



**IPCA**

Independent Police  
Conduct Authority

Whaia te pono, kia puawai ko te tika

# Fatal Police shooting of David Cerven

*September 2016*

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## Introduction

1. At about 7.45pm on Sunday, 2 August 2015, David Cerven was fatally shot by Police in Myers Park in central Auckland.
2. Earlier in the evening Mr Cerven had called Police and asked them to meet him in Myers Park. Mr Cerven was aware Police wanted to talk to him in relation to three aggravated robberies he had allegedly committed between 26 July and 1 August 2015.
3. Police notified the Independent Police Conduct Authority ('the Authority') of the incident, and the Authority conducted an independent investigation.
4. When spoken to by the Authority, Mr Cerven's partner, Ms X, and two friends, Mr Y and Mrs Z, raised concerns about the actions of Police. They queried why Mr Cerven was shot when, although he said he had a gun, he did not actually have one and why Myers Park was not 'locked down' so that Mr Cerven could be given time to calm down.
5. The Authority's investigation has examined issues arising relating to the response by staff at the Police Northern Communications Centre to Mr Cerven's 111 call, the initial Police response, the response by Police after Mr Cerven said he had a gun, the shooting of Mr Cerven and the assistance given to him after he was shot.
6. This report sets out the results of that investigation and the Authority's findings.

## Index of Police staff

Communications Centre and District Command Centre Staff	Roles/Comment
Call taker	Spoke to Mr Cerven when he called 111
Dispatcher	Dispatched officers to Myers Park and was incident controller for duration of incident
Team Leader	Called over by the dispatcher once Mr Cerven stated he had a gun
Shift Commander	Inspector who was called over by the dispatcher and team leader but did not have time to formally become incident controller before Mr Cerven was shot
DCC supervisor	Senior Sergeant who had control of CCTV coverage in Myers Park before, during and after incident
Field Staff	
Officer A	On-duty Public Safety Team sergeant and supervisor of Officers B and C
Officer B	Public Safety Team constable who was present during incident
Officer C	Public Safety Team constable who was present during incident
Officer D	Detective sergeant who was the on-duty Crime Squad co-ordinator and was supervising Officers E, F, G and H
Officer E	Crime Squad detective who was involved in shooting of Mr Cerven and was armed with a Glock pistol
Officer F	Crime Squad constable who was involved in shooting of Mr Cerven and was armed with a Bushmaster M4 rifle
Officer G	Crime Squad detective constable who went to northern Greys Avenue entrance
Officer H	Crime Squad detective constable who went to northern Greys Avenue entrance
Officer I	Traffic and Alcohol Group constable who spoke to Mr Cerven during incident
Officer J	Traffic and Alcohol Group constable who spoke to Mr Cerven during incident
Officer K	Public Safety Team constable who provided medical assistance to Mr Cerven

## Background

### SUMMARY OF EVENTS

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7. Mr Cerven was a 21 year-old Slovakian national. He arrived in New Zealand with his partner, Ms X, on 20 March 2015. Both of them had obtained 12-month working holiday visas before they arrived so that they could work in New Zealand.
8. Before arriving in New Zealand, it appears that Mr Cerven obtained two loans from Slovakian banks for €5,500 and €24,000. It is clear that he was stressed by this debt while he was in New Zealand.
9. Mr Y and Mrs Z, who knew a family friend of the Cervens, agreed to have Mr Cerven and Ms X stay with them in Auckland. Mr Cerven and Ms X stayed with Mr Y and Mrs Z for three to four weeks. They then moved into a flat in Glenfield, Auckland, for a few months and then, on 4 June 2015, moved into an apartment on Queen Street in central Auckland. On 29 July 2015, Mr Cerven and Ms X gave notice to leave the Queen Street apartment.

### Mr Cerven's behaviour leading up the time of the alleged offences

10. During the course of its investigation, the Authority has established that Mr Cerven exhibited some unusual behaviour in the weeks before his death including:
  - 1) Between 8 April and 17 July 2015 Mr Cerven worked as a labourer for a water proofing company in Auckland. He left this job suddenly, telling his employer that he needed to go back to fight in Iraq in order to pay off his debt. However, on 20 July 2015 Mr Cerven started working as a roofer at another company in Auckland. Ms X told Police that Mr Cerven had not been in the army or fought in any war.
  - 2) On 12 July 2015 Mr Cerven searched 'gun trade me' on Google. This search came up with a number of Trade Me links to guns for sale. On the same day Mr Cerven also searched 'sell pistols Auckland'. However, there is no evidence to indicate that Mr Cerven bought a gun as a result of these searches.
  - 3) On 26 July 2015 Mr Cerven had a Facebook conversation with a former colleague from the water proofing company. Mr Cerven, who was pretending to be in Afghanistan, said that the government would pay off his loan if he died.
  - 4) On 27 July 2015 Mr Cerven deactivated his Facebook account.
  - 5) Ms X had noticed that money had been disappearing from their joint accounts and had asked Mr Cerven about this.
  - 6) Mr Cerven was gambling online and watching videos of armed robberies and war movies.

- 7) On the night before he died, Ms X noticed that Mr Cerven was quiet and sad. He was also hugging her more than usual.

### Offences allegedly committed by Mr Cerven

11. At about 3.45pm on 26 July 2015, Mr Cerven allegedly entered Harbour City Liquor in Wairau Valley, Auckland, and threatened the shop assistant with a knife. He stole \$564 from the cash register.
12. At about 7.24pm on 29 July 2015, Mr Cerven allegedly entered Thirsty Liquor in Glenfield, Auckland, and threatened the shop assistant with a knife. He stole about \$400 from the cash register.
13. On 31 July 2015, Police received CCTV footage of the robbery at Thirsty Liquor. The footage was uploaded to the Waitemata Police Facebook page at 1.56pm that day and released to the media. The footage was also shown on national television on 31 July and members of the public with information were asked to ring the North Shore CIB or Crime Stoppers. There was no positive feedback from the coverage.
14. At about 6.44pm on 1 August 2015, Mr Cerven allegedly entered Pinewood Dairy in Pinehill, Auckland, and threatened the shop assistant with a knife. This time, however, the shop owner fought back and a brief struggle took place during which Mr Cerven dropped his backpack and ran off without it. The backpack contained Mr Cerven's passport and his driver licence which enabled Police to identify him.
15. At 12.56pm on 2 August 2015, Police posted an item headed "*Police looking to locate David Cerven*" on their website. The item included a photograph of Mr Cerven and some personal information about him. It also stated that Waitemata Police believed Mr Cerven could assist with their enquiries into three "*armed*" robberies on the North Shore.

### Mr Cerven's movements on 2 August 2015

16. At about 2.30pm that afternoon, Ms X noticed that Mr Cerven seemed quite sad and she asked him if he was alright. He told her that the Police were looking for him and showed her information on the Internet with his name and photo. Mr Cerven told Ms X that he had robbed a liquor store.
17. Mr Cerven and Ms X drove to the North Shore to see Mr Y and Mrs Z. Ms X told Police that Mr Cerven was very upset and crying on the drive there.
18. Mr Cerven and Ms X arrived at Mr Y and Mrs Z's house at about 3.50pm. Mrs Z was at home. Mr Cerven told her he had "*held up*" a liquor store and asked her to look after Ms X. Mr Cerven said he was going to give himself up to Police. Just before 4pm he ran off down the street crying. Ms X and Mrs Z drove around the area trying to find him.
19. At 4.09pm Ms X called Mr Cerven who told her not to call him back.

20. Mrs Z called Mr Y and he arrived home at about 4.30pm. Ms X and Mrs Z told Mr Y that Mr Cerven had committed some robberies. All three then drove into central Auckland. They went to Myers Park sometime between 5pm and 6pm because Ms X thought Mr Cerven might have gone for a walk there, as they lived nearby and Mr Cerven knew the park. Ms X and Mr Y walked around the park but they did not find Mr Cerven.
21. Cell phone records show that Ms X called Mr Cerven's cell phone a number of times after 4.09pm, however, the calls were not answered by Mr Cerven. She spoke to him for the last time at 6.57pm and told Police that, at this point, Mr Cerven was very upset and fluctuating between crying and laughing. He said that he was in church and had made a confession. Mr Cerven told Ms X not to worry and that he would go to heaven. Ms X also sent Mr Cerven 66 texts between 4.32pm and 6.24pm.
22. Mr Cerven texted Ms X 12 times before speaking to her for the last time. In one of his texts, he said that he was on the run and *"I will confess tomorrow. I will need to turn the phone off because they are monitoring everything"*.<sup>1</sup>
23. Mr Y and Mrs Z also called Mr Cerven several times during this period but he did not answer. Mrs Z told Police after the shooting that she was worried Mr Cerven might try and get Police to kill him.

### Mr Cerven heads to Myers Park

24. Myers Park is a public park in central Auckland and is surrounded by commercial buildings, hotels and private residences.<sup>2</sup> There are five main entrances to the park – one on Mayoral Drive,<sup>3</sup> one on Queen Street, one on Poynton Terrace and two on Greys Avenue. There are also other ways to enter the park, including a path from Scotia Place.<sup>4</sup>
25. Between 6.59pm and 7.16pm CCTV footage from eight different locations in central Auckland shows Mr Cerven walking along Wyndham Street, turning right into Queen Street, walking up Queen Street and arriving at the entrance to Myers Park.
26. Cell phone records show that from 7.02pm to 7.15pm Ms X texted Mr Cerven 22 times and called him twice. He did not reply to the texts or answer his phone.
27. Mr Y and Mrs Z also called Mr Cerven again at 7.03pm but he did not answer.
28. After arriving at Myers Park, Mr Cerven leaned on a fence at the Queen Street entrance for about a minute. According to the CCTV footage timing, he entered the park just before 7.17pm.

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<sup>1</sup> The texts between Mr Cerven and Ms X were in Slovakian. They were translated by an official translator during the course of the Police investigation and the Authority has relied on these translations.

<sup>2</sup> See the aerial photograph of Myers Park at Appendix 1.

<sup>3</sup> The Mayoral Drive entrance has three entrance points - a set of stairs on the western side, a set of stairs on the eastern side and an underpass between the two sets of stairs.

<sup>4</sup> See the aerial photograph of Myers Park at Appendix 1.



### Mr Cerven contacts Police from Myers Park

29. Cell phone records show that Mr Cerven called Police via the emergency 111 number at 7.20:08pm. Mr Cerven's call was answered by a call taker at the Northern Communications Centre (NorthComms), and lasted about nine minutes.
30. The call taker immediately asked Mr Cerven for the location of the emergency. Mr Cerven said he was in the middle of Myers Park and requested that Police meet him there *"because everybody thinking that I robbery something but I nothing robbery"*.
31. The call taker asked Mr Cerven for his name and he spelt it out. However, as Mr Cerven's English was not particularly good and his accent was strong, the call taker mistakenly recorded his name as 'David Terven'.
32. At 7.23:19pm information Mr Cerven had provided to the call taker became available to the dispatcher through the Police CARD system.<sup>5</sup>
33. The call taker classified the call as a Priority 2 matter<sup>6</sup> so that the dispatcher would read the event (lower priority codes are not usually read by dispatchers if they are busy) and make a decision about whether or not officers would be sent to Myers Park. However, due to the surname being incorrect at this time, the dispatcher was unable to find any record in the Police database connecting 'David Terven' to a robbery.
34. At 7.26:35pm the dispatcher updated CARD by reclassifying the matter as Priority 3.<sup>7</sup> At 7.27:21pm he entered *"not a Police matter"* into CARD and subsequently *"will not be doing that"*, meaning Police would not be sent to meet Mr Cerven.
35. The call taker read the dispatcher's update in CARD. She told Mr Cerven that Police would not be meeting him at Myers Park and asked him to walk to nearby Auckland Central Police Station instead. Mr Cerven refused to do so.
36. At 7.28:43pm the supervising sergeant at the District Command Centre (DCC)<sup>8</sup> contacted the dispatcher via radio and advised that he had also been unable to find any record in the Police database connecting 'David Terven' to a robbery.
37. At almost the same time as the DCC supervisor radioed the dispatcher, the call taker asked Mr Cerven to confirm his surname again and he spelt it out. She then updated CARD with the correct surname.

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<sup>5</sup> CARD stands for Communications and Resources Deployment system. It is an electronic Police system used in communications centres in which events are created where there is a need for the dispatch of resources and the management of events.

<sup>6</sup> A Priority 2 matter is one where Police will endeavour to be at the scene within 30 minutes of receiving the event for dispatch.

<sup>7</sup> A Priority 3 matter is one where Police will endeavour to be at the scene within 24 hours of receiving the event for dispatch.

<sup>8</sup> The main focus of the DCC is to plan, deploy, and monitor the prevention activities across the District. The DCC manages all District deployable resources under the direct command of the District Commander.

38. While the dispatcher was still talking to the DCC supervisor, he noticed the call taker's update in CARD. At 7.28:55pm the dispatcher advised the DCC supervisor that Mr Cerven's name had been corrected. The dispatcher then conducted another check in the Police database using the surname Cerven. At that point, the dispatcher read an alert about Mr Cerven being "*wanted to interview sufficient to arrest*" in relation to an aggravated robbery of a liquor store. He advised the DCC supervisor that Police would be sent to meet Mr Cerven.
39. Mr Cerven told the call taker he would be in the middle of Myers Park near the playground and he would be by himself. The call taker asked Mr Cerven what he was wearing and he replied "*orange jumper or something*" and then "*something orange*". Mr Cerven was actually wearing a high-visibility orange jacket which had dark blue bands on the lower sleeves and the lower body of the jacket. It also had large front pockets and reflectorised bands.
40. The final question the call taker asked Mr Cerven was whether he had any weapons to which he replied, "*Yes I waiting thank you*".
41. At 7.29:23pm the dispatcher re-classified the call as a Priority 1 matter.<sup>9</sup>
42. At 7.29:43pm the dispatcher advised the on-duty Public Safety Team (PST) sergeant for central Auckland, Officer A, via radio that Mr Cerven was in Myers Park and that Police were looking for him in relation to a robbery at knifepoint. Officer A responded that Police could pick Mr Cerven up if he stayed in Myers Park.
43. At 7.30:42pm the dispatcher radioed that Mr Cerven was in the middle of Myers Park wearing an "*orange jersey*" and that there were no available I-cars<sup>10</sup> to attend but he would try and "*free someone up*".<sup>11</sup>
44. According to Police records, Mr Cerven's 111 call ended at about 7.29pm.
45. Ms X texted Mr Cerven five times and called him twice between 7.27pm and 7.31pm. A text from Ms X at 7.28:02pm said "*please go and confess, we will return the money you stole and you will not go to jail*".

## Officers assigned to Myers Park

### Officers B and C

46. Officers B and C were completing paperwork at Auckland Central Police Station when they became aware that officers were needed to go to Myers Park to pick up Mr Cerven. They were

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<sup>9</sup> A Priority 1 matter is one where Police will endeavour to be at the scene within 10 minutes of receiving the event for dispatch.

<sup>10</sup> I-car is an incident car and refers to Police units that are assigned to incidents as they arise from calls to 111.

<sup>11</sup> A Priority 1 matter triggers the escalation policy which requires a dispatcher to re-evaluate the availability of officers in the area. If no units are available, the area sergeant must be made aware. If it remains the case that no units are available, the DCC must be advised so they can make an appropriate unit available.

rostered to work a central city I-car and, as they were available at the time, Officer B advised the dispatcher, at 7.30:53pm, that they would attend.

47. Officer C told the Authority that, when she got into the Police car with Officer B, she commented to him *“nothing about this job feels right”* and queried why Mr Cerven was not walking to the Police station from Myers Park, given how close it was. At 7.33:15pm, due to her unease about the situation, Officer C radioed the DCC supervisor and asked if he was able to locate Mr Cerven in Myers Park.<sup>12</sup> The DCC supervisor, who had access to, and was able to control, the CCTV cameras in Myers Park, responded that he was already looking in the park via the CCTV cameras but that the main camera overlooking the playground was not working.
48. Officer B considered this job was a routine matter and did not turn his mind to it being anything other than a pick-up or that it could turn into anything more serious.
49. Officer C was armed with a Taser at the time.<sup>13</sup>

#### *Communications from dog handler*

50. At 7.32:48pm, a Police dog handler, who was assisting with a matter in Mount Albert at the time, advised the dispatcher that Mr Cerven was responsible for three robberies but he was not sure of the weapons he had used. The dog handler knew about the three robberies because he had attended the scene of the third robbery at Pinehill Dairy the night before. The dispatcher responded that a knife had been dropped at the scene of the third robbery.

#### *Officers E and F*

51. Officers E and F were also working at Auckland Central Police Station when they heard the radio communication that Mr Cerven wanted Police to meet him in Myers Park.
52. The on-duty Auckland crime sergeant, Officer D, was supervising Officers E and F at the time. At 7.34:53pm she radioed the dispatcher to advise that Officers E and F would also be in the area in case Mr Cerven ran off or they were the first officers to locate him.
53. Officer E told the Authority that, at this point, he tried to get some more information himself about the robberies in order to make an *“informed decision”* about what Mr Cerven had allegedly done.
54. Officer E also told the Authority that, at this stage, he thought Mr Cerven just wanted to hand himself in to Police, although he found the fact that Mr Cerven had not provided his exact location in Myers Park *“a little concerning”*. Officer E said his intention was to go to the park as back-up just in case Mr Cerven changed his mind about giving himself up. He expected that Officers B and C would be arresting Mr Cerven.

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<sup>12</sup> There were seven CCTV cameras in Myers Park at the time of the incident. See the aerial photograph of Myers Park at Appendix 1.

<sup>13</sup> Since 1 August 2015 Police policy has authorised officers to routinely carry Tasers.

55. At 7.35:26pm Officer D radioed that Officers E and F were leaving the station and asked Officers B and C which entrance they were going to. Officer B replied they were “at Greys Ave”. There are two Greys Avenue entrances to Myers Park, which are about 100 metres apart. Officers B and C were at the northern Greys Avenue entrance but the dispatcher thought they were at “the entrance near 80 Greys Avenue”, which was actually the southern Greys Avenue entrance.
56. Officer E told Police that he had a discussion with Officer F at the time about taking a Taser but they decided against doing so because they knew that other officers who were attending would have Tasers and they believed it was more important that they got to the park to provide back-up.
57. Officer F told the Authority that when they got into the Police car at Auckland Central Police Station, Officer E told him that Mr Cerven was wanted for some aggravated robberies. Officer F asked Officer E where the firearms were and was told they were in the boot.
58. At 7.35:44pm the dispatcher suggested that Officers E and F go to the Queen Street entrance as this was the likely direction Mr Cerven would run out of. Officers E and F drove to the Queen Street entrance but did not get out of their Police car because the dispatcher subsequently redirected them to the Mayoral Drive entrance.

#### Officer G and H

59. Officers G and H had just completed an enquiry in Massey when they heard the radio communications about Mr Cerven. At 7.36:10pm Officer H radioed the dispatcher that they had just become available and could “head to the other side of the park if you like”. The dispatcher replied that, if Officers E and F were going to “the Queen Street side” and Officers B and C were “coming from Greys”, Officers G and H could go to either the Mayoral Drive or Poynton Terrace entrances. Officer H replied that they would go to Poynton Terrace.
60. Officers G and H told Police that, while they did not conduct any checks on the equipment in their Police car before they started their shift, they knew that it normally had an M4 Bushmaster rifle and a Glock pistol secured in the firearms safes.

#### Officers I and J

61. Officers I and J left a checkpoint on Dominion Road at about 7.30pm.<sup>14</sup> They were heading back to Auckland Harbour Bridge Police Station and were near Karangahape Road when they heard the radio communications about Mr Cerven. As they were close to Myers Park, Officer I radioed the dispatcher at 7.36:51pm and said, “Yeah at the top of ah Queen, I’ll go down and cover Mayoral Drive”. The dispatcher told the Authority that for the duration of the incident he believed there was only one officer in this Police car and not two.

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<sup>14</sup> The officers belonged to the Traffic and Alcohol Group (‘TAG’) whose principal duties are to conduct checkpoints and to breath-test drivers.

62. Officers I and J did not have Tasers or firearms either on them or in their car. Officer J told the Authority that on the way to Myers Park he and Officer I discussed whether officers equipped with Tasers were better placed to respond to the incident.
63. However, they told the Authority that they did not think that their being unarmed would be an issue as they both understood Mr Cerven wanted to give himself up to Police and, as far as they were concerned, it was a routine matter.

#### Mr Cerven waits in Myers Park for Police to arrive

64. CCTV footage shows Mr Cerven standing near some park benches in Myers Park for several minutes. At 7.37:05pm the DCC supervisor radioed that he could see a person wearing *“like an orange raincoat with reflectorised bands”* on one of the park benches near the playground.<sup>15</sup>
65. At 7.38:37pm the DCC supervisor radioed that *“The male with the orange jacket has walked up the hill away from the park benches, up to the shadows under the trees”*. CCTV footage shows Mr Cerven walking up the embankment and largely standing in one place until Officers I and J arrive some minutes later.

#### Officers arrive at Myers Park

66. Officers I and J walked into Myers Park via the Mayoral Drive underpass. The officers did not advise NorthComms that they had entered the park.
67. Officer I told the Authority that Mr Cerven called out to them almost immediately, saying calmly, *“I’m over here guys”*. As the officers got closer, they could see that he was standing at the top of an embankment. Although the footpaths were lit, there was no lighting in the area where Mr Cerven was standing.
68. CCTV footage shows Officers I and J arriving at the bottom of the embankment at 7.42:26pm<sup>16</sup> and walking a few metres up it towards Mr Cerven. Officer J is in front of Officer I. The officers told the Authority that they asked Mr Cerven several times to come down from the embankment and into the light so they could talk to him.<sup>17</sup> Officer J can be seen pointing towards the footpath while talking to Mr Cerven. Mr Cerven did not comply with their requests.
69. Officer I said that he repeatedly asked Mr Cerven to show his hands or to put his hands up. He did not do so. Officer I said that he also asked Mr Cerven to get on the ground but he refused to do so. Officers I and J did not advise NorthComms at this point that they were talking to Mr Cerven.

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<sup>15</sup> Timing on the CCTV camera footage in Myers Park was 52 seconds ahead of the Police radio communications timing. The Authority has used the Police radio communications timing in this report, unless stated otherwise, because the Authority’s focus is on Police actions and therefore the Police timing is more appropriate.

<sup>16</sup> This was the equivalent of about 7.41:30pm in terms of the Police radio communications timing.

<sup>17</sup> The CCTV camera footage does not include any audio.

70. CCTV footage also shows Officer I turning on his torch and shining it towards Mr Cerven shortly after he and Officer J start talking to him. Mr Cerven then starts pacing back and forth at the top of the embankment. It is estimated that Mr Cerven was about 30 metres away from the officers at this time.
71. In the meantime, at about 7.35pm, Officers B and C had parked opposite the northern Greys Avenue entrance to Myers Park.
72. Officer B had heard the communication from Officer D about Officers E and F heading to Myers Park. At 7.35:14pm Officer B radioed the dispatcher, *"we're just about to go into the park, can, do [Officers E and F] want us to hold until they're in position, or we just go ahead?"*. Officer D then advised that Officers E and F were just leaving Auckland Central Police Station. At 7.35:32pm Officer B replied, *"we're just about to walk down now. We'll hold here"*.
73. Officers B and C told the Authority that they waited at the top of the stairs at the northern Greys Avenue entrance for several minutes. At 7.39:49pm Officer C radioed and asked Officers E and F, *"you guys ready for us to go in?"*. At 7.41:03pm Officers E and F radioed that they had arrived at Queen Street.
74. Officer C told the Authority that, before entering the park, she asked Officer B if they should take a pistol with them. Officer B said no.
75. Officers B and C told the Authority that they were unaware Officers I and J were already in the park and talking to Mr Cerven at this time.
76. At 7.40:12pm the DCC supervisor radioed that CCTV coverage in the park had been lost.<sup>18</sup> While the CCTV cameras were not working, Officer B *"felt it was prudent"* for him and Officer C to move forward until they were in a position to observe Mr Cerven. Officer B told the Authority that he did not want Mr Cerven to see them in case it scared him and he ran, especially as there were multiple exits from the park.
77. Officer B said he told Officer C to draw her Taser but not have it on. He said this because he knew Mr Cerven was wanted in relation to aggravated robberies involving a knife and thought he may have a knife with him. At 7.40:44pm Officer C advised the dispatcher, *"we're going to go in, Taser's out but not on"*.
78. CCTV footage shows Officers B and C arriving at the scene about 30 seconds after Officers I and J. They approached from the Greys Avenue side of the embankment, roughly in line with where Mr Cerven was standing. Both officers had torches and they turned them on and directed them at Mr Cerven. Officer B was standing higher up the embankment than Officer C and he estimated that they were about 50 metres away from Mr Cerven.<sup>19</sup> From her position, Officer C told the Authority that she could see Mr Cerven but did not notice Officers I and J talking to him.

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<sup>18</sup> Going by the timing on the CCTV footage, coverage from all the cameras in Myers Park was lost at 7.40:02pm but returned at 7.42pm.

<sup>19</sup> See the photograph of the scene at Appendix 2.

79. At 7.41:11pm Officer J advised the dispatcher that they were *“off with the male, down by Mayoral”*.<sup>20</sup> This was the first time NorthComms and other officers were aware of Officer I and J’s movements.
80. Officers E and F arrived at the Queen Street entrance to Myers Park around the same time as Officers I and J radioed that they were *“off with”* Mr Cerven. The dispatcher then directed them to go to the Mayoral Drive entrance to assist Officers I and J. They drove to the Mayoral Drive car park. Officer F told the Authority that he expected to find Officers I and J in the car park.
81. At 7.42:04pm Officer F radioed Officers I and J to ask their location.
82. Officers I and J did not respond with their location because at the same time, as they walked towards Mr Cerven, Mr Cerven said that he was not the person who had committed the robberies and that he knew that person had a knife but this time he had a gun. At 7.42:11pm Officer I radioed, *“just lighting him up, he’s got a high vis on, saying he’s got a gun now”*.
83. Officers I and J said that they retreated when Mr Cerven said that he had a gun. This can be seen on the CCTV footage. Officer I took cover behind a palm tree at the bottom of the embankment. Officer J stood slightly to the left of the palm tree.<sup>21</sup>
84. Neither officer actually saw a gun. The Authority has viewed the CCTV footage and, while it is not clear, it appears to show Mr Cerven’s right hand in or near his right pocket and his left hand across the front of his body as he paced back and forth.
85. Officer F radioed again at 7.42:34pm to ask Officers I and J where they were. Officer I replied they were by the playground on the Greys Avenue side of the park.
86. Officer E told the Authority that, when he heard the communication that Mr Cerven was saying he had a gun, he believed that there was a *“serious or real threat to the lives of [Officers I and J] and as well as members of the public using the park and obviously in the buildings around as well”*.
87. At 7.42:49pm Officer F asked Officers I and J if they had a firearm. Officers I and J stated that they did not reply but it appears that Officer B did reply and said *“negative, just a Taser”*.
88. Officer F told the Authority that he relayed to Officers I and J over the radio that they needed to *“back off”*.
89. Officer E told the Authority:

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<sup>20</sup> The dispatcher and the shift commander understood this to mean that the officers were speaking to Mr Cerven. However, when asked by the Authority investigator what *“off with”* meant, Police staff variously described it as locating a person, talking to a person or arresting a person.

<sup>21</sup> See the photograph of the scene at Appendix 2.

*“And then I heard [Officer F] tell them to get back and I made sure that, I told [Officer F] to tell them to get back as well, just to make sure that we have communicated that to retreat to a safe distance.”*

90. The instruction from Officer F to Officers I and J to retreat does not appear on the transcript of radio communications. When questioned by the Authority, Officers I and J said that they did not recall hearing any instruction from Officers E or F to withdraw. However, it is possible that the communication was not recorded because of a technical issue or because there was overlapping radio traffic at the time.
91. Officer B told the Authority that, although he could not recall the exact words that Officers I and J were using, their intent was to get Mr Cerven to surrender. Officer B then challenged Mr Cerven by saying that he and Officer C were armed and told him to get on the ground. Mr Cerven did not say anything but took a few steps towards Officers B and C and then continued pacing and talking to Officers I and J. Officer B decided not to engage with Mr Cerven any further, as Officers I and J were already talking to him.
92. Being in a lower position on the embankment, it was only at this point that Officer C noticed Officers I and J talking to Mr Cerven. Officer C told the Authority about hearing either Officer I or Officer J say to Mr Cerven, *“come down here, come and talk to us”*. Officer C then heard Mr Cerven reply *“no, fuck off. If you want me you can come up and get me”*.
93. In the meantime, Officer A was on his way to another matter when he heard the communication that Mr Cerven had said he had a gun. He headed to Myers Park as he believed his attendance, as a senior officer, was required because the situation had escalated.
94. In accordance with Police policy, when the dispatcher heard the communication that Mr Cerven said he had a gun, he called for his team leader to come to his desk. The dispatcher told the Authority:

*“I was aware that [Officers I and J were] Taser equipped rather than firearm equipped. And so it’s certainly my focus at that point is getting a firearm equipped unit into position to be dealing with the offender as opposed to someone who does not have a firearm on them. Because from a staff safety aspect that’s my key requirement at that stage.”*

95. Although the dispatcher believed that Officers I and J were equipped with a Taser, they were not.
96. Officer I told the Authority that Mr Cerven was largely rambling in terms of his conversation for the remainder of the time but essentially acknowledged that he was the person responsible for the aggravated robberies. Officer J recalls him mentioning that *“something had been done unfairly to him”*. Officers I and J told the Authority that they tried to calm Mr Cerven down in order to de-escalate the situation.



97. At 7.43:01pm Officer F radioed, “we’re just ah tooling up now”.<sup>22</sup> Their supervisor, Officer D, heard this communication but did not respond to Officers E and F because she trusted their assessment of the situation. Officer B heard Officer F’s communication but Officer C did not.
98. Officer E took the pistol from the Police car and gave Officer F the rifle. Officer F told the Authority that he then got his rifle “ready”.
99. While they were arming themselves, Officers E and F saw a group of people walking towards Myers Park and told them to get out of the area.
100. Officer E told the Authority that en route to Queen Street he and Officer F discussed whether one of them should be armed. As soon as the issue of firearms was raised, both Officers E and F said that they turned their minds to the requirements of the Police fire orders.<sup>23</sup>
101. Officer E told the Authority that he put his ballistic body armour on over his SRBA vest<sup>24</sup> and ensured that Officer F put his armour on before they entered the park.
102. Officers E and F then walked into Myers Park via the Mayoral Drive underpass. Officer E saw Mr Cerven as soon as they entered the park and at 7.44:14pm radioed NorthComms, “I’ve got obs on the male”. The officers walked along the path until they reached the statue down the bottom of the embankment and to the right of the palm tree that Officer I had taken cover behind.
103. Officer E told the Authority:
- “I remember [Officer F] saying that we should stop and come up with a plan and I told him that I wasn’t happy with that. We needed to get closer, we were still too far away and the other officers were unarmed.”*
104. Officer F told the Authority:
- “[Officer E] and I didn’t have time to sort of sit around trying to formulate a plan, because my concern was that if we did that and he took off, got out of the park, then we’re in the middle of Queen Street with a person with a firearm.”*
105. Officer E said that, if Mr Cerven complied with their instructions to get on the ground and surrender, it was his intention to handcuff him because he could easily holster his pistol while Officer F trained the rifle on Mr Cerven.
106. Officer B could see Officers E and F walking into the park and getting into position and realised that he and Officer C may be directly in the firing line should anything happen. CCTV footage shows Officer B moving down the embankment to where Officer C is standing. At Officer B’s

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<sup>22</sup> “Tooling up” is understood by Police to mean that an officer is arming him or herself with a firearm.

<sup>23</sup> See paragraphs 254-256 of the law and policy section.

<sup>24</sup> This is the standard issue stab resistant vest that frontline officers wear.

instruction, Officer C turned off the torch and 'moved offline' by moving right, down towards the footpath. Officer B also moved further down the embankment and towards the path.

107. Officer F told Police that he recognised Mr Cerven had a tactical advantage by being in an elevated position at the top of the embankment, in the event that Mr Cerven decided to shoot at anyone.
108. Due to the darkness and lack of cover provided by the statue, Officers E and F wanted to get as close as possible to Mr Cerven in case they needed to fire their guns. They were aware that the risk to other officers and members of the public increased if shots were fired from a distance.

### The shooting

109. As Officers E and F walked either side of the statue, they had their firearms ready to use.<sup>25</sup> CCTV footage shows the officers walking at a similar pace towards Mr Cerven.
110. At this point, Officer E said he became aware of the other four officers at the scene.
111. At 7.44pm the dispatcher hit the 'supervisor' button on his computer screen to advise the team leader of the latest updates. As the team leader started to walk over to his desk, the dispatcher called out to him to also inform the shift commander.
112. At 7.44:45pm Officer B radioed for there to be no sirens in the city. This was to avoid Mr Cerven reacting to Police arriving at Myers Park.
113. Officer E told the Authority that, as soon as he came out from behind the statue, he challenged Mr Cerven by yelling out "*armed Police, get down on the ground, get down on the ground now*" or words to that effect. He recalled Officer F also challenging Mr Cerven by saying something similar.
114. Officer E said that, after being challenged, Mr Cerven looked away for a split second and then he put his right hand into his right pocket and "*grasped something*". He drew the object and moved towards Officers E and F "*as though he's pointing a gun*". Officer E told the Authority, "*I've seen him drawing what I believe was a gun*". Officer F said, "*When I was looking at his hands what it looked like to me was the receiver of a pistol. I thought he was about to shoot me*". Officer E said he yelled at Mr Cerven twice to drop his weapon. He said that, when Mr Cerven did not comply, he fired at Mr Cerven three times.
115. Officer F told the Authority that he yelled out to Mr Cerven "*armed Police, get on the ground*". He said that, as he yelled out, he heard a "*swooshing noise*" that was made by Mr Cerven's jacket. He then saw Mr Cerven put a hand in and then out of his pocket and then "*punch it out*".

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<sup>25</sup> See the photograph of the scene at Appendix 2.

towards me". When Mr Cerven moved towards the officers, Officer F immediately took his safety catch off and fired "a number of rounds"<sup>26</sup> at Mr Cerven.

116. Officer F told the Authority "my intention was that he was going to get arrested at gunpoint. His reaction to me, took me by surprise, I wasn't expecting him to do what he did with his hands and that".
117. CCTV footage shows Mr Cerven putting his right hand into his right-hand pocket, taking his hand out of the pocket and then appearing to clasp both hands together as if to make it look like he had a firearm in his hands. Due to the darkness and distance, it is not possible to tell with any certainty from the CCTV footage whether Mr Cerven is holding something in his hands. Mr Cerven then runs towards Officers E and F who stop walking towards him. After being shot, Mr Cerven falls to the ground.
118. Officer J told the Authority that, when Officers E and F were about 20 metres away from Mr Cerven, he heard them challenge Mr Cerven by saying "stop, armed officers, get down on the ground". Officer I heard either Officer E or Officer F say, "armed Police, I want you to get down on the ground".
119. Officer I saw Mr Cerven pull his hands out of his pockets, put them together in front of him and run towards Officers E and F before shots were fired. Officer J described seeing Mr Cerven put his hands together with his fingers pointing, as if he had a gun in his hands.
120. Officer B told the Authority that he believed Mr Cerven was presenting a firearm at Officers E and F.
121. Officer C heard multiple gun shots while moving to the right, towards the footpath. Officer C then ran back towards a palm tree to take cover and at 7.45:05pm notified the dispatcher that shots had been fired.
122. The dispatcher pushed a button on his computer screen to "mark the time" shots were fired and also to get the shift commander to come to his desk.<sup>27</sup> The team leader was in the process of walking over to the dispatcher with the shift commander when Officer C radioed that shots had been fired.

### Medical assistance provided to Mr Cerven after the incident

123. As soon as Mr Cerven fell to the ground, CCTV footage shows Officers E, F and B immediately running towards him. Officers I and J initially stand back and then move closer to Mr Cerven.
124. At 7.45:13pm Officer F radioed the dispatcher to request an ambulance.

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<sup>26</sup> The scene was forensically examined and it was determined that five bullets were fired from Officer F's rifle.

<sup>27</sup> Dispatchers also have electronic pursuit buttons on their screens and activate these when a pursuit has commenced or when they want the shift commander to come to their desk.

125. At 7.45:44pm the dispatcher advised the ambulance service of the shooting. A short time later he advised the ambulance service of the best entrance for the ambulance to go to once it arrived at Myers Park.
126. Officer E and Officer B searched the immediate area for the weapon that they believed Mr Cerven had to make sure it was safe for first aid to be administered. No weapon was found but a black cell phone was found near Mr Cerven.
127. Mr Cerven was shot once to the lower left jaw and once in the stomach.
128. Officers G and H, who had arrived at Myers Park as shots were fired, provided initial first aid and were assisted by the other officers present.
129. Officer K, who was a former paramedic, arrived at the scene a short time later. He put Mr Cerven on his back and immediately commenced CPR.
130. Police continued with CPR and first aid until the ambulance arrived just before 7.50pm. However, Mr Cerven was pronounced dead at 7.57pm. A post mortem later revealed that the injury to Mr Cerven's stomach was the direct cause of death. A Coronial inquest into Mr Cerven's death is yet to be held.

#### **Risk to members of the public**

131. A resident of a ground-floor apartment in a building on Greys Avenue called 111 after the shooting. His apartment had a balcony on the south-eastern side that looked out over Myers Park and was about three metres from the ground. His apartment also had windows that looked out over the park.
132. The man said that, at the time of the shooting, he was putting his washing out on his balcony. He said that he saw Mr Cerven standing below and to the left of his balcony, about 20 metres away from him and about three or four metres from the apartment wall. He said that the lights from the Police torches were also shining on Mr Cerven. The man said he realised the situation was escalating and thought that Police were going to shoot. He figured out that he might be in the line of fire so moved to the right of his balcony and ducked down behind the concrete wall of the balcony. As he did so, shots were fired.
133. CCTV footage also shows a different building several metres behind the area where Mr Cerven was pacing that has windows overlooking Myers Park. Immediately before the shooting, a person can be seen drawing the curtains. After the shooting, a person pulls back one side of the curtains and unlocks a door. Two people then go out onto the balcony while officers are administering first aid to Mr Cerven.

### Mr Y calls Police

134. At 8.58pm Mr Y called Police. He told the call taker he was concerned for Mr Cerven's state of mind and asked Police to try and locate him. Although Police knew by this stage that Mr Cerven had been shot and killed, the call taker was careful not to tell Mr Y this over the phone. Arrangements were made for officers to go to Mr Y and Mrs Z's house to tell them, and Ms X, in person. Officers arrived at Mr Y and Mrs Z's house at about 9.30pm.

### Procedures after the shooting

135. Police appointed an incident controller, cordoned off the immediate and outer scenes, and secured firearms and other exhibits, in accordance with Police policy.
136. The scene was forensically examined and eight fired cartridge cases were recovered. It was determined that three bullets were fired from Officer E's pistol and five were fired from Officer F's rifle. Two bullets hit Mr Cerven. Two other bullets were recovered at the scene – one was embedded in the wall of a building behind the scene and the other had hit a tree and deflected off it. The remaining four bullets were not recovered.

## The Authority's Investigation

### THE AUTHORITY'S ROLE

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137. 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.
138. 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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139. As required under section 13 of the Independent Police Conduct Authority Act 1988, on 2 August 2015 Police notified the Authority of the fatal shooting of Mr Cerven.
140. On 5 August 2015 Authority representatives travelled to Auckland, where they visited the scene and attended a Police briefing. They also spoke to Ms X, Mr Y and Mrs Z and explained the Authority's role to them.
141. The Authority made several attempts to liaise with Mr Cerven's family in Slovakia to ensure they understood the Authority's role and processes and to ensure any concerns they had were considered. These attempts were either not responded to or were declined.
142. The Authority interviewed eight Police officers who had direct involvement in the incident, four Police staff from NorthComms, the DCC supervisor and two Police officers in relation to their opinion on whether there were other tactical options that could have been employed.
143. The Authority monitored the Police's criminal investigation throughout and reviewed all the documentation produced as a result of Police enquiries.
144. Evidence was obtained by Police from those experts involved in the detection, collection, preservation and analysis of forensic evidence from the scene. Consequently, the Authority considered the reports produced by the pathologist, forensic staff from the Institute of Environmental Science and Research Ltd (ESR) and the Police armourer.
145. Finally, the Authority assessed the actions of Police involved in this incident against Police policy and practice standards, applicable at the time of this incident.

## ISSUES CONSIDERED

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

- 1) Did NorthComms staff respond appropriately to Mr Cerven's 111 call?
- 2) Was the initial response by Police appropriate?
- 3) Was the Police response appropriate after Mr Cerven said he had a gun?
- 4) Was the use of force justified and reasonable in the circumstances?
- 5) Was all reasonable assistance given to Mr Cerven after he was shot?

## The Authority's Findings

### ISSUE 1: DID NORTHCOMMS STAFF RESPOND APPROPRIATELY TO MR CERVEN'S 111 CALL?

#### Call taker

147. When the call taker answered Mr Cerven's 111 call, she asked him the location of the emergency, where in Myers Park he was, the reason he required Police assistance and his name.
148. Mr Cerven responded that he was in the middle of Myers Park and that Police needed to attend because people were saying he had committed a robbery. Mr Cerven spelt out his surname but the call taker mistakenly thought he said his surname was 'Terven'.
149. The call taker classified the call as Priority 2 so that the dispatcher would read the event in CARD and make a decision about the appropriate Police response.
150. The call taker asked Mr Cerven several times to walk to Auckland Central Police station, which is close to Myers Park. She did so because, until late into the call, she had the incorrect surname and the dispatcher could not find any information in the Police database connecting 'David Terven' to a robbery. Once Mr Cerven's surname was corrected, and therefore his connection to one of the robberies made, the call taker advised Mr Cerven that Police would come to the park to meet him.
151. The call taker then asked Mr Cerven exactly where in the park he was located and what he was wearing.
152. Mr Cerven replied that he was in the middle of the park near the playground and that he was wearing "something orange". In response to the call taker's final question about whether he had a weapon, Mr Cerven replied "Yes I waiting thank you".
153. The call taker asked the appropriate questions of Mr Cerven. She also kept him on the line, rather than ending the call, which allowed time to determine his correct surname and make the connection between Mr Cerven and the aggravated robberies. The call taker also recorded all relevant information in CARD so it was available to the dispatcher.

#### Dispatcher

154. Under the 'Radio and Communication Centre Protocols' chapter of the Police Manual, a dispatcher must prioritise events requiring a Police response, identify the nature of the response required and the most suitable Police unit/s available to respond. The dispatcher must also exercise a command and control function for all events from receipt of the initial call until a suitable officer at the scene is able to take on the role of incident controller and assume command. In addition, a dispatcher must also provide responding units with available



information to enable them to locate the scene of the incident and contact key people at the scene.

155. When the dispatcher read the information that had been put into CARD by the call taker, he did a search of the Police database to try and find information connecting 'David Terven' to a robbery. However, due to the surname being incorrect, he could not make the connection.
156. Based on the information available to him at the time, the dispatcher then re-prioritised the call from Priority 2 to Priority 3.
157. When the call taker updated CARD with the correct surname, the dispatcher did another check of the Police database and made the connection between Mr Cerven and one of the aggravated robberies.
158. At this point the dispatcher re-prioritised the call to a Priority 1 and relayed the revised information to the DCC supervisor.
159. The dispatcher then attempted to assign a Police car to pick Mr Cerven up but none was available. He correctly elevated the matter by contacting the on-duty PST Sergeant, Officer A, and shortly afterwards units responded that they were available.
160. Once Mr Cerven's surname had been corrected, the dispatcher prioritised the event appropriately. He contacted Officer A when there were no I-cars available to attend. He also sent available officers to the various entrances to Myers Park to ensure the best cover and acted as the incident controller for the duration of the incident.

## FINDING

NorthComms staff responded appropriately to Mr Cerven's 111 call.

## ISSUE 2: WAS THE INITIAL RESPONSE BY POLICE APPROPRIATE?

### Did the dispatcher appropriately assign officers to the Myers Park entrances?

161. The dispatcher told the Authority:

*“. . . the initial intention and a direction from my end was that [Officers B and C were] going to enter the park from the Greys Avenue entrance.*

*. . .*

*And that the other units attending were cordons at entrances only and were there to prevent the person from fleeing the park should he do so when approached by [Officers B and C]. That was the initial intent and [Officers I and J were] to cover off the Mayoral Drive entrance, and [Officers E, F, G and H] were covering off the other two main entrances which left one further up Greys*

*Avenue but we didn't have sufficient staff at the time and it didn't seem necessary at the time to get a further unit in place to cover that off given the timeframe."*

162. The dispatcher assigned available officers to the various entrances to Myers Park primarily to try to block Mr Cerven's escape, should he try to run. There were not enough officers to cordon all the entrances. However, this was not considered by the dispatcher to be an issue as he thought the 'pick-up' of Mr Cerven was a routine matter.
163. As part of this plan, the dispatcher intended that Officers I and J would establish a cordon at the Mayoral Drive entrance to Myers Park. However, they entered the park and engaged with Mr Cerven without advising the dispatcher.
164. Due to the fast way this incident developed, not all the officers that the dispatcher had assigned to cordons had arrived at Myers Park by the time Mr Cerven said he had a gun. The 'gun information' completely changed the nature of the situation that Police were responding to (see Issue 3 for further discussion).

## FINDING

The dispatcher acted appropriately in assigning available staff to Myers Park entrances.

### **Was the initial engagement by Officers I and J with Mr Cerven appropriate?**

165. The dispatcher told the Authority that his intention was for Officers I and J to cordon the Mayoral Drive entrance to Myers Park in case Mr Cerven tried to run off and that Officers B and C would enter the park and approach Mr Cerven.
166. The transcript of the radio communications shows that Officers B and C initially held their position at the northern Greys Avenue entrance because they were waiting for Officers E and F to arrive at the park. They told the Authority that, when they entered the park, they were not expecting to find Officers I and J talking to Mr Cerven.
167. Officer B told the Authority that if he had known that Officers I and J had entered the park, and had located Mr Cerven and were talking to him, it would have changed how he dealt with the situation. He elaborated that, if he knew that Officers I and J were at the Mayoral Drive entrance, he would have planned to enter the park, and approach Mr Cerven, with them.
168. Officers I and J were not armed with either Tasers or firearms. As they believed this was a 'routine pick-up', neither officer considered arming himself.
169. Officers I and J did not advise NorthComms of their movements. They should have told the dispatcher that they had entered the park and seen Mr Cerven, and that they were talking to him.

170. After Officers I and J entered Myers Park, they were called over by Mr Cerven almost immediately. They were then required to make a decision on how to engage with him.
171. Officers I and J walked over to the embankment and asked Mr Cerven several times to come down from it and move into the light so they could talk to him. They also asked him to get on the ground.
172. Given that Officers I and J believed Mr Cerven wanted Police to pick him up and that he was “*wanted to interview – sufficient to arrest*” in relation to a robbery, the Authority finds that it was appropriate for them to ask Mr Cerven to talk to them and give himself up.

## FINDINGS

Officers I and J did not provide sufficient information to NorthComms about their movements. They should have provided situational reports when they entered Myers Park, saw Mr Cerven, and approached and talked to him.

Officers I and J engaged appropriately with Mr Cerven after he called them over.

## Did Officers B and C appropriately arm themselves?

173. Officer B considered that picking Mr Cerven up was a routine matter. However, Officer C commented to Officer B that “*nothing about this job feels right*” and queried why Mr Cerven was not walking to the Police station from Myers Park, given how close it was.
174. Before entering the park, Officer C asked Officer B if they needed to take a firearm. Officer B said they did not, considering that he believed it was a routine pick-up.
175. However, Officer C was armed with a Taser when entering Myers Park. Since 1 August 2015, constables have been able to routinely carry Tasers.
176. On the instruction of Officer B, Officer C removed the Taser from its holster and held it down and to the side before they entered the park. Officer C did not turn the Taser on during the incident.

## FINDINGS

Officers B and C appropriately considered whether they should arm themselves with a firearm before entering Myers Park.

The decision not to do so was reasonable based on their knowledge at the time.

Officer C was appropriately armed with a Taser, and had it ready to use if necessary when entering the park.

### Standard Police policy and procedures

177. Standard Police practice when dealing with an armed offender, or an offender who is believed to be armed, is, when the offender's actions permit, to cordon the area and verbally appeal to the offender in order to negotiate a surrender.
178. 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 (known as TENR – see paragraph 241).
179. Police officers must constantly assess an incident based on information they know about the situation; the behaviour of the people involved; and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer and subject's physical size, strength and skills; the result of checks on the subject and their emotional state, the influence of drugs or alcohol, and the presence and/or proximity of weapons; similar previous experiences with the subject; and environmental conditions such as weather, lighting and physical location.
180. Police policy also 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.
181. Tactical options that can be considered by the Police when dealing with a violent, or potentially violent, offender include:
- officer presence and tactical communication;
  - cordon and containment;
  - retreat or delaying an arrest;
  - using CS gas (or 'tear gas');
  - using pepper spray<sup>28</sup> and/or a baton;
  - using a Taser or a firearm;
  - using Police dogs; and
  - calling out the Armed Offenders Squad (AOS).
182. The tactical options that were available and relevant to this incident were:

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<sup>28</sup> This is also known as oleoresin capsicum (OC) spray.

- a) continuing to cordon Myers Park and verbally appeal to Mr Cerven to try and get him to surrender;
- b) retreating to an outer cordon or delaying the arrest of Mr Cerven;
- c) using a Taser or a firearm;
- d) using Police dogs;<sup>29</sup>
- e) calling out the AOS.<sup>30</sup> Where time and an offender's actions permit, incidents involving armed offenders, and particularly any direct approaches to the offender, must be carried out by AOS members. If AOS members are not available or there is insufficient time to call them, the senior officer in charge at the incident must take immediate steps to deal with the situation;

### Risk assessment

183. When Officers I and J radioed that Mr Cerven had said he had a gun, the following are the factors (applying the policy outlined above) that Police, and specifically Officers E and F, should have considered when assessing the situation and therefore the appropriate tactical options to be used:

- although the incident was originally thought by most of the officers to be a routine pick-up of someone who wanted to hand himself into Police, it had become a potential armed incident;
- although Mr Cerven told Police he had a gun, no gun had been seen at this time;
- Mr Cerven was in a public park that had five main entrances. Members of the public were in the park and others would be heading towards the park;
- there were a number of residential buildings in close proximity to Mr Cerven. The residents of these buildings were potentially exposed to risk;
- it was night time and there was no lighting where Mr Cerven was standing;
- Mr Cerven repositioned himself up the embankment before Police arrived and by doing so had a tactical advantage in the event he decided to shoot at anyone;
- it was known that Mr Cerven had used a knife at the aggravated robbery Police wanted to talk to him about;

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<sup>29</sup> The Officer in Charge of the Auckland Police Dog Section advised the Authority that two dog handlers were on duty at the time of the incident – one was attending an incident in Mount Albert and the other was in the Counties Manukau Police district.

<sup>30</sup> The Auckland AOS commander told the Authority that he would have expected AOS to have been contacted to attend this incident once Mr Cerven had stated he had a gun.

- Mr Cerven was pacing backwards and forwards in the same area and continuing to engage with Officers I and J;
- Mr Cerven was not complying with requests or instructions from Officers I and J for him to come down to the lit pathway to talk to them, take his hands out of his pockets, lie on the ground etc;
- Officers B, C, I and J did not have firearms.

### The dispatcher's actions

184. Throughout the incident, the dispatcher, on behalf of the shift commander, remained the incident controller.
185. In accordance with standard Police practice (see paragraph 177), the dispatcher attempted to cordon as many entrances to Myers Park as possible, with the staff available, before Mr Cerven said he had a gun.
186. After Officers I and J radioed at 7.42:11pm that Mr Cerven had said he had a gun, the dispatcher escalated the matter by pressing his 'supervisor' button and asking his team leader to advise the shift commander. The team leader was in the process of walking over to the dispatcher, with the shift commander, when Officer C radioed that shots had been fired.
187. The dispatcher told the Authority that, when Mr Cerven said he had a gun, his focus moved to ensuring that officers with firearms were quickly sent to the scene to deal with Mr Cerven and to protect the unarmed officers. He said, "*from a staff safety aspect that's my key requirement at that stage*". He also said that his plan was that, after arming themselves, Officers E and F would enter the park and take over communications with Mr Cerven from Officers I and J.
188. Due to the speed that events unfolded, the dispatcher did not have time to get sufficient staff to the incident to properly cordon the park or to consider any other tactical options, such as calling out Police dogs or AOS, before shots were fired.

### The justification by Officers E and F for arming themselves and their compliance with procedures

189. At 7.42:11pm Officer J advised the dispatcher that Mr Cerven had said that he had a gun.
190. At 7.42:49pm Officer F established that the officers interacting with Mr Cerven were not armed with firearms.
191. In accordance with policy, Officer F notified the dispatcher at 7.43:01pm that he and Officer E were "*tooling up*" (which meant they were arming themselves with firearms). Both officers considered the fire orders and subsequently put on ballistic body armour.
192. Their supervisor, Officer D, told the Authority that she heard this communication but did not respond to Officers E and F because she trusted their assessment of the situation.

193. Officers E and F were aware that Mr Cerven had stated he had a firearm and that the officers at the scene did not have any firearms. They were therefore concerned about the risk to those officers. Officer E took the pistol and Officer F took the rifle.
194. Police policy sets out the circumstances in which officers may arm themselves (see paragraphs 246-247).
195. Police policy also requires officers to consider the Police fire orders (see paragraphs 254-256).

#### *Training certification*

196. Officers who carry firearms operationally must hold current New Zealand Police first aid certification and have up-to-date Police Integrated Tactical Training (PITT) certification for the firearm that has been deployed.
197. Officer E armed himself with a Glock pistol and Officer F with a Bushmaster M4 rifle. Both officers had current first aid and firearms certification at the time of the shooting.

#### **The actions of Officers E and F**

198. At 7.43:01pm Officer F radioed from the Mayoral Drive car park that he and Officer E were in the process of arming themselves with firearms. They entered Myers Park and at 7.44:14pm they told the dispatcher they had “*obs on the male*”. Officers E and F then quickly approached and challenged Mr Cerven. There is no recorded communication from Officers E or F relaying their intent. Officer C advised NorthComms at 7.45:05pm that shots had been fired.
199. In terms of formulating a plan before approaching Mr Cerven, Officer E told the Authority that he remembered Officer F saying that they should stop and come up with a plan but Officer E considered that they needed to get closer to protect the unarmed officers. Officer F told the Authority that he and Officer E did not have time to formulate a plan.
200. When asked by the Authority whether it would have been helpful to have communicated to the other officers that they were going to make an approach, Officer F said:

*“Well my concern was that if we’d gotten on the radio, and I don’t know where the other staff were, that if they weren’t wearing earpieces and the radio crackled, would have given away their positions and I was concerned that because I believed at this point he was armed, if he then started shooting at those Police officers, I would have lost, we would have lost total control of the situation, so that’s why we – that’s then why I took the action that I took on the night.”*

201. This decision meant that Officers B, C, I and J were not aware of Officer E and F’s plan to quickly approach and challenge Mr Cerven. In this respect, Officers I and J, in particular, had

limited time to cease their engagement with Mr Cerven and take cover.<sup>31</sup> Officer C also heard multiple gun shots while moving to the right, towards the footpath. Officer C then ran back towards a palm tree to take cover. The Authority does not agree with the decision by Officers E and F not to radio NorthComms to advise of their intention to approach and challenge Mr Cerven. That information was vital for those involved in the incident to know and may also have provided time for the unarmed officers at the scene to fully retreat.

202. In addition, even if what Officer F said at paragraph 200 is correct, it conflicts with the fact that Officers E and F made a number of communications, some of which required Officers I and J to respond, after Mr Cerven had stated he had a gun.
203. Police policy states *“Never go unnecessarily into danger. However, if the offender is acting in a way that makes casualties likely, Police must act immediately to prevent this”*. Officer E told the Authority that cordoning and containing Myers Park was not an option. As Mr Cerven was talking to two unarmed officers and members of the public were close by he believed *“it was in everyone’s best interests to make an approach”*. Officer F recognised the risk to members of the public and officers if anyone fired a gun at long distance. Because of this, he decided the best tactic was to approach Mr Cerven and surprise him, so that any risk to others would be minimised should they need to fire their gun.
204. CCTV footage shows a person walking through Myers Park near the scene after Mr Cerven told Officers I and J that he had a gun. One resident in an apartment building behind the scene said he saw the situation unfold and ducked behind a concrete wall as shots were fired. CCTV footage of the incident also shows two people present in the building right behind the area where Mr Cerven was pacing.
205. The Authority is of the view that when Officers E and F made the decision to quickly approach and challenge Mr Cerven, they did not sufficiently consider the safety of members of the public in Myers Park or in the nearby buildings.
206. While the Authority acknowledges that Officers E and F sought to minimise the risk posed by potential gun shots, by quickly approaching and challenging Mr Cerven, their decision focused on the threat or risk posed by Mr Cerven to the unarmed officers and not on the other aspects of TENR – exposure, necessity and response.
207. They were focused on intervening immediately to protect the unarmed officers and did not consider the possibility of:
  - 1) moving closer to Mr Cerven and covering Officers I and J while they continued to verbally appeal to Mr Cerven in order to negotiate his surrender;

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<sup>31</sup> The Authority acknowledges that Officer F told the Authority that he relayed to Officers I and J over the radio that they needed to *“back off”* and Officer E said he heard Officer F tell Officers I and J to get back and he also told Officer F to tell them the same thing. The instruction from Officer F to Officers I and J to retreat does not appear on the transcript of radio communications and, when questioned by the Authority, Officers I and J said that they did not recall hearing any instruction from Officers E or F to withdraw.



- 2) taking over negotiations from Officers I and J (which the dispatcher stated was part of his plan – see paragraph 187);
- 3) delaying the arrest of Mr Cerven by continuing with negotiations until the park could be properly cordoned and Mr Cerven contained; or
- 4) finding out whether AOS was going to be, or had been, called.

208. In the Authority’s opinion, Officers E and F could, and should, have considered these options, given that the incident had escalated from being a routine pick-up. Their actions in immediately approaching and challenging Mr Cerven precipitated his response.

209. In addition, Officers E and F did not consider seeking approval for their plan of action or instructions from the dispatcher, who remained incident controller throughout the incident.

## FINDINGS

The dispatcher acted appropriately in the time available.

In the circumstances as Officers E and F believed them to be, they were justified in arming themselves in response to this incident.

Officers E and F complied with relevant procedures in relation to arming themselves and had the appropriate firearms certification at the time of the incident.

Officers E and F should have radioed NorthComms and advised of their intention to approach and challenge Mr Cerven.

Officers E and F chose to immediately approach and challenge Mr Cerven. In terms of their TENR assessment, their focus was on the risk Mr Cerven posed to the unarmed officers at the scene and not on a complete assessment of the situation. In making their decision, they did not give sufficient weight to the risk members of the public in the park and in the nearby buildings were exposed to or whether it was necessary to immediately engage Mr Cerven.

There were other options that Officers E and F should have considered and their actions precipitated Mr Cerven’s response.

## ISSUE 4: WAS THE USE OF FORCE JUSTIFIED AND REASONABLE IN THE CIRCUMSTANCES?

### Were Officers E and F justified in shooting Mr Cerven?

210. Sections 39 and 48 of the Crimes Act 1961 provide legal justification for Police to use reasonable force to arrest an offender and in defence of themselves or another. However, any force used must be the minimum necessary to achieve the objective, and reasonable under the circumstances as they believe them to be. The Police Tactical Options Framework guides Police in determining the appropriate level of force to use in certain situations (see paragraphs 236-244 for law and policy on use of force).

211. Police policy provides that potentially lethal force may be used when an offender presents a threat of death or grievous bodily harm. Officers must give an offender the opportunity to surrender if practicable, and employ less lethal tactical options to effect an arrest or disarm an offender if they are available. However, if further delay in apprehending the offender would be dangerous or impractical, officers are justified in firing at an offender.
212. After being challenged by Officers E and F, Mr Cerven can be seen on the CCTV footage taking his hands out of his pockets and appearing to clasp both hands together as if to make it look like he had a firearm in his hands. He then runs towards the armed officers.
213. Believing Mr Cerven had a gun in his hands that he was aiming at them, and fearing for their lives, Officers E and F simultaneously fired in Mr Cerven's direction. They believed that shooting Mr Cerven was the only way to protect themselves and others at the scene from death or serious injury. The Authority finds that, based on this belief, Officers E and F were lawfully justified in using a firearm. This was the only tactical option available to the officers in the circumstances.

## FINDINGS

In the circumstances as Officers E and F believed them to be, they were justified in shooting Mr Cerven.

## ISSUE 5: WAS ALL REASONABLE ASSISTANCE GIVEN TO MR CERVEN AFTER HE WAS SHOT?

214. CCTV footage shows officers immediately going to Mr Cerven's aid after he was shot.
215. Officer C advised NorthComms at 7.45:05pm that shots had been fired.
216. Officer F requested an ambulance at 7.45:13pm.
217. While waiting for the ambulance to arrive, Officer K, who had been a paramedic before joining the Police, put Mr Cerven on his back and immediately commenced CPR procedures until the ambulance arrived a few minutes later.

## FINDING

All reasonable assistance was given to Mr Cerven after he was shot.

## Subsequent Police Action

### CRIMINAL INVESTIGATION

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218. A criminal investigation was conducted by Police regarding the criminal liability of Officers E and F for shooting Mr Cerven. Police considered that, in the circumstances of the case, the officers' actions were justified under section 48 of the Crimes Act 1961 (see paragraph 238) and determined that no criminal charges would be laid against them.

### STANDARD OPERATING PROCEDURES FOR COMMUNICATION CENTRES

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219. As a result of this incident, Police have made recommendations including:

- 1) A review of the Master Standard Operating Procedure (sets out the procedures communication centre staff must follow during armed offender incidents) should be undertaken to ensure that the procedures are 'fit for purpose' in such situations including situations that do not involve active shooters. The review should include the training requirements of dispatchers.
- 2) An operating model identifying the role and relationships between communication centres and district command centres should be completed and implemented as soon as possible. This would allow communication centres to have the same access to CCTV as district command centres. Arising from this incident, NorthComms now has the same access to CCTV as the Auckland DCC.

## Conclusions

220. The Authority has concluded that NorthComms staff responded appropriately to Mr Cerven's 111 call. Based on initial information that this was a routine pick-up, the dispatcher then correctly assigned available staff to Myers Park entrances. Two of the initial responders, Officers B and C, were appropriately armed with a Taser. They considered whether they should arm themselves with a firearm before entering Myers Park. Their decision not to do so was reasonable based on their knowledge at the time.
221. Once Mr Cerven told Police he had a gun, the risk to Police and the public escalated. The dispatcher acted appropriately in attempting to cordon as many park entrances as possible and in ensuring that officers with firearms were sent to the scene. Officers E and F, the first armed responders, were justified in arming themselves and complied with relevant Police procedures when doing so.
222. The Authority has also concluded that, in the circumstances as they believed them to be, Officers E and F were justified in shooting Mr Cerven and that Mr Cerven received all reasonable assistance from Police after he was shot.
223. However, in the Authority's view, Officers E and F did not give sufficient weight to the risk members of the public were exposed to or whether it was necessary to immediately engage Mr Cerven. The following options were available:
- 1) moving closer to Mr Cerven and covering Officers I and J while they continued to verbally appeal to Mr Cerven in order to negotiate his surrender;
  - 2) taking over negotiations from Officers I and J (which the dispatcher stated was part of his plan);
  - 3) delaying the arrest of Mr Cerven by continuing with negotiations until the park could be properly cordoned and Mr Cerven contained; or
  - 4) finding out whether AOS was going to be, or had been called.
224. In the Authority's opinion, Officers E and F did not consider these options that could, and should, have been considered given that the incident had escalated from being a routine pick-up. Their actions in immediately approaching and challenging Mr Cerven precipitated his response.

225. In addition, from a communications perspective, the Authority finds that, although Officers I and J engaged appropriately with Mr Cerven after he called them over, they did not provide sufficient information to NorthComms about their movements. They should have provided situational reports when they entered Myers Park, saw Mr Cerven and approached and talked to him. The Authority also finds that Officers E and F should have radioed NorthComms and advised of their intention to approach and challenge Mr Cerven. Their failure to do so meant that neither the dispatcher, who at that time had control of the incident and intended that Officers E and F would take over negotiations from Officers I and J, nor the four officers present in the park were aware of Officer E and F's plan. As the other officers were unaware of Officer E and F's plan, they had limited time to retreat and take cover.



**Judge Sir David Carruthers**

Chair  
Independent Police Conduct Authority

1 September 2016

15-0207

## Laws and Policies Applicable as at 2 August 2015

### COMMUNICATION

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226. The *'Radio and Communication Centre Protocols'* chapter of the Police Manual sets out procedures for the use of radio and the command of incidents responded to by Police. The policy states that *"An efficient and effective Police response to incidents requires that everyone involved in the process clearly understands their own role and responsibilities, and those of the other participants"*.

#### *Incident command*

227. Under the policy, the communications centre is responsible for the initial command of the Police response to an incident. This responsibility to act as the 'incident controller' formally lies with the communications centre shift commander; although in practice a team leader or dispatcher is often delegated to take this role.

228. For as long as the communications centre retains the responsibility for incident command, officers at the scene must comply with the directions given by the shift commander (or by the delegated team leader or dispatcher). The shift commander makes the final decision on operational matters.

229. The communications centre retains the responsibility for incident command until that role is formally passed to a suitable officer at the scene. The policy sets out formal procedures for handing over this responsibility, and states that incident command will not be handed over to an officer at the scene until he or she has established an incident command point, familiarised themselves with the incident and obtained a briefing, and formulated a response plan.

230. Once incident command has passed to an officer at the scene, the shift commander is still required to maintain active oversight of the Police response. Even after an officer at the scene has been appointed incident controller, there may be situations where that person is no longer the most appropriate to manage the Police response, and so the shift commander may take back incident control. They may then undertake the incident control themselves, appoint another incident controller or appoint multiple incident controllers to control different phases of a major incident.

#### *Role of dispatcher*

231. Among other things, the role of the dispatcher is to prioritise events requiring a Police response, identify the nature of the response required and the most suitable Police unit/s available to respond, and exercise a command and control function for all events from receipt of the initial call until a suitable officer at the scene is able to assume command. A dispatcher must also provide responding units with available information to enable them to locate the scene of the incident, contact key people at the scene, be aware of potential hazards en route

to, or at, the scene, and identify people, vehicles or activities relevant to the incident while en route.

## INCIDENT CONTROL AND COMMAND

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232. The *'Control and Command'* chapter of the Police Manual states that 'control' refers to the responsibility for coordinating and directing the response to an incident. The person who has responsibility for control sets priorities and objectives, and determines how best to implement them.
233. 'Command' is the authority that a commander in the 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 to achieve the accomplishment of assigned tasks.
234. A cordon is the means used to contain an area. It usually requires the deployment of both personnel and equipment, and may utilise the area's natural features. It is used to restrict movement in and out of the area. This may be necessary to, among other things, prevent a suspect from escaping and contain an armed offender and protect the public.
235. When setting up a perimeter cordon, the scene area should be defined. Until the situation has been assessed, it should be made as wide as possible.

## USE OF FORCE

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### Crimes Act 1961

236. Section 39 of the Crimes Act 1961 provides authority for Police officers carrying out an arrest to use *"such force as may be necessary"* to overcome any force used in resisting the arrest, unless the arrest can be carried out *"by reasonable means in a less violent manner"*.
237. Section 40 of the Crimes Act 1961 provides authority for Police officers to use *"such force as may be necessary"* to prevent a person from escaping in order to avoid arrest, unless the escape can be prevented *"by reasonable means in a less violent manner"*.
238. Section 48 of the Crimes Act 1961 provides justification for Police officers to use *"such force as, in the circumstances as he or she believes them to be, it is reasonable to use"* to defend themselves or others.
239. Under section 62 of the Crimes Act 1961, Police Officers are criminally responsible for any excessive use of force.

### Police guidance on the use of force

240. 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 (or OC) spray, batons, Police dogs, Tasers and firearms.

241. 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.
242. 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. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the result of checks on the subject and their emotional state, the influence of drugs or alcohol, and the presence and/or proximity of weapons; similar previous experiences with the subject; and environmental conditions such as weather, lighting and physical location. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).
243. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are: cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from police policy.
244. Police policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

## CARRIAGE OF TASERS

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245. Since 1 August 2015 Police policy has authorised officers to routinely carry Tasers.

## CARRIAGE AND USE OF FIREARMS

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### Authorisation to carry firearms

246. The *Police firearms* policy authorises officers and Police employees specifically authorised by the Commissioner (such as firearms instructors) to carry firearms. Officers who carry firearms operationally must hold a current Police first aid certification and Police Integrated Tactical Training (PITT) certification for the firearm deployed.



247. The principal reason an officer can carry firearms is *“when their perceived cumulative assessment of a situation is that it is in, or likely to escalate to be within, the death/grievous bodily harm range as specified by the tactical options framework”*.
248. Officers who have formed the above assessment must advise their immediate supervisor and the communications centre of their decision to deploy with firearms, unless this is impractical in the particular situation. They must also take a Taser with them if one is available.
249. Police employees must wear approved ballistic body armour when deploying to an incident where they believe firearms are, or could be, present.
250. General Instruction FO61 (*Use of firearms*) is also known as ‘fire orders’. When firearms are issued, if time and circumstances permit, supervisors must draw an officer’s attention to the ‘fire orders’, which set out the circumstances in which Police officers may use firearms. These are printed on the inside cover of Police notebooks and are also stored in firearm safes and vehicle firearm security cabinets.
251. Every Police employee issued with a firearm is personally responsible for ensuring they are *“thoroughly conversant”* with relevant law (particularly sections 39, 40, 41, 48 and 62 of the Crimes Act 1961), General Instruction FO61, and all relevant instructions and guidelines in the Police Manual.

## Responding to armed offenders

### *Armed Offenders Squad*

252. The Police Manual outlines the role of AOS in an armed incident. Where time and the offender’s actions permit, all forward operations against armed offenders, particularly any direct approaches to the offender, must be carried out by AOS members assisted by the Police negotiation team (PNT). If AOS members are not available or there is insufficient time to call them, the senior officer in charge at the incident must take immediate steps to deal with the situation.

### *Principles for responding to armed offenders*

253. The ‘*Police firearms*’ chapter of the Police Manual sets out the basic principles for Police responding to an armed incident:

*“When dealing with an armed offender or an offender believed to be armed, you should observe these basic principles:*

- *It is better to take the matter too seriously than too lightly.*
- *Treat all armed offenders or offenders believed to be armed, as dangerous and hostile unless there is definite evidence to the contrary.*
- *Make every effort to prevent casualties.*

- *Caution is not cowardice. When the offender's actions permit, cordon the area, and adopt the wait and appeal role in order to negotiate surrender.*
- *Never go unnecessarily into danger. However, if the offender is acting in a way that makes casualties likely, Police must act immediately to prevent this."*

### *Use of firearms*

254. General Instruction F061 provides that Police must only use firearms for the purposes of defending themselves or others, arresting an offender or preventing escape in accordance with the corresponding Crimes Act provisions or destroying animals in accordance with Police policy.
255. The instruction reminds officers that *"An overriding requirement in law is that minimum force must be applied to effect the purpose"*. It also says that *"Where practical, Police should not use a firearm unless it can be done without endangering other persons"*.
256. 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 they cannot be disarmed or arrested without first being shot*
  - *further delay in apprehending the offender would be dangerous or impractical."*

### *Firing at offenders*

257. The *'Police Firearms'* chapter of the Police Manual reminds officers of the Crimes Act provisions and the need to use the minimum force necessary to achieve the objective. It states that the *"circumstances justifying Police firing at an offender can change very rapidly"*, and any officer who fires a shot *"must be personally satisfied there is justification for doing so"*.
258. The Police Manual also reminds officers of the circumstances in which they are able to claim self-defence under section 48 of the Crimes Act, and states *"There is no justification for firing at a suspect when they are no longer a threat to life. This applies regardless of the suspect's previous actions"*.

### *Discharge of firearms in operational situations*

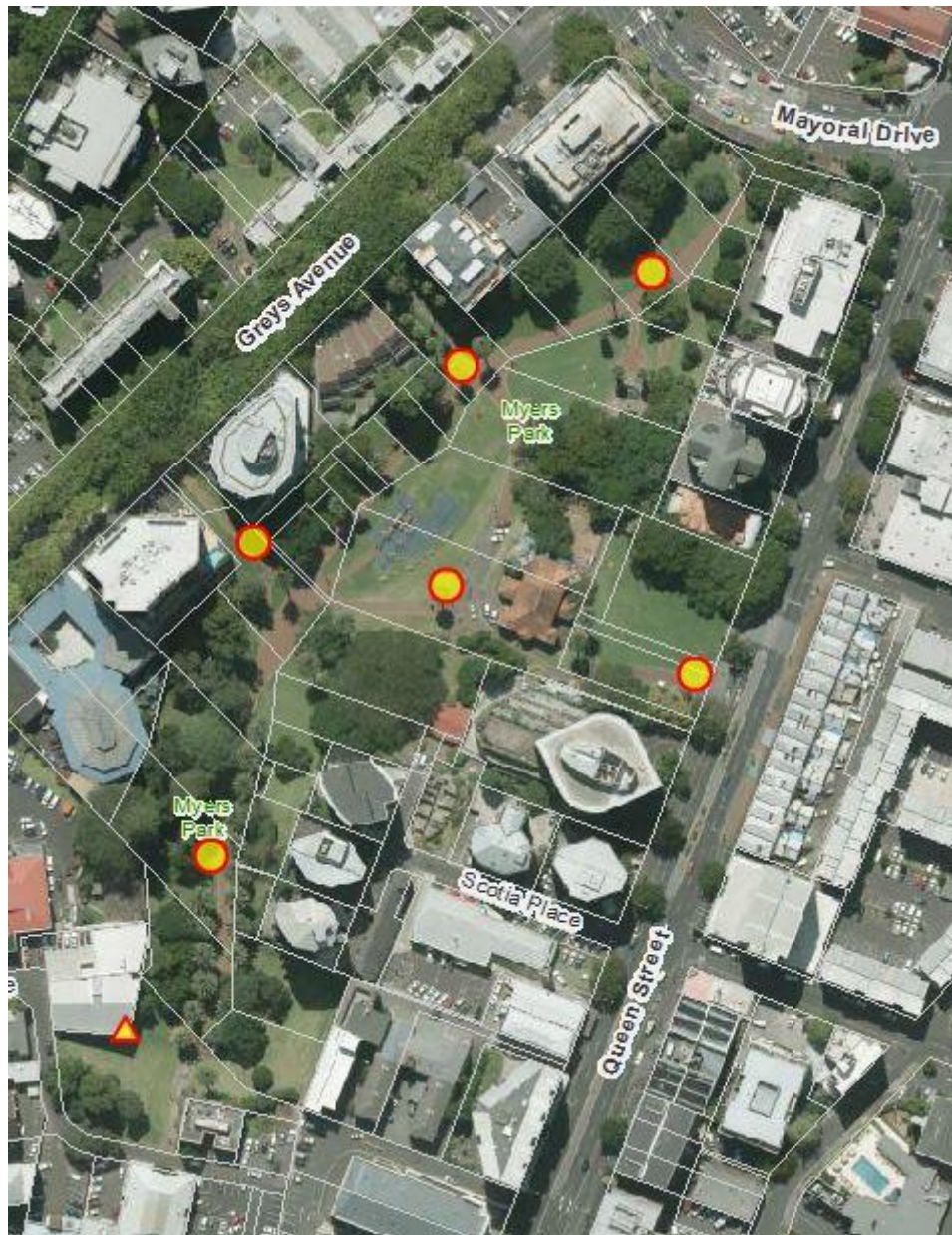
259. The *'Police firearms'* chapter of the Police Manual outlines what actions must be taken immediately after Police firearms are discharged in operational situations. The senior officer present (or the officer appointed to do so) must:
- render first aid and contact medical emergency services;

- mark the position of the officer who discharged the firearm, the empty cartridge case/s, and other items or people associated with the discharge; and
- secure the firearm and remaining rounds.

260. The Manual notes, *“On no account is the firearm to be altered or items/accessories removed. It must be secured in the state at which it was at the time of firing”*.

## Appendices

### APPENDIX 1 – AERIAL PHOTOGRAPH OF MYERS PARK



**DISCLAIMER**  
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Myers Park

0 10 20 30  
Meters

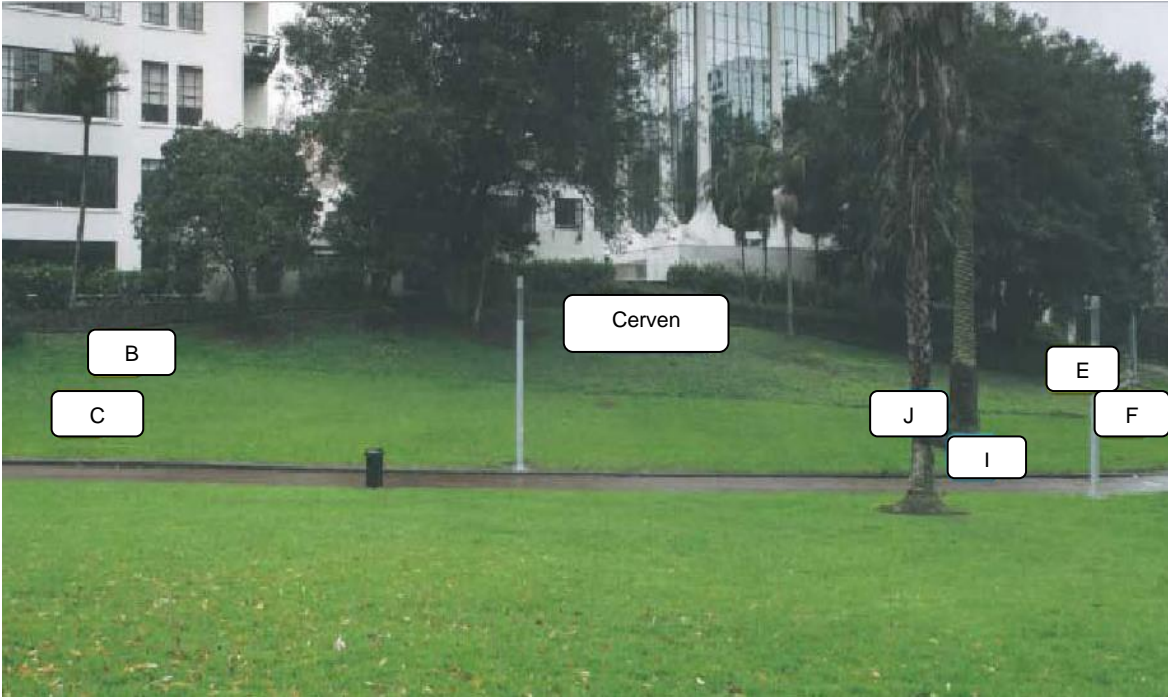
Scale @ A4  
= 1:2,500

Date Printed:  
22/07/2016



This image has been reproduced with the permission of Auckland Council. The Authority acknowledges the Council's assistance. The yellow circles (new cameras) and yellow triangle (old camera) show the positions of CCTV cameras as at 2 August 2015.

APPENDIX 2 – PHOTOGRAPH OF SCENE OF INCIDENT



This is a Police photograph that has been included in the report with their permission.



## About the Authority

### WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

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

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

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

### WHAT ARE THE AUTHORITY'S FUNCTIONS?

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

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

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



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