sup> The only requirements are that the force is necessary and that the arrest could not reasonably be carried out in a less violent manner. Because the AOS were dealing with a potentially armed offender who was not responding to commands, there was no less forceful option available to carry out the arrest. Any use of tear gas would therefore have been legally justified.
258. In this context, the level of certainty that the AOS Commander required that the armed offender was present in 158 was unnecessary and unrealistic. The Authority considers that having “*good grounds to believe*” that an offender is in an address, which is the specific wording in the Manual of Best Practice, is better described as “*a high or substantial likelihood*” based on an objective interpretation of the circumstances.<sup>22</sup> This interpretation aligns with the TENR assessment approach, which requires the decision to use force to be based on the balancing of a number of different factors.
259. In the Authority’s view, from the beginning of this incident, there was a body of evidence from various sources, including an eye-witness Police officer and the spotter plane, that there was a substantial likelihood that the offender was still in 158.
260. The Authority considers that the AOS Commander and AOS Forward Commander fixated on the information that they did not have, rather than the evidence that was available, such as the slamming of the backdoor at 158, the fact that no one including the spotter plane had seen anyone leave either address, and that 160 had been found to be empty. There was an unjustified level of concern about the risks to innocent people inside the house, when there was no compelling evidence to indicate that these people were present.

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<sup>21</sup> This section is set out in paragraph 396.

<sup>22</sup> Law Commission *Search and Surveillance Powers* (NZLC R97, 2007) at 57 and cited as the appropriate test in *Harvey v Police* HC Christchurch CRI-2017-409-99, 20 September 2017 at [34]-[36].

261. By requiring such a high level of likelihood as to who was or was not in the house, the AOS Commander did not give sufficient weight to the threat and exposure elements of the TENR assessment. The officers would now need to get much closer to the armed offender in order to make an arrest, increasing the overall risk.
262. Policy makes clear that avoiding an “*unacceptable risk to staff*” is part of the consideration, and that a decision about using tear gas needs to be made with reference to what alternative tactics may need to be employed to resolve the incident. It did not make logical sense for a less forceful and lower-risk tactical option to be unavailable because the presence of an armed offender was unconfirmed, yet, upon the same set of circumstances, armed officers were ostensibly able to approach the house, break windows and enter the property.

### *Use of Police dogs*

263. AOS-rated Police dogs are trained to be able to enter and search a building while under the voice command of their handlers, and to return to their handlers when called. This skill forms part of the Police dog team’s AOS qualification.
264. The AOS Commander may use a Police dog to search a building for an offender, if they believe that the circumstances justify it and in accordance with the TENR assessment framework. The Manual of Best Practice states that, unless impracticable, a Police dog should search a building prior to AOS officers entering it.<sup>23</sup>
265. A Police dog was successfully used to search 160 prior to the entry of officers to clear the building (see paragraph 101). This decision complied with Police policy.
266. However, the AOS Commander did not consider using one or more Police dogs to search 158 instead of conducting a CTR.
267. This would have been a safer alternative to the CTR as the Police dog would have been more likely to detect any person hiding in the house than looking through the house’s windows.
268. The Authority appreciates the view expressed by several AOS officers spoken to, including the AOS Commander, that a decision to use a Police dog to search a building cannot be made without considering the risks to the AOS dog handler and other officers. The AOS dog handler and supporting officers may need to follow the Police dog into the building to secure the offender and remove the Police dog if it has bitten the offender. A decision to send a Police dog to search the building is treated as a decision to enter the building itself, and lower-risk tactical options would be considered before deciding to enter a building.
269. In the circumstances presented to the AOS Commander, the Authority does not consider that the officers sent to conduct the CTR were exposed to less risk than if the same officers had been required to support a Police dog handler while a Police dog searched 158.

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<sup>23</sup> The relevant policy is set out in paragraphs 421-423.

40 270. The Authority has already found that the AOS officers should have used tear gas before approaching 158. Police dogs can be used in conjunction with tear gas.

271. Further, while the AOS Commander might have intended to use Police dogs after the CTR of

158, as part of the entry plan, the AOS Commander, AOS Forward Commander and AOS Officer

3 did not consider that the broken glass created when the windows were smashed during the

CTR was likely to affect this. They should have done so.

272. The two AOS Dog Handlers did not hear or appreciate this aspect of the CTR plan, and so were unable to warn their commanding officers of the implications for the performance of their Police dogs.

273. Once the AOS Dog Handlers had expressed their view that the Police dogs could not be effectively used, the AOS Commander accepted this advice and did not use Police dogs to search 158. The general consensus amongst the senior AOS officers spoken to by the Authority was that the AOS Commander should have ordered the Police dogs to search 158, regardless of the glass.

274. In the Authority's view, the decision whether or not to proceed with the use the Police dogs in

158, irrespective of the broken glass, was finely balanced, with benefits and risks on both sides.

275. It was possible that the Police dogs would detect a concealed offender, and that person would react in a way which confirmed his or her presence to the officers outside. However, it was equally possible that the Police dogs would have completed a substandard house search, falsely indicating that there was no one inside. The Police dogs would likely have been impaired by broken glass from that point onwards, and unable to be used for the rest of the operation.

276. The Authority does not think the AOS Commander should be criticised for not requiring the Police dogs to search 158 at this specific point in the operation. It was a matter of judgement at the time, and the judgement that was made was reasonable.

277. The real criticism is the failure of the AOS Commander and the AOS Forward Commander to consider using the Police dogs at an earlier stage (in accordance with TENR), without the complications of broken glass.

278. As events unfolded, a Police dog was carried into 158 with the entry team, but was present as a tactical contingency and was not used to search the house ahead of the officers.

#### *Close Target Reconnaissance (CTR)*

279. A CTR is a covert information-gathering tactic used exclusively by the STG. Rotorua AOS

incorrectly believed that they were authorised to use this tactic. The Tauranga AOS officers



were “*confused and concerned*” about the tactic, as they were unfamiliar with it and the Rotorua AOS officers referred to it using different acronyms (see paragraph 100).<sup>24</sup>

280. The CTR was carried out differently at 158 and 160.
281. 160 was regarded as the lower-risk address based on the information available to Police. The reconnaissance was conducted by stealth, and did not involve overt actions such as breaking windows. While the overall CTR was unjustified, the approach adopted by AOS Officer 2 was safer for the officers taking part in the reconnaissance. It also meant that the subsequent entry and clearance could be conducted with the support of a Police dog.
282. 158 presented a higher risk to Police, based on the original information from the witness officers and the fact that the offender was not in 160. Further, a potential offender was linked to 158 and it was unclear whether phone calls into the address were being deliberately cut off.
283. Once the AOS Commander had decided to “*move towards*” entering and searching 158, the AOS Forward Commander said that he wanted to undertake a CTR first as a way of mitigating risk:
- “Obviously we’d done several hours of voice appeal, that wasn’t taking us anywhere and the next step would be to do the CTR of that house, so again, an intermediate step, more risky than staying back in our cover and concealment but less risky than putting someone into the house. So again, another intermediate step. And again at any of those stages, if we, for example, if we’d gone forward to do a CTR and seen some movement in the house, seen some signs of life in the house or anything, easy to drop back to cordons and then refer it back to gassing it and that certainly would have been the plan had there been any indication someone was in the house from the CTR.”*
284. AOS Officer 3 told the Authority that, with tear gas unavailable, his plan for the CTR team to break the windows of 158 and train their firearms into the rooms while calling to any occupants was an attempt to make the house a safer environment for the officers to subsequently enter, by limiting the spaces inside the house that the offender was likely to be.
285. Unfortunately this aggressive and overt element of the CTR was not only dangerous in itself; it significantly reduced the tactical options available to the officers if they did encounter evidence that the offender was in the house. The Police dogs were impacted by the broken glass, and any subsequent use of tear gas could be less effective due to the venting effect of the broken windows.
286. In addition, the consequences of breaking windows and yelling into a house that could contain a person who had shown intent to shoot at Police was insufficiently considered. These officers put themselves at significant risk of being shot and killed by this occupant.
287. In essence, the action approved by the AOS Commander for 158 was not consistent with the fundamental characteristics of a CTR. This was confirmed by the senior AOS (and STG)

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<sup>24</sup> The relevant policy is set out in paragraphs 412-414.

commander spoken to by the Authority. He said that what had been described as a 'CTR', he would describe as a series of breaches: looking in windows, having staff hold the door, holding windows and voice appeal. What occurred was not a 'recce', they were separate activities or actions.

288. In the Authority's view, any advantages that would have been gained from gathering information about the house by stealth were then nullified by the aggression and breaching tactics used by the officers.

#### *Decision to enter 158*

289. AOS officers had already mentally committed to entering 158 before completing the CTR, and did not properly reassess the situation. New information was gained during the CTR, which increased the threat:

- a) The .303 cartridge, found in the outside toilet, strongly suggested that the shots heard by Officer B were linked to 158 and indicated that any person in the house had access to a powerful firearm.
- b) An addressed package (paragraph 116) confirmed that members of the Warren family occupied the house. Mr X and Rhys Warren both presented risks to Police; it made no material difference which family member was the offender.

290. Furthermore, the realisation that Police dogs and tear gas may not be able to be effectively used in 158 increased officers' exposure to harm.

291. The change in perceived threat and exposure should have altered the AOS Commander's response, had he sufficiently considered TENR. The address was contained, and any offender inside was not posing a risk to the wider public. The AOS Commander could have continued with the cordon, contain and appeal approach, especially since contact had been made with Ms Y (despite the fact that she did not want to assist Police at this point).

292. In the face of the evidence known to the AOS Commander, and with limitations on their tactical options, the Authority finds that the decision to enter 158 was ill-considered and wrong at that point in the operation.

#### *Overall tactical approach*

293. Overall, the Authority considers that the step-by-step TENR assessment of tactical options by the AOS Commander and AOS Forward Commander was rushed and lacked due consideration. In speaking to the AOS officers involved, the Authority sensed a general preference for more aggressive tactics that would bring about a swift resolution over a slower, more considered response that was both available and appropriate on the facts known.

294. The fact that the AOS Commander and AOS Forward Commander could not be certain that the armed offender was in 158 appeared to disconcert them, and undermine their judgment and assessment of risk when making tactical decisions. In short, the AOS Commander and AOS

Forward Commander incorrectly interpreted AOS standard operating procedures (set out in the Manual of Best Practice), and adopted tactics that were unsafe.

295. This general view was summarised by a senior AOS and STG Commander spoken to by the Authority. He explained that when there are a series of indicators which infer that a person is inside a building, the natural thing to do is to slow down, assess and give the situation time. This did not necessarily occur on this occasion, for whatever reason. If it looks like someone is inside a building and they are not responding to voice appeals or phone calls, then the use of tear gas or the introduction of a Police dog to search the building may help confirm the presence of a person before Police officers enter themselves. However, the CTR tactic used by the AOS on this occasion made the effective use of tear gas and Police dogs more difficult.

## FINDINGS

The use of tear gas in 158, after 160 had been cleared, would have been justified and in accordance with Police policy.

The use of the Police dog to search 160 prior to the AOS officers entering complied with Police policy.

The AOS Commander should have considered using a Police dog to search 158 instead of undertaking a CTR.

The AOS Commander, AOS Forward Commander and AOS Officer 3 should have considered that creating broken glass during the CTR was likely to impact on the use of Police dogs at 158.

The AOS Commander cannot be criticised for failing to direct the Police dogs to search 158 after the CTR, and before the entry of the officers.

CTR is not a tactical option available to AOS, and should not have been conducted at either 158 or 160.

The decision to enter 158 was ill-considered and wrong.

The step-by-step assessment of tactical options by the AOS Commander and AOS Forward

~~Commander was rushed and lacked due consideration. Some tactics adopted were unsafe.~~

## ISSUE 6: WERE OFFICERS JUSTIFIED IN FIRING AT RHYS WARREN?

296. AOS officers entered the house and were fired at by Mr Warren. Three AOS officers fired 46 shots towards Rhys Warren in response.
297. Section 48 of the Crimes Act 1961 provides legal justification for Police to use reasonable force in defence of themselves or another.<sup>25</sup>
298. Police policy provides that potentially lethal force may be used when an offender presents a threat of death or grievous bodily harm.<sup>26</sup>

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<sup>25</sup> This section is set out in paragraph 397.

299. The Manual of Best Practice provides that when AOS officers come under fire while on foot, they should “*return fire only if you have to provide covering fire or enable wounded to be evacuated. In doing so, take care not to endanger squad members.*”
300. In order for force to be justified under section 48 of the Crimes Act, a person’s actions must be assessed on a subjective and objective basis. This assessment involves three questions:<sup>27</sup>
- 1) What were the circumstances as the person believed them to be?
  - 2) Did the person use force for the purpose of defending himself or herself or another?
  - 3) Was the force used reasonable in those circumstances?

### AOS Officer 7

301. AOS Officer 7 was standing behind AOS Officer 3 and AOS Dog Handler 1 when Mr Warren fired at Police. The ESR analysis and the Authority’s investigation indicates that AOS Officer 7 fired once down the hallway, and ten times through the wall in bedroom two (see paragraphs 193 and 195). His account of events is set out in paragraphs 132, 137, 139, 142 and 149.
302. In the moments before he fired his rifle towards the end of the hallway, AOS Officer 7 told the Authority that he saw a “*gun and an arm*” at the end of the hallway pointing “*straight at us.*” He heard two shots, felt a big shockwave and saw that “*the two [officers] in front of me have dropped*” and “*I’m the next person standing in the hallway...*”
303. AOS Officer 7 said that he fired a “*reaction shot*” at the person who he believed was trying to kill him, and had “*already shot two people in the hallway.*” He acted in “*defence of myself*” as he believed it was a “*life or death situation*”. He believed that he and his colleagues were going to die, or that his colleagues were already dead and his own life was at risk.
304. The Authority asked AOS Officer 7 why he fired through the wall of the bedroom, when he could not see the threat. AOS Officer 7 said that it was “*still very much a life and death situation*” and he still thought that he was going to die. He did not know how he and the other officers were going to get out of the house.
305. He was in a “*tight space*”, with “*nowhere to go*” and still feeling “*extremely exposed and vulnerable.*” He had to fire the shots “*in order to survive and to deal with the two guys in the hallway.*”
306. He also said that he stopped firing when he felt that there was no longer a threat.
307. The Authority is satisfied that AOS Officer 7 feared for his life and the life of his injured colleagues throughout this incident. He believed that the threat to himself and his colleagues

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<sup>26</sup> The relevant policy is set out in paragraphs 404-408.

<sup>27</sup> Adams on Criminal Law (Brookers, Wellington, 1992) Crimes Act, para CA48.01

remained imminent after he stepped into bedroom two and out of the direct line of sight of<sup>45</sup> the armed offender. He knew that he still needed to get himself and his colleagues out safely, which would mean moving through the hallway, where the armed offender had fired at them.

308. The Authority is also satisfied that all shots fired by AOS Officer 7 were for the purpose of defending himself and his injured colleagues from being shot and killed.
309. It was reasonable to fire a single shot directly at an armed offender who he believed had shot two colleagues in front of him. These officers had already fallen to the ground, and were out of AOS Officer 7's line of fire.
310. In the extreme circumstances that AOS Officer 7 faced, the Authority finds that it was reasonable for him to fire through the wall towards Mr Warren. The only reasonable means of extracting his wounded colleagues from the scene, and effecting the escape of himself and other officers was to pin Mr Warren down in bedroom four using gunfire so that Mr Warren could not fire further shots at them. There was no reasonable alternative to mitigate the threat.

### AOS Officer 6

311. AOS Officer 6 was also standing behind AOS Officer 3 and AOS Dog Handler 1 when Mr Warren fired at Police. The ESR analysis and the Authority's investigation indicates that he fired 20 times from three separate positions (see paragraph 194).<sup>28</sup> His account of events is set out in paragraphs 132, 137, 138, 144 and 149.
312. AOS Officer 6 said that he heard "*a very, very loud bang*" and felt "*a very big shockwave*" while temporarily losing vision and hearing. He became aware that his two colleagues were on the ground, screaming and groaning, and felt his own leg "*get hit by a projectile.*"
313. He briefly saw the "*silhouette*" of a person "*shooting a gun*" and realised that they were being "*attacked*" by a person who had "*waited until they got the maximum opportunity to get a kill shot.*" The person then moved into an unknown area at the end of the hallway, and AOS Officer 6 thought it was likely that they were going to "*reload or reassemble their firearm, get ready for action again and then come back and fire another shot.*"
314. He told the Authority that he started firing towards where he had seen the silhouette to prevent a further, imminent attack. He was unaware of AOS Officer 7's presence, and believed that he was the only person available to protect the two officers who had fallen in front of him because they were not able to defend themselves:

*"To wait for a person to discharge a firearm is too late .... The fact that I couldn't see him was not relevant, 100% faith that if I didn't act I'd die and my colleagues would die."*

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<sup>28</sup> AOS Officer 6 believed that he fired 14 shots.

315. AOS Officer 6 said that he continued firing while the injured officers were evacuated and the other officers in the house had left. He kept firing for a short time, suppressing the armed offender for his “*own protection*” before evacuating himself.
316. The Authority is satisfied that AOS Officer 6 believed that he and his injured colleagues were about to be shot at again by Mr Warren, and that if he did not prevent this from happening he and his colleagues would be killed. He fired to protect himself, his injured colleagues, and the rest of his team during the subsequent evacuation.
317. For the reasons stated in paragraph 310 in respect of AOS Officer 7, the Authority finds that it was reasonable for AOS Officer 6 to fire towards Mr Warren.

### AOS Officer 5

318. AOS Officer 5 was in bedroom two when Mr Warren fired at Police. The ESR analysis and the Authority’s investigation indicates that he fired 15 times through the wall and wardrobe, towards the southern end of the house (see paragraph 195).<sup>29</sup> His account of events is set out in paragraphs 132, 140-143 and 148.
319. After realising that two officers had been shot, AOS Officer 5 heard a Police rifle being fired in response.
320. He explained that the hallway was a “*dangerous space*” and he believed the injured officers were about to be fatally shot. At the same time, he believed that he could not safely go into the hallway to protect them, because he could be shot himself.
321. The Authority asked why he fired through a wall at an unseen target. AOS Officer 5 told the Authority that his intention was not to hit Mr Warren, but rather to force him to stop firing down the hallway and take cover, so that he could rescue his team. He explained that, while he could not pinpoint exactly where the armed offender was, he fired at a downwards angle, through a point in the wall where he thought the bullets were likely to miss hitting Mr Warren. He also believed that the wooden framing in the wall was likely to stop the bullets:

*“If he hears me engaging he’s just gonna run for cover ... it’s not my intention to hit him with any of those bullets. It’s purely to make him run for cover so I can get the upper hand and start to control and dominate the situation.*

*... if I needed to fire some shots to make him hide, to make him seek cover then that would be my initiative to be able to overcome him and to rescue the other four staff members, basically. It was purely to rescue the team.”*

322. AOS Officer 5 said that he was mindful of the safety of the officer on the cordon on the southern side of the house, and the downwards trajectory of his shots was intended to minimise the risk of bullets passing through the external wall and hitting that officer.

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<sup>29</sup> AOS Officer 5 believes he fired 17 shots.

323. When AOS Officer 5 heard AOS Officer 7 start to fire through the wardrobe door, he was satisfied that Mr Warren would have been forced into cover. He could then move into the hallway to protect the injured officers and evacuate them.

324. AOS Officer 5 considered other tactical options available to him to incapacitate Mr Warren.

While he was still in the bedroom, he considered throwing a distraction device towards the end of the hallway where Mr Warren was, but he could not guarantee that it would not injure AOS Officer 3

.<sup>30</sup> He therefore told AOS Officer 7 to “*keep firing*” while he went to help the injured officers.

325. The Authority is satisfied that AOS Officer 5 believed that his injured colleagues were at imminent risk of being fatally shot by Mr Warren if they remained exposed in the hallway, and that he faced a similar risk if he entered the hallway to evacuate them from the house. AOS Officer 5’s actions were intended to create the opportunity to enter the hallway, pick up two incapacitated officers, and get them and the rest of the team out. He considered and reasonably discarded a less forceful tactical option to create this opportunity.

326. His decision to fire through the wall towards Mr Warren was calculated to avoid unnecessary injury to Mr Warren himself, and officers on the cordon. Although he had not seen Mr Warren, the Authority accepts that AOS Officer 5 knew his general whereabouts in the house due to the injuries sustained by the officers in the hallway, and the direction of AOS Officer 7’s first shot.

327. In the circumstances, with the lives of two incapacitated Police officers dependent on a swift evacuation from the house, shooting towards Mr Warren was proportionate and justified, due to the threat he presented. The AOS Manual of Procedures contemplates that officers may need to use covering fire to facilitate the rescue of injured officers.<sup>31</sup>

## FINDING

All of the shots fired by AOS Officers 5, 6 and 7 involved the use of reasonable force in defence of themselves or of their fellow officers, and were therefore lawful under section 48 of the Crimes Act 1961.

<sup>30</sup> A distraction device is a non-lethal explosive grenade. It produces a loud noise and one or more bright flashes when detonated.

<sup>31</sup> The relevant policy is set out in paragraph 299.

#### 48 ISSUE 7: DID POLICE EXERCISE APPROPRIATE CONTROL AND COMMAND THROUGHOUT THIS INCIDENT?

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328. Control and command is the exercise of authority and direction by a properly designated commander for the purpose of accomplishing a task. It includes responsibility for effectively controlling the available resources for that purpose.<sup>32</sup>

329. This incident developed quickly from a planned, business-as-usual recovery operation to an emergency incident involving the DCC, NCCC and specialist tactical resources. Control moved through several command levels (from business-as-usual to local level) and incorporated different command structures as events became more serious.

330. However, the Authority has found that staff at all levels had some degree of misunderstanding about how control and command functioned during different phases of the overall Police response. These are discussed below.

#### Control and command prior to the shooting of the AOS officers

331. When officers involved in Operation Dee were shot at, the situation changed from a planned operation to a firearms incident. This triggered the implementation of a prescribed control and command structure and response.

332. Initial control was taken by the NorthComms shift commander, as required by Police policy.<sup>33</sup>

Despite difficulties in identifying Officer A and his location (see paragraphs 40 and 227), the NorthComms shift commander worked well with staff in the DCC to establish basic information, inform the Acting District Commander and ensure that Officer A had the resources he needed to manage the incident by directing available officers to go to the scene, and activating the AOS (see paragraphs 41, 42 and 50).

333. Prior to taking formal control of the incident from the NorthComms shift commander (see paragraph 55), Officer A, as the senior officer at the scene, checked the safety of his staff and made sure the scene was cordoned and contained to the extent possible. He also made sure that all officers were appropriately armed and had read the Police fire orders. After becoming the Incident Controller, it was his responsibility to manage the cordons, keep NorthComms and the DCC updated, and to meet and brief the AOS. Officer A met these responsibilities.

334. The Authority has considered the EBOP Area Commander's decision not to go immediately to the scene upon hearing about the incident.

335. The EBOP Area Commander told the Authority that he understood only one shot had been fired at the spotter plane (see paragraph 43) but, regardless, he was confident that Officers A and F had the experience to assess the situation and handle it appropriately. He expected to

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be kept informed of any developments (which he was), and made sure he was contactable.  
He

32 The relevant policy is set out in paragraphs 424-434.

33 The relevant policy is set out in paragraph 431.

received assurance from Officers E and F that the situation was under control, and his<sup>49</sup>  
presence was not necessary (see paragraphs 56 and 72).

336. The Authority accepts that this was a reasonable approach for the EBOP Area Commander to adopt, based on the information available to him. There was no indication that the incident was anything other than a standard armed offender call-out at this stage.

337. Similarly, it was appropriate for the Acting District Commander to note the incident, and for the DCC to maintain a watching brief in addition to their monitoring and support role. This was one of several significant incidents occurring in the district that morning, all of which required attention and resources.

### *AOS arrival and incident control*

338. The Authority has found that, from this point onwards, there was considerable and on-going confusion about where incident control lay.

339. A significant source of confusion was the arrival of the AOS, and how it affected the existing  
(and subsequent) control and command structure. Several officers at the SFP assumed that  
'the officer in charge of AOS' (either Officer E or the AOS Commander) automatically became the Incident Controller upon arrival, because of the squad's specialist role. Others assumed that the AOS took full operational responsibility for the tactics they used to secure the armed offender.

340. Officer A said he understood that, initially, he was the Incident Controller and therefore in control of the full Police response. However, once the AOS arrived and he had briefed them, it became an "AOS operation", and responsibility for securing the armed offender sat with the AOS Commander rather than himself.

341. While the AOS carried out their task, Officer A thought that he had a "support role", meaning he was responsible for co-ordinating the uniformed staff at the cordon points. After this was complete, he would resume responsibility for dealing with the arrested offender and the scene investigation.

342. Several officers (including senior officers) told the Authority that this was their understanding of how an incident involving the AOS operates. The AOS make their own decisions about tactics, independent of the control and command structure in place at an incident. The EBOP Area Commander said:

*"AOS turns up, and what normally happens, or what always happened in our district, was AOS do their thing and the Incident Controller stays with cordons and having an investigation team ready ...*

*... there's no real discussion of tactics with the Incident Controller  
...."*

343. The Authority finds that this interpretation is not consistent with Police policy. The Incident

Controller retains control over, and responsibility for, all aspects of an operation, including the tactics used to arrest an armed offender. The AOS Commander and AOS officers act under the

<sup>50</sup> control of the Incident Controller, who is accountable for the tactics used during the operation. If the Incident Controller delegates the ability to make independent decisions to the AOS Commander and AOS officers, this should be explicit and recorded in his or her incident log.

344. This being the case, the proposed tactics should be outlined to the Incident Controller and receive his or her approval. Informed approval from a position external to the AOS is an important check-and-balance, to help ensure that appropriate force is used.

345. The AOS did not advise Officer A about what they proposed to do to arrest Mr Warren. Officer A said that he only became aware that the AOS were about to enter 158 because he was “*earwiggling*”, and he was “*surprised*” that the AOS were not planning to use tear gas first or “*wait [the offender] out*”.

346. However, he also said that he had no AOS tactical experience himself, and did not know what value he could add to their tactical planning.

347. The Authority acknowledges this reservation, since any officer of any rank could be required to become an Incident Controller, and be ultimately responsible for the outcome of an incident, such as this one.

348. In such circumstances, it is important that a tactical commander (such as an AOS Commander) outlines his or her proposed tactics, and advises how they align with the overarching purpose of the Police response and the TENR framework, before obtaining the Incident Controller’s approval. For accountability, the fact that the discussion took place, and the approval subsequently given should be recorded in the Incident Controller’s log.

349. It is also important that Incident Controllers are aware of their responsibilities, and proactively seek out communication with the AOS command. This should extend to questioning aspects of the plan that they do not understand, and drawing on their own areas of expertise if they believe it would add to the overall response.

#### *Officer rank*

350. Police policy specifically notes that the control or command of an operation does not automatically default to the most senior ranking officer.<sup>34</sup>

351. However, many officers spoken to by the Authority assumed that, as the highest ranking officer at the scene during this phase of the incident, Officer E:

█ was the AOS tactical commander (rather than an observer);  
and

█ became the overall Incident Controller upon his  
arrival.

352. Further adding to the confusion, Officer E was incorrectly listed in a command chart subsequently provided to the Authority as having a command role during this incident.

<sup>34</sup> The relevant policy is set out in paragraph 430.

353. Very few officers outside of the AOS were aware that Officer E was not in<sup>51</sup> operational command of the Rotorua AOS at that time (see paragraph 45). What was most surprising to the Authority was that the Acting District Commander, the EBOP Area Commander and Officer D all initially believed that Officer E was in the 'AOS commander' role.

354. Some officers at the SFP told the Authority that they drew their conclusions about Officer E's role based on the fact that he was involved in tactical discussions with the AOS Commander and Officer G, the fact that he tasked PNT staff and general duties staff to make enquiries about the Warren family, and the phone contact he had with Bay of Plenty District management, the DCC, and Ms Y (see paragraphs 72, 86, 104 and 151).

355. Officer E told the Authority that his involvement in tactical discussions was purely to assist his own learning, rather than as a decision-maker. The AOS Commander confirmed that all tactical decisions were his, and that he delegated information gathering and communication roles to Officer E. The Authority is satisfied that this was the case.

356. Officer E also said that he was instructing staff to make enquiries to help support the AOS Commander's decision-making, as the AOS does not have a dedicated intelligence resource (see paragraph 104). While it was natural for Officer E to want to be actively involved in operational tasks, this reinforced the perception that he was in a specific position of control or command. It would have been preferable for Officer E to have asked Officer A, the Incident Controller, to task officers to make these enquiries.

### Control and command post-shooting

357. After three Police officers were shot, the seriousness of the situation justified moving the control of the operation from incident level to local (or district) level. The Acting District Commander became the Local Controller, supported by the DCC. The EBOP Area Commander assumed the Forward Commander position, once he arrived at the SFP.

358. Both officers and their supporting staff then became focussed on ensuring that the injured officers were safely extracted and taken to hospital, co-ordinating welfare support for their families and co-ordinating remaining staff at the scene. The DCC commenced a RIOD log, recording actions and decisions.

359. At the same time, the Assistant Commissioner, with other senior staff at PNHQ, started to make a series of decisions to provide support for the now District-led operation, including activating the STG and New Zealand Defence Force assets, and arranging for other AOS squads to make themselves available to support the operation over the coming hours (see paragraphs 158-159). However, as described, these decisions were not communicated directly to the Acting District Commander, as the Local Controller.

360. District staff became aware of the involvement of the NCCC and the decisions that had been made through indirect requests received by the DCC for logistical support, and through a

series of phone calls made by the Assistant Commissioner to the EBOP Area Commander at the scene, to discuss the arrival of the STG, lines of tactical command and the overall strategy for

<sup>52</sup> managing the operation. The NCCC communicated directly with STG and PNT staff, and were able to listen in to their radio conversations and to the negotiation with Mr Warren (while the DCC did not have this capability).

361. District staff also told the Authority that the NCCC requested operational updates and information about various logistical and command matters with unrealistic frequency. However, the Local Controller said that District staff have since learned that they were updating the district RIOD site (as opposed to the national RIOD site), which the NCCC could not access.

362. The Acting District Commander told the Authority that he felt that the NCCC slowly took over control and command of the Police response, through their direct tactical involvement and decision making (see paragraphs 158-159 and 170-171).

363. In his opinion, the NCCC were providing all the *“right things”* as the NCCC *“has access to a lot of resource that district don’t”*, however they should have provided that support through the Local Controller.

364. The Authority spoke to the Assistant Commissioner and other NCCC staff, who said that they were acting in support of the Bay of Plenty District, who retained command and control of the incident for its entire duration. The Assistant Commissioner believed that this was clearly communicated to the district, through the EBOP Area Commander (who the Assistant Commissioner believed was the Incident Controller).

365. The Assistant Commissioner’s decision to activate the STG and other resources was influenced by a lack of information about what had happened, where the injured officers were and how the District was responding. The Assistant Commissioner said that he activated resources with the knowledge that he *“could always turn the tap off”* if they were not needed.

366. The Assistant Commissioner also said that it was necessary for specialist resources such as the STG to retain a line of reporting to himself and the NCCC, to *“make sure that there is appropriate judgement applied around the use of those enhanced skills or tactical judgments.”* However, the STG should also discuss their tactical options and plan with the controller of the operation, and receive approval from them to carry these out.

367. The role of the NCCC in critical incidents is to support the local controller, and authorise and help coordinate the deployment of specialist Police staff (such as the STG) and NZDF resources. The NCCC also keeps Police executive informed, liaises with other government agencies as required and responds to media enquiries.

368. During this extremely serious incident, the NCCC rightly monitored the situation, updated the Police executive, liaised with media, and made nationally managed assets available to support the District. The STG, for example, played a vital role in safely resolving this incident.

369. However, the Authority considers that, although well-intentioned, the NCCC moved beyond a support role during this incident by making decisions that had a direct impact on the tactics

and logistics of the operation, without the knowledge or agreement of the Local Controller and DCC.<sup>53</sup>

370. In general, there was poor communication between the NCCC and the District. Neither group sought clarification from the other when (in the DCC's case), it was uncertain of its role in relation to the other, or when (in the NCCC's case) it felt it was not being adequately updated.

371. Even although the DCC failed to make their log information available to the NCCC, the NCCC nevertheless had a clear obligation to proactively consult with the District about the resources they intended to send to support the operation, before doing so. As with Officer A and the AOS command during the first phase of this operation, the Local Controller was left out of tactical discussions.

372. The Authority has found that control and command concepts, and their practical application, were not clearly understood by Police at all levels throughout this operation. At almost every level, officers did not know who was control or command of a critical position, or identified the wrong officer. In some cases, officers in critical control or command positions were unaware of the breadth of their responsibility, or the need to offer or seek advice as part of their decision-making.

## FINDINGS

The NorthComms shift commander and Officer A, as the initial Incident Controller, exercised good control and command from the time the first shots were fired, until the AOS arrived.

Area and District staff were informed of the incident and responded appropriately. In particular, the EBOP Area Commander's decision against immediately going to the scene was justified in the circumstances.

There was general confusion about where control of the incident lay once the AOS arrived. Officer A did not know that he was accountable for AOS tactics and decision-making as the Incident Controller.

The AOS Commander should have consulted with Officer A and obtained approval for the tactics employed. The disconnectedness between the AOS Commander and Officer A (as Incident Controller) meant that objective scrutiny of tactical decisions did not occur.

The command structure of the Rotorua AOS was not well understood outside of the squad. Officer E acted under the authority of the AOS Commander, and not in his own capacity as an Inspector, while at the scene. However, his tasking of staff created the perception that he was

in a specific position of control and command, which reinforced general confusion.

The NCCC should not have made unilateral operational decisions without including the Local

Controller and  
DCC.

Control and command concepts, and their practical application, were not clearly understood by

Police at all levels during this  
operation.

#### **54 ISSUE 8: DID POLICE PROVIDE ADEQUATE WELFARE SUPPORT TO THE INJURED OFFICERS AND THEIR FAMILIES?**

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373. The Authority spoke to all of the officers who were injured during this incident, and some of their family members. In general, they all said that the support offered by Police was timely and well considered. The injured officers were transported to hospital quickly, and their family members were informed about what had happened by senior officers, before being taken to the hospital to be with the injured officers.

374. This level of support continued during the officers' recovery. The officers were very complimentary of the support provided by designated Police welfare officers, and also by the Police Association.

375. Some comments were offered to the Authority in the spirit of constructive criticism for the future:

- a) When several members of a tactical group are injured, the families of the uninjured officers would appreciate being informed that their family member is not among the injured as soon as is practicable.
- b) The family of an injured officer should have a single point of contact with Police for information and support.

376. Overall, it was apparent to the Authority that the level of support that was able to be provided to the injured officers and their families was partially the result of the willingness of many officers in the Bay of Plenty District on 9 and 10 March 2016, to come in to work to support the operation despite being off-duty, or to work long hours. The availability of staff to carry the collective burden, both at the DCC and at the scene, gave other senior officers the capacity to look after the injured officers and their families. The Authority was impressed that officers of all ranks were willing to undertake any task that was helpful to the overall Police response.

#### **FINDING**

Police provided good welfare support to the injured officers and their families.

#### **Subsequent Police Action<sup>5</sup>**

#### **Police debriefs**

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377. In accordance with Police policy, Police held a series of debriefs following this event to review

Police performance and identify any areas where practices or procedures could be improved:

- On 24 and 29 March 2016 respectively, the Tauranga AOS and Rotorua AOS held separate operational debriefs.
- On 27 April 2016, a Bay of Plenty Police District debrief was held at Bay of Plenty District Headquarters.
- On 18 May 2016, a national debrief was held at PNHQ.

378. These debriefs were detailed and explored a number of practice areas. Of particular note, the debriefs:

- acknowledged that there were some deficiencies in the way in which the NCCO generally, and Operation Dee specifically, were planned and operated both nationally and at district level. Substantial recommendations were made to address these areas, with an emphasis on officer safety practices and risk assessment (see paragraphs 382-383).
- identified issues with the understanding and application of control and command principles during the operation, including:
  - o the actions of some PNHQ officers in the hours after the AOS officers were shot created the impression amongst District staff that the NCCC had taken control;
  - o further work needs to be done to set out how the NCCC, PNHQ, DCC, Communications Centres and district staff should operate together during a district- led emergency operation.

## Police dogs

379. All AOS-rated Police dogs are now required to wear protective boots while on duty.

380. AOS Police dog teams are now required to successfully complete the building search component of their annual certification while the Police dog is wearing protective boots. It is intended that this certification requirement will extend to all Police dog teams.

381. AOS squads are currently trialling the use of a camera which can be mounted on the Police

dog's harness while it is searching a building. An AOS officer can watch the captured footage on a screen while remaining outside the building.

## National Cannabis Crime Operation

382. Police have issued a National Operation Instruction setting out comprehensive operational and planning requirements for the National Cannabis Crime Operation. Operational orders must be reviewed and approved by the relevant District Commander and a working group at Police National Headquarters.
383. Approved operational orders must be circulated to key staff in the district and to the DCC, Communications Centres and the NCCO. Operational orders must cover or include:
- ▣ operational practice (including the use of tactical devices, safety devices, oversight by supervisors and the role of Safety Officers, Communications Centres and DCC);
  - ▣ procedures for conducting searches;
  - ▣ the role and ambit of Safety Officers;
  - ▣ pre-planned warrants;
  - ▣ risk assessments;
  - ▣ an assessment of the impact of the operation on the community; and
  - ▣ the involvement of specialist tactical groups.

## Command Centre Operating Guidelines

384. The Authority understands that Police are developing guidelines setting out how Police Communication Centres, District Command Centres and the National Command and Coordination Centre will operate during critical events, both planned and unplanned. The Authority supports such an initiative and anticipates the Guidelines will reflect the Authority's recommendations.

### Recommendation<sup>57</sup>

385. The Authority's investigation identified significant issues with the control and command of this incident. While the senior operational managers involved in this incident may have been fully conversant with the CIMS control and command model, the same level of practical understanding did not exist at other operational levels, particularly amongst front line officers.
386. Specifically, the Authority's investigation identified issues with the transition of control and command between different response levels during a critical event.
387. In order to ensure a wider understanding and greater consistency of practice of the CIMS control and command model at all levels within Police, the Authority recommends that New Zealand Police:

387.1 Identify and introduce additional relevant training for Police staff at all levels focusing on the following:



- a) the control and command structure during an incident managed within a district where different response groups are deployed, including the role of District Command Centres during such events;
- b) the control and command structure of incidents where the National Command and Co-ordination Centre provide logistical and/or operational support;
- c) the control and command structure of incidents when the National Command Centre takes control and command responsibilities;
- d) ensuring that officers undertaking a tactical commander role, irrespective of their rank or the level of command, consult and obtain the approval of the controller of the Police operation about proposed tactics, and ensure that the consultation, and the approval given, is recorded in the Incident Controller's log; and
- e) ensuring that all officers have a comprehensive understanding of the different roles undertaken during a critical event, and use appropriate terminology accurately and consistently.

387.2 Urgently review and finalise the Command Centre Operating Guidelines document, to ensure it aligns with the Control and Command policy and includes the following elements:<sup>35</sup>

- a) clarification of the control and command capability of the National Command and Co-ordination Centre and District Command Centres;
- b) specification of the role of the National Command and Co-ordination Centre in critical events; and

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<sup>35</sup> See paragraph 384.



- c) specific guidance about how District Command Centres will ensure clear line control and communications between individuals, command groups and external agencies holding key control and command roles so as to ensure clarity of role and function of all participants.

387.3 Review radio and communications protocols to ensure that the transition of control and command between different response levels is clearly, widely and consistently recorded and known by all staff involved in a critical event.

387.4 Ensure there is a desk file in each District Command Centre that aligns with the Command Centre Operating Guidelines and Control and Command policy and provides information on the various roles of a District Command Centre during a critical event.

387.5 Develop an induction package for staff moving to work in a District Command Centre and ongoing training, including the CIMS model, to ensure consistency in the way District Command Centres operate, particularly during critical events.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

19 July 2018

**IPCA: 15-2202**



SEARCH AND SURVEILLANCE ACT 2012

388. Section 8 of the Search and Surveillance Act 2012 permits officers to enter a place without a warrant, search for and arrest a person they believe to be in that place, if:

- ▣ they suspect that the person has committed an offence punishable by imprisonment for which he or she may be arrested without warrant; and
- ▣ they believe that if they do not enter immediately, the person will leave to avoid arrest, or he or she will conceal, alter, damage or destroy evidence relating to that offence.

389. Section 18 (Warrantless searches associated with arms) provides:

*“(1) A constable who has reasonable grounds to suspect that any 1 or more of the circumstances in subsection (2) exist in relation to a person may, without a warrant, do any or all of the following:*

- (a) search the person;*
- (b) search anything in the person's possession or under his or her control (including a vehicle);*
- (c) enter a place or vehicle to carry out any activity under paragraph (a) or (b);*
- (d) seize and detain any arms found;*
- (e) seize and detain any licence under the Arms Act 1983 that is*

*found. (2) The circumstances are that the person is carrying arms, or is in possession of them, or has them under his or her control, and—*

- (a) he or she is in breach of the Arms Act 1983; or*
- (b) he or she, by reason of his or her physical or mental condition (however caused),—*
  - (i) is incapable of having proper control of the arms; or*
  - (ii) may kill or cause bodily injury to any person; or*
- (c) that, under the Domestic Violence Act 1995,—*
  - (i) a protection order or a police safety order is in force against the person; or*
  - (ii) there are grounds to make an application against him or her for a protection order.*

*(3) A constable may, without a warrant, enter a place or vehicle, search it, seize any arms or any licence under the Arms Act 1983 found there, and*

60 detain the arms or licence if he or she has reasonable grounds to suspect that there are arms in the place or vehicle—

- (a) in respect of which a category 3 offence, a category 4 offence, or an offence against the Arms Act 1983 has been committed, or is being committed, or is about to be committed; or
- (b) that may be evidential material in relation to a category 3 offence, a category 4 offence, or an offence against the Arms Act 1983.”

390. Section 20 (Warrantless search of places and vehicles in relation to some Misuse of Drugs Act

1975 offences) states:

*“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.”

391. Section 131 of the Search and Surveillance Act sets out identification and notice requirements for a person exercising search powers. Before entering a place to search it without a warrant, an officer must identify him or herself, provide evidence of identity if not in Police uniform and announce their intention to enter and search the place under the Search and Surveillance Act 2012 and the reason why.

392. These steps do not have to be taken if the officer has reasonable grounds to believe that the no-one is lawfully present in or on the place, or if compliance would endanger any person or prejudice the entry, search or ongoing investigation.

393. If the occupier is not present at any time during the search, the person carrying out the search must leave a copy of a notice in a prominent place (or provide a copy within seven days of conducting the search), detailing (amongst other things) the time and date of the search, who conducted the search, the legislative power relied upon, and what (if anything) was seized.

### Policy requirements when conducting a search

394. Prior to executing a search (with or without a warrant), the risks to the officers conducting the search and to members of the public impacted by the search (particularly vulnerable members of the community) must be assessed. Considerations, decisions and steps taken to eliminate or minimise the impact of the search on vulnerable community members should be recorded.

395. For safety reasons, officers must notify the Communications Centre of all warrantless searches, including the details of the intended search and of the risk assessment undertaken, unless impracticable in the circumstances. Such circumstances could include if the officer is out of radio or cell phone range, or if the urgency of the circumstances requires immediate action.

### USE OF FORCE BY POLICE

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396. Section 39 of the Crimes Act 1961 provides for Police officers to use reasonable force in the execution of their duties such as arrests. Specifically, it provides that officers may use “*such force as may be necessary*” to overcome any force used in resisting the law enforcement process unless the process “*can be carried out by reasonable means in a less violent manner.*”

397. Section 48 of the Crimes Act states: “*Everyone is justified in using, in defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.*”

398. Section 62 of the Crimes Act makes a Police officer criminally responsible for any excessive use of force.

### General guidelines on use of force

399. 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), pepper spray, batons, Police dogs, Tasers and firearms. Specialist groups, such as the AOS and STG, have additional tactical options available to them (see paragraphs 411-423).

400. 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.

401. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved; and the potential for de-escalation or escalation. Officers must choose the most reasonable option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer's 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)).
402. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions, or potential actions, of the people involved, and depends on whether they are: cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from Police policy.
403. The policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

### Use of firearms

404. The Crimes Act provisions are mirrored in Police General Instruction F061 (Fire Orders) in the 'Police Firearms' chapter of the Police Manual. F061 instructs members of the Police to always be aware of their personal responsibilities in the use of firearms, reminds them of the relevant sections of the Crimes Act and also sets out the circumstances in which the use of lethal force is justified.
405. General Instruction F061 provides for the use of firearms by Police officers to defend themselves or others if they fear death or grievous bodily harm and cannot reasonably protect themselves or in a less violent manner.
406. 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 they cannot be disarmed or arrested without first being shot*
  - ☐ *further delay in apprehending the offender would be dangerous or impractical.”*
407. In operational situations where firearms are issued, General Instruction F061 also requires that the officers' attention is drawn to the fire orders printed in their Police issue notebooks *“if time and circumstances permit”*.

408. At the time of this incident, policy required officers to wear approved ballistic body armour when deploying to an incident where they believe firearms are present or could be present.

#### *Responding to armed offenders*

409. The Police Manual outlines the role of AOS in an armed incident. Where time and the offender's actions permit it, all forward operations against armed offenders, particularly any direct approaches to the offender, must be carried out by AOS members assisted by a Police Negotiations Team (PNT).
410. During an AOS incident, the AOS commander is responsible for establishing an AOS base and commanding and directing the AOS in the forward area.

#### **Tactical options used by specialist groups**

411. The AOS and STG are trained in and have access to tactics, weapons and equipment in addition to those available to front-line officers.

#### *Close Target Reconnaissance*

412. A Close Target Reconnaissance (CTR) is a covert information-gathering tactic that only STG officers are trained in and approved to use.
413. The purpose of a CTR is to gather information for the next phase of an operation, without being detected. A small team of officers covertly move towards a target (such as a building) to look for potential points of entry, obstructions, or evidence of that someone is inside.
414. A CTR does not involve overt action at the target, such as deliberately breaking a window, or calling into or entering a building.

#### *Tear gas*

415. Tear gas causes eye, skin and throat irritation, shortness of breath and disorientation, and can be used to detect an offender's presence or location, or to dislodge an offender from a building where negotiations have not been able to resolve a situation.
416. The use of tear gas must be in accordance with the 'Use of force' policy (paragraphs 399-403) and statutory obligations (paragraphs 396-398).
417. Tear gas canisters can be fired through windows into a property using a 40mm launcher. The insertion of tear gas using this method presents a risk of death or serious harm if a person is hit by the projectile gas canister.
418. AOS and STG may only use tear gas and associated equipment "*against person(s) believed to be armed or otherwise potentially dangerous*" in certain specified situations where the perceived risk is "*deemed serious enough to warrant its use.*" For example:

64. “Where there are good grounds to believe an offender is in an address, but there is an unacceptable risk to staff (and others) in entering or approaching that address to search for that offender.”

### *Building clearance*

419. The AOS Manual of Operating Procedures provides that entry into a building containing an armed suspect is the “*last course of action*” as it is “*inherently dangerous and should be avoided if possible.*” It further states: “*... only in exceptional circumstances, and when the AOS Commander is sure it is legally and tactically justified, should the squad enter a building containing a suspect.*”

420. Before entering a building containing a suspected offender, less dangerous options should be considered, including:

- ▣ verbal appeal;
- ▣ telephone negotiation;
- ▣ out-waiting the suspected offender;
- ▣ tear gas or distraction devices; and
- ▣ using AOS-rated Police dogs.

### *Use of AOS-rated Police dogs when clearing buildings*

421. The AOS Commander may make the tactical decision to use AOS-rated Police dogs to enter a building and search it, with a view to locating offenders who may be trying to hide from Police.

422. The AOS Manual of Operating Procedures states that, “*on all occasions, except if impracticable, a dog or dogs should be deployed into the building before AOS members enter.*” However, the decision to use Police dogs to clear buildings depends on the circumstances at the time, and the likelihood that an offender or innocent people may be in the building.

423. The Police dog and handler form part of an AOS entry team. The Police dog searches the property while under the voice control of its handler, who remains outside the building with the rest of the entry team. If the Police dog indicates or bites an offender inside the building, the entry team will follow a pre-determined plan to enter the property, remove the Police dog and secure the offender.

## **CONTROL AND COMMAND**

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424. Police have adopted the Coordinated Incident Management System (CIMS) as the model for command, control and coordination of emergency incidents in New Zealand. From time to time, Police may partner with other agencies under this model to respond to an incident.

425. ‘Control’ refers to the responsibility for coordinating and directing the response to an incident.

Control sets priorities and objectives, and determines how best to implement them. This can



include assigning tasks to another agency and coordinating that agency's wider actions so that it integrates with the wider response.

426. 'Command' refers to the authority that a Commander in the New Zealand Police lawfully exercises over assigned staff by virtue of rank or assignment. Command includes the authority and accountability for effectively using available resources and for planning, organising, directing, coordinating and controlling Police resources.
427. The CIMS model describes five response levels, depending on the scale of the event:
- ▣ Community (business-as-usual);
  - ▣ Incident;
  - ▣ Local (events affecting a Police district);
  - ▣ Regional (events affecting more than one Police district);
  - ▣ National (events requiring a whole-of-government response, such as the 2011 Christchurch earthquake, or a terrorist attack).
428. Different response levels are activated as the event grows in seriousness and scale. The lower-level response is supported and/or coordinated from the next-higher level, when this is activated.
429. A 'Controller' is responsible for coordinating and controlling the response at each level.
430. Controllers and Commanders must be competent, trained and qualified for their respective roles. Control and command is role rather than rank specific. Officers of a senior rank nominated to take a control or command role, should not automatically assume superiority, solely on the basis of rank or territorial responsibility.
431. Most incidents will be responded to following a report to the Communications Centre. The Shift Commander of the Communications Centre will take initial control or command until an operation or tactical commander in the field can safely be handed incident control at the appropriate time.
432. The District Command Centres (DCCs) exist to support or enable the control and command of critical incidents in the early stages. A relationship must exist between the Incident Controller and the DCC.
433. The National Command and Coordination Centre (NCCC) is located at PNHQ. In the event of an incident or emergency requiring higher level command and control, the NCCC may take responsibility for coordinating all significant or national and international operations and responses, as well as operations and responses that involve two or more Police districts.
434. The NCCC also supports lower levels of Control and Command with a picture of what is taking place and to enable the controllers to deliver on intent. The DCC keeps the NCCC informed.

## Index of Officers

| Officer   | Roles/Comment  |
|---|--|
| NCCO<br>National<br>Coordinator                   | Detective Senior Sergeant based at Police National Headquarters. Had overall charge of the National Cannabis Crime Operation. Thirty-two years' service in the New Zealand Police at the time of this incident.                        |
| Officer A   | Detective Sergeant. Officer in charge of Operation Dee in the Bay of Plenty Police District. Incident Controller until the AOS officers were shot. Twenty-three years' service in the New Zealand Police at the time of this incident. |
| Officer B<br>the New                              | Detective. Ground crew, Operation Dee. Fourteen years' service in Zealand Police at the time of this incident.   |
| Officer C<br>service in                           | Constable. Ground crew, Operation Dee. Police dog handler. Eight years' the New Zealand Police at the time of this incident.   |
| NorthComms<br>shift<br>commander                  | Inspector. Took initial control of the incident until Officer A became Incident Controller at the scene. Ten years' service in the New Zealand Police at the time of this incident.  |
| Officer D<br>New Zealand                          | Senior Sergeant, based in the DCC. Twenty-four years' service in the Police at the time of this incident.  |
| Officer E   | Inspector. Officer in charge of the Rotorua AOS, but not AOS qualified at the time of this incident. Fourteen years' service in the New Zealand Police at the time of this incident.   |
| Acting District<br>Commander                      | Inspector. Relieving District Commander. Became Local Controller after the AOS officers were shot. Twenty-five years' service in the New Zealand Police at the time of this incident.  |
| Eastern Bay of<br>Plenty (EBOP)<br>Area Commander | Inspector. Became Forward Commander at the scene after AOS officers were shot.   |
| Officer F   | Sergeant. Officer in charge of Kawerau Police station.   |
| AOS Commander                                     | Senior Sergeant, member of the Rotorua AOS. In tactical command of the Rotorua and Tauranga AOS officers during this incident. Twenty-four years' service in the New Zealand Police at the time of this incident.                      |
| AOS<br>Forward<br>Command<br>er                   | Senior Sergeant, member of the Rotorua AOS. Thirty years' service in the New Zealand Police at the time of this incident.  |
| AOS Officer 1<br>Rhys Warren.                     | Sergeant, team leader on the Tauranga AOS. Shot in the hand by Eighteen years' service in the New Zealand Police at the time of this incident.   |
| Officer G<br>Commander.                           | Inspector. Officer in charge of the Tauranga AOS. Qualified AOS Thirty-five years' service in the New Zealand Police at the time of this incident  |
| PNT Sergeant<br>service in the                    | Sergeant, leader of the Police Negotiation Team. Nineteen years'   |

New Zealand Police at the time of this incident.

PNT Officer 1  
in the New

Constable, member of the Police Negotiation Team. Nine years' service

Zealand Police at the time of this incident.

AOS Officer 2

Sergeant, team leader on the Rotorua AOS. Led the team that reconnoitred and cleared 160 Onepu Spring Road. Twenty-three years' service in the New Zealand Police at the time of this incident.



|                                      |  |
|--------------------------------------|--|
| AOS Dog Handler 1<br>Spring Road.    | AOS Dog Handler, Rotorua AOS. Entered 160 and 158 Onepu<br>Received serious head injuries after being shot at by Rhys Warren.<br>Eight years' service in the New Zealand Police at the time of this incident.  |
| AOS Officer 3                        | Constable, team leader on the Rotorua AOS. Led the team that reconnoitred and cleared 158 Onepu Spring Road. Injured by shrapnel after being shot at by Rhys Warren. Fourteen years' service in the New Zealand Police at the time of this incident. |
| AOS Dog Handler 2<br>Eleven years'   | AOS Dog Handler, Rotorua AOS. Entered 158 Onepu Spring Road.<br>service in the New Zealand Police at the time of this incident.  |
| AOS Officer 4<br>Zealand Police      | Constable, member of Rotorua AOS. Nine years' service in the New<br>at the time of this incident   |
| AOS Officer 5                        | Constable, member of Rotorua AOS. Entered 158 Onepu Spring<br>Road. Fired at Rhys Warren. Thirteen years' service in the New<br>Zealand Police at the time of this incident.   |
| AOS Officer 6                        | Constable, member of Rotorua AOS. Entered 158 Onepu Spring<br>Road. Fired at Rhys Warren. Injured by shrapnel after being shot at by<br>Rhys Warren. Five years' service in the New Zealand Police at the time<br>of this incident.                  |
| AOS Officer 7<br>Rhys Warren.        | Member of Rotorua AOS. Entered 158 Onepu Spring Road. Fired at<br>Nine years' service in the New Zealand Police at the time of this incident.  |
| Assistant Commissioner               | Assistant Commissioner: Response and Operations. Authorised the<br>activation of the STG after three AOS officers were shot. Thirty-five<br>years' service in the New Zealand Police at the time of this incident.                                   |
| Taupo Area Commander<br>eight years' | Inspector. Negotiated with Mr Warren over the telephone. Twenty-<br>service in the New Zealand Police at the time of this incident.  |

## Glossary of Terms

| Abbreviation/term                               | Explanation   |
|---|---|
| Armed Offenders Squad (AOS)                     | Armed Offenders 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.   |
| AOS 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 AOS commander are implemented. The forward commander reports to the AOS commander.   |
| AOS Log   | The AOS log is a chronological record of all AOS and PNT actions, decisions and intelligence.   |
| Controller                                      | The 'controller' is the officer responsible for coordinating and controlling the Police response to an event. The Police response is controlled at different levels, depending on the scale and seriousness of the event. For example, an 'Incident Controller' is responsible for coordinating and controlling events within a Police district, whereas a 'Local Controller' will coordinate and control an event which affects the entire Police district.              |
| Close Target Reconnaissance (CTR)               | A Close Target Reconnaissance (CTR) involves a limited number of officers covertly approaching a target (such as a building or structure) to gather information (such as potential points of entry, obstructions, or evidence of occupancy) which cannot be collected from a safer position further away. This information is then used to make further tactical plans. This is not a tactic that AOS officers are trained in or approved to use. See paragraphs 412-414. |
| CS gas  | Tear gas.   |
| 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 call on and direct a wide range of staff and resources, including staff that would not normally be deployed in response to an incident.  |
| Incident Controller                             | The Incident Controller is the officer responsible for managing the Police response to an incident. The communications centre shift commander is the Incident Controller until that role is formally handed to a field commander. See paragraphs 424-434 for further explanation.   |
| Mobility device                                 | This is either an iPad or an iPhone that Police officers carry in their vehicles and can use to access Police databases.  |
| National Cannabis Crime Operation (NCCO)        | An annual, national Police operation that targets offending connected with the cultivation and distribution of cannabis.  |
| National Command and Coordination Centre (NCCC) | The NCCC is located at Police National Headquarters in Wellington and monitors Police activity across the country. The NCCC takes responsibility for coordinating all significant or national and international operations and responses. It also coordinates operations and responses that involve two or more Police districts.   |
| Operation Dee                                   | The 2015/2016 National Cannabis Crime Operation.  |

Fire orders instruct officers to always be aware of their personal responsibilities in the use of firearms. The fire orders remind officers of relevant sections of the



|                               |   |
|-------------------------------|---|
|                               | Crimes Act 1961 and set out the circumstances in which the use of lethal force is justified. See paragraphs 404-407 for more detail.  |
| Police Negotiation Team (PNT) | A Police negotiation team (PNT) is a specialist team formed to help other operational staff resolve situations by using negotiating techniques. Police negotiation teams are attached to all AOS squads, but also operate independently.  |
| Safe Forward Point (SFP)      | The SFP is a gathering point for briefings, and the allocation of roles and equipment.  |
| Special Tactics Group (STG)   | The national specialist Police unit, based in Auckland, Wellington and Christchurch, which undertakes high-risk policing operations. Members have expertise in and access to a wide range of tactics, weapons and equipment. The STG activates with the approval of an Assistant Commissioner, the Deputy Commissioner or the Commissioner of Police. |



## 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 Colin Doherty.

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.

## THIS REPORT

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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.





Whaia te pono, kia puawai ko te tika

PO Box 25221, Wellington  
6146

Freephone 0800 503

728 [www.ipca.govt.nz](http://www.ipca.govt.nz)

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