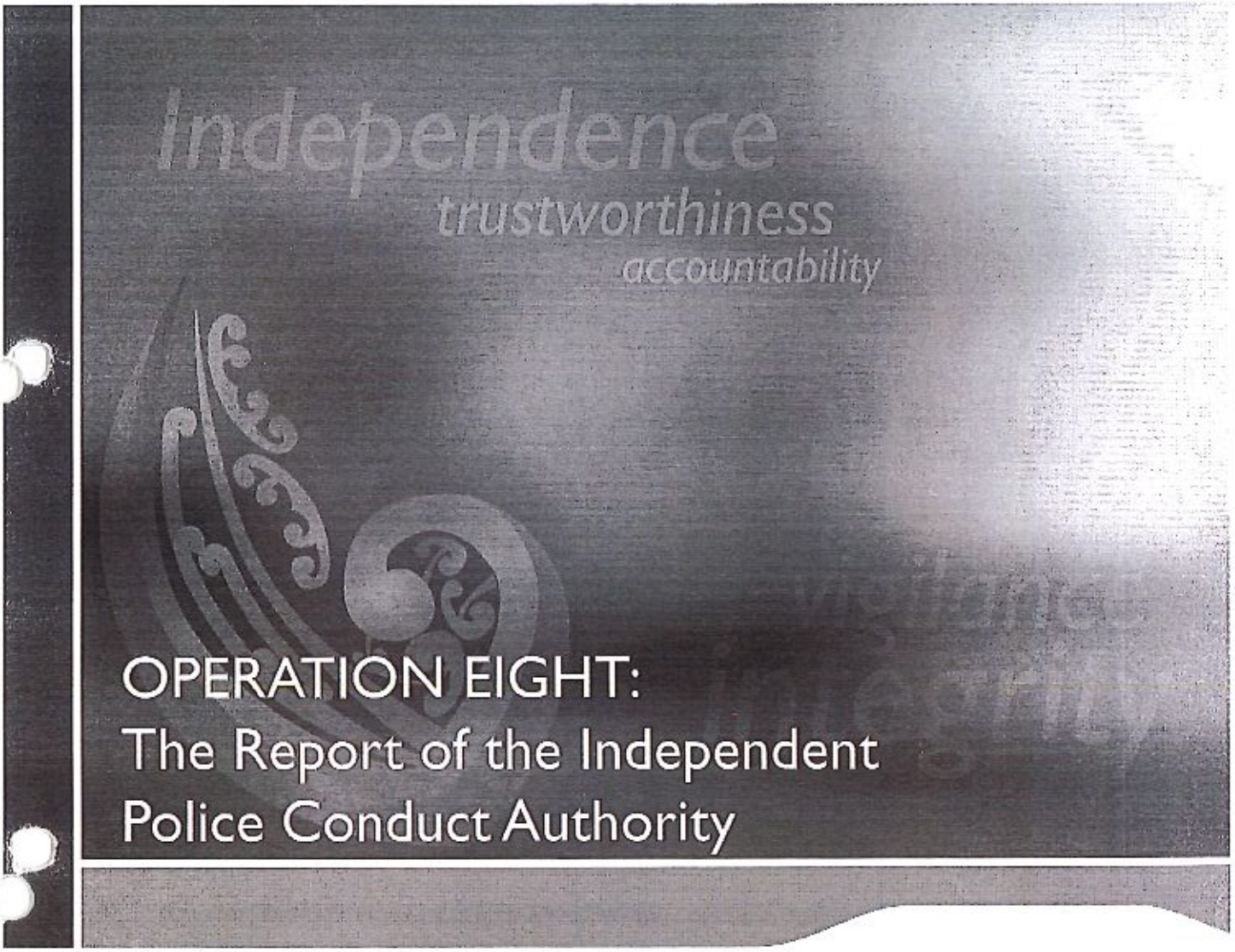
2007

(IPCA, 2013: 41)



OPERATION EIGHT: The Report of the Independent Police Conduct Authority

May 2013

IPCA

Independent Polic

Whaia te pono, kia

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He Whakarāpopototanga/Executive Summary

1. Tata ki te rua tau mai i te 2005, e hōpara ana ngā Pirihimana i ngā mahi a tētahi rōpū e ai ki ngā whakaaro i te whakahaere rātau i ngā mahi whakangungu rākau i roto i te nehenehe nui o Te Urewera. Ko te ingoa o te hōparatanga Pirihimana ko *'Operation Eight'*.

2. Ko ngā kitenga a te Authority i te tika tonu ngā Pirihimana, e ai ki ā rātau whakaeminga kōrero, kia noho mataara ki ngā mahi a tēnei rōpū tērā he mahi tūturu e tūpono ai he mahi tūkino nui. He whaitake, ka mutu he tika tonu tā ngā Pirihimana ki te hōpara i ēnei mahi.

3. I muri i ngā mahi whakaemi taunakitanga ka whakarite ngā Pirihimana ki te kōkiri whakamua i te marama o Whiringa-ā-nuku 2007. Nō te Kaikōmihana Pirihimana o te wā te kōrero mō taua whakatau. Nāna tonu i whakamana kia kōkiritia i te 10 o Whiringa-ā-nuku[1] whai muri i ngā tohutohu ā-ture e kī ana ka tautokohia ngā whakapae i raro i te Terrorism Suppression Act 2002. Kua kitea e te Authority he whaitake, he tika anō hoki te whakatau a te Kaikōmihina i roto i aua āhuatanga ki te kōkiri.

4. I roto i te kōkiritanga o Operation Eight ko te whakarite katoa i ngā whakamana haurapa i ngā wāhi maha puta noa i Aotearoa, me te whakatū aukati rori i Rūātoki me Tāneatua i te 15 o Whiringa-ā-nuku 2007. I taua wā, he mahinga nui tērā nā ngā Pirihimana, neke atu i te 300 ngā āpiha i roto i aua whakahaere i ngā wāhi maha puta noa i te motu.

5. He whānui ngā pānga i muri mai. Kīhai te Rōia-Matua i whakamana i tētahi hāmene i raro i te Terrorism Suppression Act 2002. I tukuna kētia ngā hāmene i raro i te Arms Act 1983, i raro anō hoki i te Crimes Act 1961 mō ētahi tāngata. I muri mai ka haere ngā kēhi autō e tātari ana i ngā tikanga hōpara a ngā Pirihimana, ā, mēnā hoki ka whakaaetia ngā

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1 I kōkiritia a Operation Eight i te 15 Whiringa-ā-nuku 2007, ā, ka uru katoa ngā mahi a ngā Pirihimana ki te rapu me te hopu i ngā tāngata e whakapaetia ana, te kōkiri i ngā whakamana haurapa i ngā wāhi, te hopu i raro i te ture, te whakahaere uiui me te whakatū aukati rori.

taunakitanga i kohia. Whai muri i te whakataunga a te Kōti Matua i te marama o Mahuru 2011 i whakakorehia ngā hāmene ki ngā tāngata 13. I haere tonu ngā kōkiri whakawā ki ngā tāngata tokowhā, ko te mutunga ake ko tā rātau whakawātanga i te Hui-tanguru me te Paenga-whāwhā i te tau 2012. I haere ngā pīra ki te turaki i te whiu me te whiunga ki te Kōti Pīra me te Kōti Matua. Nō te 23 o Paenga-whāwhā 2013 ka mutu i runga i te whakawāteatanga o ngā tono pīra e te Kōti Matua.

6. He tino maha ngā amuamu i tae mai ki te Independent Police Conduct Authority ('te Authority') mai i ngā tāngata me ngā whakahaere mō ngā mahi a ngā Pirihimana i te wā o te kōkiritanga, otirā ngā aukati rori me te whakahaeretanga o ngā whakamana haurapa. E whakarārangi ana tēnei pūrongo i ngā kitenga me ngā tūtohutanga a te Authority whai muri i tana hōparatanga ki ēnei amuamu. I tuku pūrongo atu anō te Authority ki ia kaituku amuamu mō ngā take hāngai ake ki a rātau anō.

7. Mai I te tirohanga whakahaere pirihimana i tutuki haumarutia te wāhanga kōkiri o Operation Eight. Kāore i pakū he pū a tētahi Pirihimana, a ētahi atu tāngata rānei, ahakoa he maha ngā pū me ngā rākau patu i kitea e ngā Pirihimana I kitea paitia ngā tāngata katoa e kimihia ana[2], ka mutu kāore tētahi tangata o te iwi whānui i pā kinotia.

8. Nā te whakatau a te Kōti Matua i te marama o Mahuru 2011 i whai pānga ki te wā mō te whakatinana i te whakarerekētanga ki te ture. I whakamanatia te Search and Surveillance Act 2012, ā, kua tino rerekē te ture, ngā mahinga me ngā kaupapa here. Nā te urunga mai o te Ture hou kua kore e hāngai ētahi o ngā tūtohutanga a te Authority ka tāpaetia i muri i tana hōparatanga.

9. Ko ngā whakamaheretanga me te whakaritenga mō te whakahaere i ngā whakamana haurapa mō te kōkiri i a Operation Eight i ū ki ngā kaupapa here hāngai. He nui ngā whakapātaritari whakarite whakanekeneke nā te tuku ngātahitanga o ngā whakamana haurapa i te wā kotahi puta noa i te motu. I tere hopukinatia ngā tāngata i whakaarohia e ngā Pirihimana he nui te raruraru tērā ka puta i a rātau.

10. Heoi anō, kāore i tika te whakamahere me te whakarite i te whakatūnga o ngā aukati rori i Rūātoki me Tāneatua. Kua kitea e te Authority kāore i tika i raro i te ture aua aukati rori kia whakatūhia, kia whakahaerehia rānei. Kāore i aromātaitia te pānga o aua aukati rori ki te haukāinga. Kāore he mana, he tika rānei i raro i te ture kia puritia, kia whakatūhia, kia haurapatia rānei e ngā Pirihimana ngā waka, te tango kōrero, te whakaahua rānei i ngā kaitaraiwa, ngā pāhīhī rānei.

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2 Ko ngā mea e kimihia ana e ai ki ngā Pirihimana e hāngai ana ki te hōparatanga o Operation Eight ko ngā tāngata, kāinga, waka hoki. Arā anō ko ngā kaimataara, me te hunga hoki e whakapaetia ana mō ngā mahi hara.

11. Ko te nuinga o ngā amuamu i tae atu ki te Authority e pā ana ki ngā haurapa kāinga kāore i ahu mai i te hunga e whāia ana engari nā ētahi atu kainoho kē i ēnei kāinga e amuamu ana mō ngā whāwhātanga a ngā Pirihimana i a ratau. Ko te whakaaro a ētahi o ēnei tāngata i whakaritea rātau ānō he tāngata whakapae rātau. He maha ngā kainoho he mea kōrero rātau e ngā Pirihimana ka pupuritia rātau i te wā e haurapatia ō rātau kāinga, ahakoa kāore he mana i raro i te ture kia puritia pēneitia rātau. Kāore he mana ā-ture o ngā Pirihimana ki te whakahaere haurapa whaiaro ki ēnei kainoho.

12. Ko te whakatau a te Authority he maha ngā āhuatanga o te kōkiri a ngā Pirihimana i a Operation Eight i te hē i raro i te ture, ka mutu kāore i te tika. I roto i tētahi whakahaerenga rerekē pēnei i tēnei, he maha ngā akoranga hei āwhina i ngā kaupapa here me ngā mahi a ngā Pirihimana ā muri ake. Kua kitea ētahi akoranga i roto i ngā matapaki a ngā Pirihimana ki a rātau anō whai muri i te kōkiritanga o Operation Eight, ā, kua whakatinanahia ngā whakarerekētanga e hiahiatia ki ngā whakangungu, kaupapa here me ngā tohutohu whakahaere. Kua tāpaetia e te Authority ētahi atu tūtohutanga i runga anō i āna ake whakakitenga. Ko tētahi, ko te tūhono atu anō me te waihanga whanaungatanga hoki ki te haukāinga o Rūāto

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1. For almost two years from late 2005, Police investigated the activities of a group of people who appeared to be involved in military-style training camps using firearms and other weapons in remote forest areas within the Urewera Ranges. The Police investigation was named *'Operation Eight'*.

2. The Authority has found that Police were entitled, on the information they had, to view the threat posed by this group as real and potentially serious. The investigation into such activities by Police was reasonable and necessary.

3. After gathering evidence Police decided to terminate the operation in October 2007. The then Commissioner of Police was ultimately responsible for that decision. He personally authorised termination[3] on 10 October 2007, following legal advice that the evidence obtained could support charges under the Terrorism Suppression Act 2002. The Authority has found that the decision of the Commissioner to authorise termination was reasonable and justified in the circumstances.

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3 'Terminate' and 'termination' are used throughout this report. These words reflect the language used by Police when bringing an end to the investigation phase of an operation. The termination phase of Operation Eight commenced on 15 October 2007 and covered actions taken by Police to locate and apprehend suspects, execute search warrants at properties, make arrests, undertake interviews and establish road blocks.

4. The termination of Operation Eight involved the co-ordinated execution of search warrants at multiple addresses throughout New Zealand, and the establishment of road blocks at Ruatoki and Taneatua on 15 October 2007. At the time, it was an extremely large Police operation involving over 300 officers at multiple locations nationwide.

5. Extensive ramifications have followed. The Solicitor-General did not authorise any prosecutions under the Terrorism Suppression Act 2002. Instead charges were laid under the Arms Act 1983, and in addition under the Crimes Act 1961 for some individuals. There have been protracted court proceedings analysing Police investigative techniques, and whether certain evidence obtained was admissible. Following the judgment of the Supreme Court in September 2011 charges against 13 people were discharged. Criminal proceedings continued against four people resulting in a trial during February and March 2012. Appeals against conviction and sentence followed to the Court of Appeal and the Supreme Court. These finally concluded on 23 April 2013 when the applications for leave to appeal were dismissed by the Supreme Court.

6. The Independent Police Conduct Authority ('the Authority') received a number of complaints from individuals and organisations about Police actions during the termination, particularly regarding the road blocks and execution of search warrants. This report sets out the Authority's general findings and recommendations following its investigation into those complaints. The Authority has also reported directly to each complainant about the specific matters each raised.

7. From a policing perspective the termination phase of Operation Eight was concluded safely. No shots were fired by Police or others, despite Police locating a number of firearms and weapons. All target[4] individuals were located without incident and no members of the public were put at risk.

8. The Supreme Court judgment in September 2011 impacted upon the timescale for implementation of legislative changes. The Search and Surveillance Act 2012 was passed which has significantly changed law, practice and policy. The new Act has meant that some recommendations the Authority would normally have made following its investigation are no longer appropriate.

9. The planning and preparation for the execution of search warrants on termination of Operation Eight was largely in accordance with applicable policy. It involved huge logistical challenges given that search warrants had to be executed simultaneously across

[4] 'Target' is also used throughout the report. Again this reflects Police terminology. Targets of Operation Eight were individuals, properties or vehicles that Police identified as potentially relevant to the investigation. These included potential witnesses, as well as those suspected of criminal behaviour who were arrested.

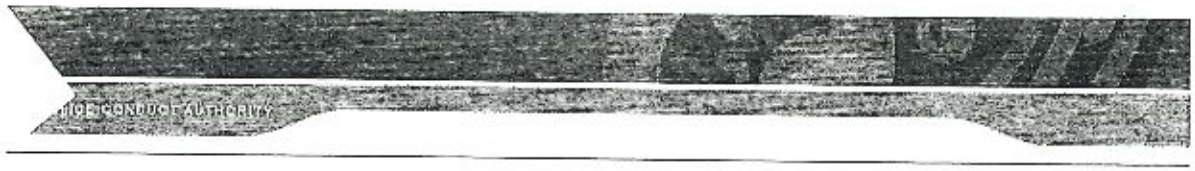
the country. Those individuals who were considered by Police to pose the greatest risk were quickly and safely apprehended.

10. In contrast, the planning and preparation for the establishment of the road blocks in Ruatoki and Taneatua was deficient. The Authority has found there was no lawful basis for those road blocks being established or maintained. There was no lawful power or justification for Police to detain, stop and search the vehicles, take details from or photograph the drivers or passengers.

11. There was no assessment of the substantial and adverse impact of such road blocks on the local community. The road block at Ruatoki was intimidating to innocent members of that community, particularly in view of the use of armed Police officers in full operational uniform.

12. The majority of complaints received by the Authority in relation to property searches were not from target individuals but rather from other occupants at these properties complaining about the way they were treated by Police. Some felt they were being treated as suspects. A number of occupants were informed by Police that they were being detained while a search of the property occurred, despite there being no lawful basis for such detention. Police had no legal basis for conducting personal searches of these occupants.

13. The Authority has concluded that a number of aspects of the Police termination of Operation Eight were contrary to law and unreasonable. In a complex operation of the type that was undertaken here, there are always a number of important lessons to be learned about future Police policy and practices. The Police internal debrief following the termination of Operation Eight has already identified a number of those lessons and necessary changes to Police training, policy and operational instructions have been made. The Authority has made a number of other recommendations in light of its own findings. This includes the need to re-engage, and build bridges, with the Ruatoki community.


CONDUCT AUTHORITY

The Reason for the Authority's Involvement

14. From 6.00am on 15 October 2007 Police executed a number of search warrants at various addresses across New Zealand. This was the culmination of a lengthy Police investigation (assigned the name *'Operation Eight'*) into the activities of a group of people who, intelligence suggested, were involved in military-style training camps at which firearms and other weapons were used. These training camps were held in remote forest areas within the Urewera Ranges, Eastern Bay of Plenty, close to the town of Ruatoki.

15. The Police termination of Operation Eight included the establishment of road blocks in the town of Taneatua and on the outskirts of Ruatoki throughout the morning of 15 October 2007. These road blocks restricted the movements of the residents of these local communities.

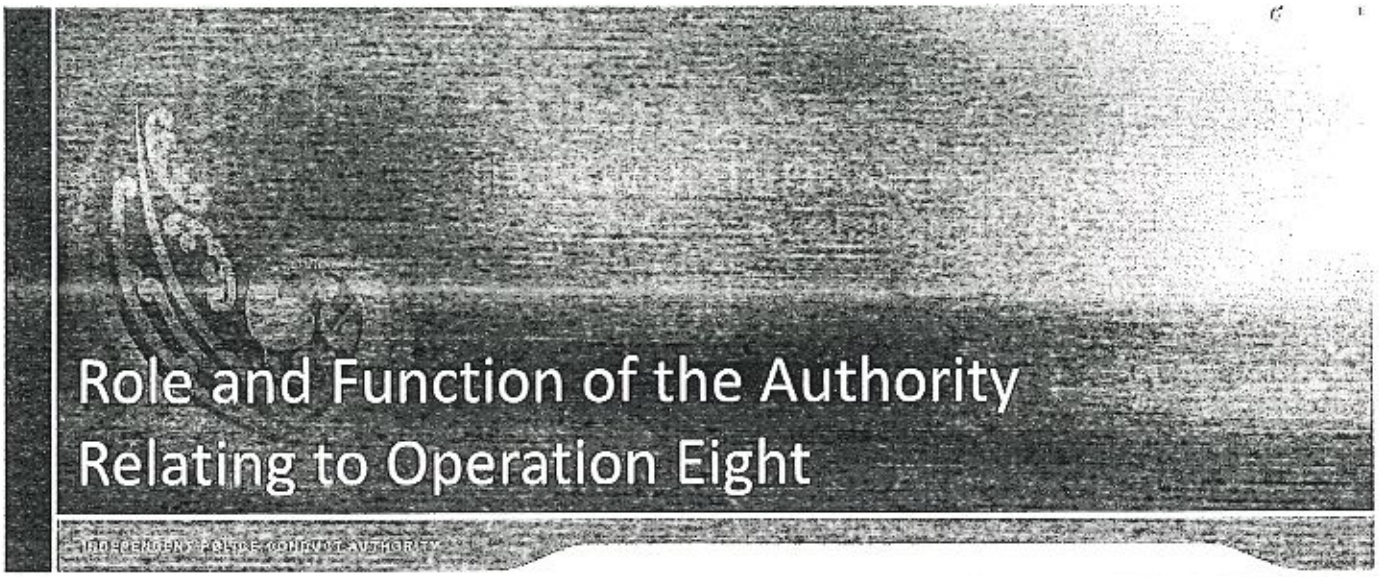
16. Following events on 15 October 2007 the Independent Police Conduct Authority ('the Authority') received a number of complaints either directly or indirectly from:

    16.1 those caught up in the road blocks;

    16.2 individuals affected by the execution of search warrants at their properties; and

    16.3 individuals and organisations concerned generally about the Police operation.

17. The Authority conducted an independent investigation into the complaints received. This report sets out the scope of that investigation and the Authority's findings and recommendations.



WHAT IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

19. It is not part of the New Zealand 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.

20. 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 in respect of those findings.

21. 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?

22. Under the Independent Police Conduct Authority Act 1988 ('the Act'), 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.

23. On completion of an investigation, the Authority must form an opinion on whether any Police conduct, policy, practice or procedure (which was the subject of a complaint) was contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority may make recommendations to the Commissioner of Police.

24. Unless Police action has resulted in death or serious bodily harm, the Authority does not have power to initiate an investigation into Police actions, but rather has to respond to specific complaints received.

25. The Authority has a duty to express its findings in the language used in the Act, namely whether something is *"contrary to law, unreasonable, unjustified, unfair, or undesirable"*. Accordingly, a finding in the report is expressed in those terms.

26. Although the Authority is chaired by a Judge its findings do not have the same effect as a decision made by a court. Throughout this report the Authority makes findings that a number of Police actions were contrary to law. If court proceedings were taken against Police in relation to these actions, the findings made in this report would not be binding on, or affect the decisions of, that court.

WHAT COMPLAINTS/INFORMATION DID THE AUTHORITY RECEIVE?

27. Complaints can be made directly to the Authority by individuals, notified by Police or forwarded by other agencies. In this case, complaints were received by all three methods. These can be summarised as follows:

    27.1 A complaint from Peter Williams QC on behalf of Te Kotahi ā Tūhoe concerning the effects of the Police operation on the residents of the Ruatoki Valley. This included 18 accounts from residents of their experiences during the termination of Operation Eight.

    27.2 Complaints from four individuals personally affected by the road blocks.

    27.3 Complaints from seven individuals affected by property searches conducted by Police.

    27.4 Correspondence from 10 individuals and five organisations who were concerned generally about a number of aspects of the Police operation.

28. In addition to the above formal complaints, the Authority received information during interviews or meetings conducted as part of its investigation. These interviews and meetings were with individuals and organisations that provided accounts of their particular experiences. This information has been considered as part of the Authority's independent investigation when forming opinions and recommendations.

29. The Authority has had the benefit of being able to consider the evidence and submissions presented at the criminal hearings, and the various judgments provided by the different levels of Courts.

30. Additionally, the Authority has obtained and viewed footage of media coverage of events at termination, photographs, and also the theatrical documentary film, *'Operation 8: Deep in the forest'*. These various materials from media sources informed the Authority's investigation, particularly in relation to different public opinions.

31. In this instance the Authority considered it essential to gain a sufficient understanding of the whole Police operation to be able to properly analyse and determine the individual complaints. Accordingly the Authority has reviewed and analysed the entire Police file relating to Operation Eight. At the time of termination this was an extremely large Police operation. This is reflected in the huge volume of documents collated by Police and considered by the Authority. The Police file includes information received by Police, the Police analysis of such information, jobsheets and notebooks of officers, operation orders, and directions and briefings provided to Police personnel.

32. The Authority has conducted a thorough review of Police policy both at the time of termination of Operation Eight in 2007 and, as this has subsequently been developed, to the present time. This has also involved ensuring that Police policy reflected the legislative provisions applicable at the relevant times.

33. A number of officers have provided further information to the Authority which was required:

    33.1 for clarification of decisions and actions;

    33.2 to deal with particular aspects of the Police operation; or

    33.3 for the Authority to form an opinion about the subject matter of a complaint.

34. The Authority has been mindful of the context in which these events occurred. The Authority has informed itself of many matters of context to ensure that the determinations and findings made were on a fully informed basis. These contextual matters included the involvement of heavy calibre military-style weaponry, attitudes as to the use of guns in New Zealand, cultural issues, Tūhoe history[5], media reporting of events at the time of, and subsequent to, the termination, and Police policies.

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5 Information concerning Tūhoe history can be found in Binney, J (2009) 'Encircled Lands: Te Urewera, 1820-1921.'

COURT PROCEEDINGS

35. Police located a significant quantity of live ammunition and numerous firearms during the execution of search warrants upon termination of Operation Eight. The firearms recovered included several semi-automatic weapons and shotguns:

- 17 firearms at three properties in Ruatoki;
- 7 firearms at one property in Auckland;
- 1 firearm during a search in Wellington;
- 1 firearm at one property in Whakatane.

36. In addition Police searched the training camp areas at termination and located 12 individually identifiable but smashed or partially smashed Molotov cocktails[6]. Police also located and seized quantities of spent ammunition.

37. Following the termination of Operation Eight, the Solicitor-General did not authorise any prosecutions under the Terrorism Suppression Act 2002. Eighteen people were charged with offences of unlawful possession of firearms contrary to the Arms Act 1983 and, additionally for five of those accused, participation in an organised criminal group contrary to section 98A of the Crimes Act 1961.

38. There have been lengthy and extensive criminal proceedings. There were a number of court hearings relating to the admissibility of evidence obtained by Police. This culminated with the Supreme Court issuing a judgment on 2 September 2011 concerning these matters. The Supreme Court decided, by a majority, that the disputed evidence was admissible against accused individuals who were charged with unlawful possession of firearms and participation in an organised criminal group. However, for those individuals charged only with unlawful possession of firearms, the evidence was not admissible. As a result, the charges against those 13 people were discharged and criminal proceedings continued in relation to five individuals (one of whom died before the trial commenced).

39. The criminal trial of Tame Iti, Te Rangikaiwhiria Kemara, Urs Signer and Emily Bailey took place in February and March 2012. A jury found each was guilty of unlawful possession of firearms at military-style camps in the Urewera Ranges on a number of occasions in 2007 and also of possession of a restricted weapon, namely Molotov cocktails, in September

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6 A Molotov cocktail is a generic name used for an improvised incendiary device. In this instance they were breakable glass bottles containing wicks and an accelerant.

2007. Additionally each was found to be in possession of firearms when the Police operation terminated on 15 October 2007.

40. The jury was unable to reach a verdict on the charge of participating in an organised criminal group. The Crown subsequently applied for a stay of proceedings on that charge, meaning that the four individuals did not face a retrial.

41. On 24 May 2012, Tame Iti and Te Rangikaiwhiria Kemara were each sentenced to two and a half years' imprisonment. On 21 June 2012, Urs Signer and Emily Bailey were each sentenced to nine months' home detention.

42. All four individuals appealed against both conviction and sentence. The appeal was heard on 22 August 2012. The Court of Appeal gave judgment on 29 October 2012 dismissing the appeals by all four individuals. Further applications for leave to appeal were lodged with the Supreme Court. The court proceedings were concluded when judgment was given on 23 April 2013 declining the applications.

WHAT IS THE SCOPE AND REMIT OF THE AUTHORITY'S INVESTIGATION?

43. The Authority's duties and functions are set out in the Act as outlined in paragraph 22.

44. The scope of the Authority's independent investigation in relation to Operation Eight is derived from its legislative mandate to consider Police policy, practice and procedure. The scope and remit is:

    44.1 the planning and preparation leading up to the termination of the Police operation;

    44.2 the road blocks established in Ruatoki and Taneatua on 15 October 2007; and

    44.3 the execution of search warrants at various addresses (where complaints or information have been received by the Authority).

45. In relation to the complaints received, while these raise general issues which are outlined in this report, many also raise matters specific to individuals. Those specific matters are not referred to in this report. The Authority has reported to each complainant directly in respect of these issues.

46. The Authority's findings are in relation to the matters investigated arising from the complaints received, in accordance with the Authority's functions. The Authority has not undertaken a comprehensive investigation of all elements of the Police operation.

47. It is not the role of the Authority to make a determination on matters of law that have been considered and adjudicated upon by the Courts. Accordingly this report does not address matters which have been traversed in the numerous court hearings.

THE TIMING OF PUBLICATION OF THE AUTHORITY'S REPORT

48. The Authority acknowledges that it is more than five years since Operation Eight terminated on 15 October 2007.

49. The Authority does not publicly report on its independent investigations until it is satisfied that the most thorough investigation has been conducted and all reasonable natural justice processes have been completed.

50. The Authority's work during its investigation phase is an ongoing process which involves different persons at varying times for distinct purposes, such as investigators conducting interviews, analysts compiling assessments of specific data, and lawyers reviewing the applicable law and policies at different stages of the Police operation. This investigation has been much greater in size and complexity than any other investigation conducted by the Authority.

51. In this instance, there were added features as a result of protracted criminal proceedings. For more than five years following initial charges being laid these matters have been before various criminal and appeal courts. At stages there have been suppression orders. The Supreme Court did not release its judgment regarding the applications for leave to appeal against conviction and sentence until 23 April 2013. It has not been possible for the Authority to access all information to be able to finalise its investigation into each complaint until the criminal trials and appeals were completed. This has greatly impacted upon the time taken by the Authority to report publicly.

52. The Authority's initial draft report, as is routine, was subject to the natural justice process. Accordingly, following receipt, consideration and analysis of new information, amendments have occurred prior to finalisation of the Authority's public report.

53. Finally there has been a change of Authority Chair during the latter stages of the investigation. Justice Lowell Goddard was the Chair of the Authority until her term of office expired in April 2012. She then returned to her duties as a sitting High Court Judge. The new Chair, Judge Sir David Carruthers, was appointed in April 2012 and all final decisions were made under his chairmanship.

WERE POLICE INITIAL INVESTIGATIVE ACTIONS REASONABLE AND JUSTIFIED?

54. The Police investigation into the activities of a group of people, who intelligence suggested were involved in military-style camps within the Urewera Ranges, spanned more than 18 months and led to termination of the operation in October 2007. The investigation was co-ordinated by the Special Investigations Group (SIG) within Auckland Metro Crime and Operations Support (AMCOS).

55. During this time Police were gathering information to ascertain if criminal offences were being committed and whether there was sufficient evidence to charge any person(s) involved in such criminal activity.

56. Throughout the investigation Police successively applied to Court for a number of warrants under section 198 of the Summary Proceedings Act 1957. These warrants enabled Police to obtain text messages between those believed to be involved. The information obtained led Police to believe that quasi-military training camps were being conducted in remote campsite locations in the Urewera forest.

57. Police regarded this information in the context of the fact that some of those involved in the group had criminal records (including for assault and firearms offences), some were known political activists, and at least one of the participants had a military background. The information suggested that the group was training for potentially violent action in New Zealand. Police perceived the activities of the group as posing a very real threat to public safety.

58. Subsequently, interception warrants (to intercept private communications) were granted under section 312CA of the Crimes Act 1961 on the basis that serious violent offences (such as use of a firearm during the commission of a crime) were about to be committed.

59. Interception warrants were granted between May and October 2007 under section 312CD of the Crimes Act 1961 on the basis that an offence (*"participating in a terrorist group"*) had been committed, was being committed, or was about to be committed.

60. Throughout this 18-month period, prior to termination of the operation, Police sought and obtained legal advice on the evidence obtained from their investigation to date and whether that evidence would substantiate any charges being laid. Police acted in accordance with the legal advice obtained in that regard. Police did not seek any specific legal advice about the investigative techniques being used as they were using long accepted policing tactics.

61. Applications challenging the lawfulness of certain warrants, and also the admissibility of evidence gained by Police under the auspices of those warrants, were made by those charged with offences. The Supreme Court ruled on those applications as outlined in paragraph 38. It is noted that the Supreme Court ruling held that certain warrants obtained were unlawful and certain evidence gained was inadmissible. New legislation has been enacted by Parliament in the form of the Search and Surveillance Act 2012. Police policy has also been updated and amended to reflect the provisions in the new legislation.

FINDING

Apart from those actions that the Supreme Court has found to be unlawful, Police actions during the initial evidence gathering phase, prior to October 2007, were reasonable. Police were entitled, on the information they had, to view the threat posed as real and potentially serious, necessitating investigation. Police sought legal advice on the evidence obtained and were entitled to rely upon the advice provided.

PLANNING AND PREPARATION FOR TERMINATION

62. Police terminated Operation Eight over a number of days commencing on 15 October 2007. The plan was to execute search warrants in order to search for and obtain further evidence of criminal offending and also to make a number of arrests. In addition, certain individuals were to be interviewed in connection with their knowledge of, or involvement in, activities taking place at the training camps in the Urewera Ranges.

63. This section will address a number of key factors and issues considered by Police leading up to termination of Operation Eight starting on 15 October 2007, namely:

63.1 the number, location and categorisation of targets;

63.2 the final search warrant application dated 10 October 2007;

63.3 the decision to terminate the operation;

63.4 the risk assessment and use of the Special Tactics Group (STG) and the Armed Offenders Squad (AOS);

63.5 the planning and consultation concerning the Police approach in Ruatoki;

63.6 the relevance of an earlier visit by the Right Honourable John Key, the then Leader of the Opposition, to Ruatoki;

63.7 the operation orders and information provided to Police personnel;

63.8 the role envisaged for Police Iwi Liaison officers; and

63.9 the recovery plan.

The number, location and categorisation of targets

64. The information gained by Police during Operation Eight had, by early October 2007, identified 56 target individuals connected to 53 addresses. They were categorised into three groups depending on their level of involvement known to Police:

- **Group One** – those individuals who were to be arrested and jointly charged with unlawful possession of a firearm and unlawful possession of a restricted weapon. The Crown Solicitor was then to assess whether there was sufficient evidence to seek the Solicitor-General's consent for charges to be brought under the Terrorism Suppression Act 2002.

- **Group Two** – those individuals who were to have search warrants executed at their addresses and who would be interviewed about their knowledge of and involvement in matters subject to investigation. An assessment would then be undertaken by Police as to whether they would later be included in Group One and charged with firearms offences.

- **Group Three** – those individuals who would not have search warrants executed at their addresses but would be interviewed as it was believed they had some connection to other individuals in Group One or Two, or knowledge of the matters under investigation that could assist Police.

65. The Authority's analysis of Police documents shows that Police identified 14 Group One targets at 15 addresses, 26 Group Two targets at 23 addresses (one of which was also the address of a Group One target) and 16 Group Three targets at 16 addresses.

66. These individuals were located throughout New Zealand. For example, 14 addresses were in Auckland, six addresses in Wellington, four addresses in Ruatoki, three addresses in Hamilton, two addresses in Christchurch and one address in Gisborne.

67. The substantial number of targets and the multiple locations throughout the country were major features in the planning for the termination of Operation Eight. The termination of the operation involved over 300 Police officers nationwide. This required

significant numbers of officers being briefed in a consistent manner in respect of all necessary information, and being mobilised to commence the termination simultaneously at various locations on 15 October 2007.

The final search warrant application

68. On 10 October 2007 Police applied for search warrants under section 198 of the Summary Proceedings Act 1957 in respect of 41 addresses (relating to 37 individuals), one business entity's address and eight vehicles. The basis of the application was that, from evidence gained and presented to the judicial officer, Police believed on reasonable grounds that a search of the named addresses and vehicles would locate evidence of Participating in a Terrorist Group (an offence under the Terrorism Suppression Act 2002), Unlawful Possession of Firearms and Unlawful Possession of Restricted Weapons (offences under the Arms Act 1983). Police stated they believed the group intended to use military-style semi-automatic firearms and Molotov cocktails to take control of an area of land, *"most probably in the Tūhoe area of New Zealand"*.

69. Police compiled one compendious warrant application numbering 164 pages (excluding appendices) setting out the information gained in respect of each of the 37 individuals to support the basis for the search warrants. In relation to the categorisation of targets (see paragraph 64 above) named in the final search warrant application, 14 of these individuals were assessed by Police as Group One targets and 23 were assessed by Police as Group Two targets. (Three remaining Group Two targets were not included in the final search warrant application because they each resided with a Group Two target already named.)

70. This application was to obtain search warrants which would be executed at termination. There had been a number of applications for warrants over the preceding 18 months. Police have explained that assessment and analysis of information was undertaken as it was received and in each successive application for warrants a careful updated analysis was conducted to establish whether grounds still existed for that individual to be included in a subsequent warrant application.

71. Police have confirmed that individuals were generally initially included in intercept or search warrant applications because they were invited to a camp or they sent or received a text message that indicated knowledge of the training camps. Police have stated that they would then review subsequent data obtained from the intercept or search warrant and where there was no further activity indicating knowledge of what was occurring, and the original information provided insufficient grounds to obtain another warrant, those individuals were removed from subsequent warrant applications.

72. Police policy in 2007, in relation to applying for a search warrant, set out the basic matters that must be included in an application. These included identifying the place to

be searched, setting out the grounds for the application and describing the items sought. It did not provide any further advice or instruction about circumstances such as in this instance, when multiple warrants relating to numerous individuals were included in a single application.

73. Police have to make an application to a judicial officer for a search warrant, but the granting of such a warrant does not mean that the judicial officer has given approval to the specific action or manner in which the search is conducted. It is Police's responsibility to ensure that the actions they take comply with applicable law and policy.

74. The Authority has considered three specific issues relating to the final search warrant application:

74.1 the threshold applied by Police for individuals to be included in the application;

74.2 the structure of the application; and

74.3 the approval and review process.

75. Much of the information in the final search warrant application had been included in previous applications for either search or interception warrants. The Police approach was to update the preceding warrant application by adding any new information.

76. In formulating the final search warrant application Police had to decide who would be included on the basis of the available evidence. The threshold they applied was that *"a person invited to only one camp that did not reply to the message would not meet the threshold of a search warrant application"*.

77. One of the complaints investigated by the Authority raises an issue concerning whether Police had proper evidential grounds to include that individual in the final search warrant application. That individual had not been charged with any offence and thus had not had the opportunity to challenge such matters in court. The Authority has reported separately on this issue to the individual complainant. In this particular instance the Authority concluded that this person's inclusion in the final search warrant application was unjustified, and that Police failed to undertake a thorough and robust ongoing assessment with regard to the evidence available against this person.

78. While the Authority has made a specific finding in relation to this particular complaint, it does not follow that other individuals should not have been included in the final search warrant application, or that Police failed to undertake a thorough and robust assessment concerning such individuals.

79. While the final search warrant application complied in general terms with Police policy, the Authority would have expected the application to be more structured, particularly in

light of the extent of the operation and the number of individuals included. Due to the process Police adopted of building on previous applications the document was unwieldy. By the time the application was prepared, Police had decided which individuals would be in Group One (namely where they had sufficient evidence to arrest and charge those persons), and those who would fall into Group Two (namely where further evidence was sought). Despite this there was no differentiation expressed in the application.

80. The application should have contained clearer specific information relating to each individual's involvement with the suspected offending and set out the evidence available against each individual which led Police to form the belief that the individual had committed a particular offence.

81. In addition the list of items being sought were in some instances so generic (such as "*blue jeans*") that they could be expected to be found at almost any home. As worded, they had no evidential value. Police should have provided more particularity in terms of the items being sought.

82. It was standard Police practice for applications for interception warrants to be reviewed by an inspector and Police Legal Services before the application is submitted to Court. That practice was adhered to in respect of the nine applications for interception warrants made during the investigation.

83. It was not though standard Police practice for an application for a search warrant pursuant to section 198 of the Summary Proceedings Act 1957 (i.e. the final search warrant application in this case) to go through a review and approval process by an inspector or Legal Services.

84. It appears that an informal discussion took place in the days leading up to the search warrants being obtained on 10 October 2007 with the lawyer who had been advising the investigative team throughout, but this did not amount to a review of the application or the evidence which supported the inclusion of those 37 individuals. No records were kept of that discussion. This was a critical stage of the decision-making process. In this particular instance, given the scale and exceptional nature of the operation, and given that all previous nine applications for interception warrants had been submitted to a more rigorous review and approval process, the Authority would have expected a more formal review and approval process to have been undertaken in respect of the final search warrant application.

85. The Authority considers it best practice for Police, during the planning stages of a major operation, to formally record key decisions, such as who was consulted and the factors taken into account.

FINDINGS

The final search warrant application should have been more structured and contained clearer specific information about the evidence available against each individual included in it. There should also have been more specific details about some of the items being searched for. Police's failure in this regard was undesirable.

Police should have undertaken a more formal documented review and approval process in respect of the final search warrant application. Their failure to do so was unreasonable.

The decision to terminate Operation Eight

86. The AMCOS investigation team continued to weigh the threat posed to public safety against the need to obtain sufficient evidence to initiate criminal proceedings. By September 2007, the investigation team had formed the opinion that the operation should be terminated. It organised a meeting with the then Commissioner of Police, Howard Broad, and senior staff at Police National Headquarters. On 27 September 2007 the team provided a situation report and briefing on the proposed termination.

87. The briefing outlined that six training camps had been held between November 2006 and September 2007. More than 60 people had been identified by Police as having either been invited to attend or attended at least one of the training camps. The training camps involved participants using a range of weapons, explosives and Molotov cocktails. Evidence obtained led Police to believe that participants were engaged in ambush exercises, simulating ambushing vehicles, undertaking patrolling drills and engaging in interrogation techniques such as putting a gun to a person's head. The investigation team had intercepted telephone conversations between some participants talking about going to war, using extreme violence and fighting using guerrilla-based tactics. From the nature of the conversations intercepted and activities observed, Police believed that the subjects were developing more concrete intentions.

88. The Commissioner was not involved in the detailed planning of termination but was advised of the evidence obtained and potential charges that would follow. A plan was formulated to terminate the operation as soon as practicable in a way that preserved public safety and ensured that appropriate planning of a large operation could take place.

89. The Authority is satisfied that the Commissioner took a considered approach to the various options available. The Commissioner made the final decision to authorise termination on 10 October 2007. In light of the available information at that time, the legal advice received, and the duty on Police to act not only to enforce the law but also in defence of public safety, the decision by the then Commissioner of Police to authorise termination was reasonable and justified.

FINDING

The then Commissioner of Police's decision on 10 October 2007 to authorise termination of the operation was reasonable and justified.

Risk assessment and use of STG and AOS

90. The Special Tactics Group (STG) comprises full-time members trained to provide a 'tactical capability' in the Police response to incidents. They deal with armed incidents, or other threats, perceived to be beyond the capability of the Armed Offenders Squads.

91. Members of the STG were involved in the evidence gathering phase of Operation Eight.

92. The planning for termination of Operation Eight included the preparation of a tactical *'appreciation'* by the STG. This was in accordance with applicable Police policy at the time in relation to 'Planning and Command'. Policy sets out a series of stages by which Police make an appreciation of an incident or situation, form and implement a plan to deal with it, and then subsequently evaluate that process. The appreciation stage of the process involves a situation being broken down into component parts so that each can be examined in detail, clearly and logically. A written appreciation document should cover four stages of the command planning cycle as follows:

a) define the aim of the operation in a clear, concise and precise manner;

b) collect and analyse the factors relevant to the situation;

c) identify and select courses of action; and

d) document an outline plan.

93. The information which STG relied upon in formulating the plan included the following:

- the targets possessed numerous weapons including *"heavy calibre military style semi-automatic weapons"* and were part of a group actively training in military tactics;
- they had received training in the use of rudimentary explosives and incendiary devices;
- intelligence suggested they were prepared to *"die for their cause"* and use lethal force to achieve their purpose, including sleeping with weapons under their beds to be better prepared for any attack on them;
- the intention of this group was to achieve *"an independent Tūhoe nation within the Urewera area"*;
- the area where the training camps were situated was rural and some distance from comprehensive medical facilities;
- not all attendees at the training camps had been identified by Police;

- intelligence suggested there was an unknown *"local group"* in the area who could pose a threat to Police; and
- the feelings of the community towards the participants in the training camps were largely unknown and thus it was stated that *"the existence of sympathisers and supporters for their cause cannot be discounted"*.

94. The stated STG aim in this plan was to assist with the execution of multiple high risk search warrants during the termination phase of Operation Eight. A detailed consideration of general and specific factors was undertaken in the 'appreciation document'. This included a careful analysis of risks and threats posed at three addresses housing the principal targets identified during the investigation phase. A further address was subsequently included when it was established that one such target may have been residing at one of two locations. These four addresses were in Auckland, Ruatoki and Whakatane. STG were tasked with entering and securing these addresses which were considered to be the highest risk.

95. In addition, certain targets and addresses were identified as requiring discreet assistance from members of the Armed Offenders Squad (AOS). The direction in this regard was to have AOS staff in attendance in plain clothes, wearing body armour and carrying weapons covertly. This would provide specialist assistance against the potential threat to the inquiry team executing the search warrant.

96. The AOS enables Police to provide a response by a specially trained unit to incidents where firearms or other weapons are involved. Their standard approach is to cordon, contain and negotiate during an incident. AOS members are part-time, drawn from all branches of Police, and operate on a call-out basis. They qualify through a national selection and training process.

97. The STG tactical plan also recommended that an *"AOS-supporting road block"* was put in place in Ruatoki while the search warrants were executed and that a separate AOS reserve contingency was positioned nearby to respond if necessary. This aspect will be more fully considered below and in the section concerning the road blocks.

What planning and consultation occurred concerning the Police approach to Ruatoki?

98. The plan prepared by STG recommended that a road block be established in Ruatoki, staffed by AOS officers due to the risks assessed by Police. This approach in Ruatoki was different from other areas of the country. Police have stated they felt this was necessary, particularly due to the fact that they had to search remote training camp locations and did not know what they would discover, their belief that there was an unknown local group in the area who could pose a threat, and the possibility of sympathisers and supporters in the local community.

99. Police state the investigation team did hold briefings and consulted with Bay of Plenty Police management in the weeks leading up to the termination on 15 October 2007. Despite this it appears that there were matters that Police failed to take into account when planning for termination in Ruatoki.

100. There is a long history between Ngai Tūhoe and the Crown. There were ongoing claims before the Waitangi Tribunal[7] regarding land and 'self-government' within Tūhoe tribal boundaries. There are widely and deeply held grievances within Tūhoe against the State which are reflected in past protests and continuing visible symbols of historical sufferings such as the painting of the words *'confiscation line'* on the road to mark a geographical point in Ruatoki which demarcates land remaining in Tūhoe hands from land confiscated by the Crown in the 1860s. This historical and cultural context is a potentially relevant consideration for individuals representing the Crown, such as Police, and should have been more fully taken into account when planning an operation in the area.

101. Such information should have been provided to the investigation team so that this could have assisted Police when planning the approach to termination in Ruatoki and enabled a more detailed assessment of the likely effect of such an approach on the local community.

102. Police have informed the Authority that the existence of the *'confiscation line'* was known to Police and that senior officers within the investigation team were provided with a briefing in relation to cultural issues in the days leading up to termination.

103. Despite this briefing, there was no mention of such cultural or historical issues within the STG planning documents concerning the Police approach in Ruatoki or when giving directions on the establishment of the road block.

104. The significance of the *'confiscation line'* was not communicated to the officer in charge of the road block until the morning of termination. As a result of that information the proposed site of the road block was changed to ensure it was not placed directly on the *'confiscation line'*.

105. Despite Police being aware of cultural and historical issues no assessment was undertaken during the planning stages as to how the community would perceive such a road block established by the Police.

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7 Waitangi Tribunal Te Urewera reports are available on its website – www.waitangi-tribunal.govt.nz

FINDING

Although Police identified significant cultural, historical and pertinent issues, these were not fully addressed or considered when planning for termination in Ruatoki. The failings in this regard were unreasonable.

The relevance of a visit by the Right Honourable John Key to Ruatoki, in respect of termination planning

106. On 2 August 2007 the Right Honourable John Key visited the Owhakatoro Marae in Ruatoki at the invitation of the Western Tūhoe Executive Committee. Mr Key is currently the Prime Minister of New Zealand. At the time of his visit he was the Leader of the Opposition. As is usual in preparation for such visits, Mr Key's staff made contact with the Diplomatic Protection Squad (DPS).

107. The DPS is a specialist unit of Police responsible for providing protection for New Zealand dignitaries and visiting guests of government. Specifically, DPS provides ongoing continual protection to the Prime Minister and Governor-General, while members of the Parliamentary and Judicial executive and leaders of the opposition parties are provided protection on an as-needed basis.

108. The DPS undertakes threat assessments for dignitaries, by identifying and quantifying perceived risks and planning appropriately for security.

109. The DPS conducted such an assessment of any threat that Mr Key might have faced by a visit to Ruatoki in August 2007. This involved considering previous incidents in the local area and liaising with the Police Iwi Liaison Officer in Whakatane to assist in obtaining information from local Tūhoe leaders.

110. The DPS concluded that Mr Key did not require any specific protection from their squad, particularly as he had been invited to attend by local Tūhoe leaders. As Leader of the Opposition he was not seen as a Member of the Crown or State. Mr Key's visit to Owhakatoro Marae took place on 2 August 2007 without incident.

111. During the time these inquiries were being made in July 2007, the Operation Eight investigation team was intercepting communications of key participants in the training camps. The investigation team was aware of the proposed visit by Mr Key and the inquiries being made by the DPS. The intercepted communications regarding Mr Key's anticipated visit did not indicate any specific threat to his safety or support any need to elevate security for him during that visit. The investigation team continued to monitor the situation leading up to that visit.

112. The Operation Eight investigation team did not make any written reference to the visit by Mr Key in the tactical appreciation or operation orders on termination. While the visit

took place approximately two months prior to termination it was not considered by Police to be relevant to the planning of the termination, particularly as Mr Key had not been assessed as being at risk and had in fact been invited to the area by the Western Tūhoe Executive Committee.

113. The Authority considers that the visit by Mr Key is relevant to consideration of the proportionality of the Police's approach to termination of Operation Eight in Ruatoki. Police state they had received intelligence suggesting there was an unknown *"local group"* in the area which could pose a threat. They had not identified all the participants at the training camps. They were aware that participants at the camps were a disparate group, not all Tūhoe and not under the control or influence of Tūhoe leaders. Yet despite this being the situation, the Operation Eight investigation team did not consider it necessary to take any steps to alert DPS so that protection could be afforded to Mr Key during his visit in August 2007.

114. There is an apparent discrepancy between the assessment of risk posed to Mr Key and the one taken by Police some two months later when assessing the risks to Police and the public on termination of Operation Eight and in the specific approach taken in Ruatoki.

115. The Authority recognises that these divergent issues are more easily seen with the benefit of hindsight. The Authority is of the opinion that the fact that Mr Key's visit was incident-free should have been considered as part of Police's tactical appreciation and termination planning. However, given the different circumstances, even if it had been considered it is not likely to have affected the nature of the Police termination.

Operation orders and information provided to Police personnel

116. Police policy clearly sets out the planning and command process that must be followed for major operations such as Operation Eight. This includes preparation of an appreciation document, orders and briefings.

117. The tactical appreciation compiled by STG has already been dealt with at paragraph 92.

118. Police policy, applicable at the time, clearly sets out the correct format that operation orders must follow. Such orders are the directions used by the commander of an operation to convey the plan to those who will execute it, i.e. an order is a direction about how to do something. In this instance the 'Operation Order for Termination of Operation Eight' was prepared by the Operation Commander, the Superintendent in charge of AMCOS. This overarching Order gave directions on how to apprehend, interview and, where appropriate, charge members of the target group with Arms Act and related offences.

119. The overarching 'Operation Order for Termination of Operation Eight' was distributed to relevant parties on 11 October 2007. In accordance with policy this then enabled each of

the key section commanders to prepare detailed Operation Orders for specific groups. In this instance there were three separate Operation Orders for Termination:

119.1 Tactical Group – covering STG and AOS;

119.2 Orders covering the Bay of Plenty area; and

119.3 Orders covering the rest of the country.

120. These Operation Orders follow the set format and comply with applicable policy in that respect.

121. Policy also requires that the first Operation Order compiled should be allocated the number 'one' and then each subsequent version should be numbered consecutively. Also all orders should be signed and uniquely identified with a copy number. The documents provided to the Authority have not all been signed or dated, or have version and copy numbers on them. This has made it difficult to ascertain which document was the final version relied upon by Police. In a major operation it is important for there to be clear document control, particularly when orders are being amended and updated, to ensure that Police are all working from the same orders.

122. These orders form the basis of briefings provided to staff. They contain the detailed information required to implement termination. This includes:

- information gained by Police;
- details of the targets;
- Police personnel to be used and their specific roles;
- execution of the termination in terms of the manner of approach to initiate arrests and execute the search warrants;
- practical details such as timing and routes;
- procedure for dealing with exhibits;
- use of firearms by Police;
- dress and equipment;
- accommodation; and
- command structure.

123. As previously discussed, the termination of Operation Eight involved more than 300 Police staff and required significant planning. The Operation Commander was based in Auckland which was the headquarters for the operation. In addition there were two regional headquarters in Rotorua and Wellington, where regional investigation coordinators were based to ensure a consistent approach during termination and provide regular reports to the operation headquarters in Auckland. Although certain key staff were briefed prior to the day of termination, the majority of staff were briefed about their roles and duties early on the morning of 15 October 2007. The Authority notes from

its review of individual officers' notebooks that these briefings were detailed and covered the information contained in the Operation Orders.

124. A detailed folder was prepared providing all necessary information for each team dealing with a particular address such as:

- a profile of the individual targets expected at the address and their categorisation;
- a profile of the address including route to the address and details of known, identified occupants;
- a report for the Officer in charge of interviews detailing relevant matters;
- details of the evidence obtained to date;
- a copy of the search warrant;
- details of the procedure to be followed for exhibit seizure and handling; and
- relevant forms that would be required.

125. The Operation Orders also contained a schedule setting out the style of approach to be used at each address which was determined following a risk assessment. Some premises (22 addresses) were assessed as low risk where the approach would be through a normal inquiry team 'door-knock'. Most premises (26 addresses) were assessed as medium risk which meant they would be first cleared by AOS members (or a blend of inquiry staff with a discreet AOS presence), and the highest-risk premises (four addresses) would be first 'cleared' by STG staff.

126. Finally, the Operation Orders also contained a list of priorities setting out the order in which districts should deal with target individuals and addresses. This was influenced by the resources in a particular area and the number of target individuals and addresses that each district had to deal with. For example, Auckland had the resources to be able to deal with all individuals and addresses on 15 October 2007, whereas it took Police in Rotorua two days to deal with their priority one target individuals and addresses before being able to move on to lesser priority targets.

127. Police were reminded to act professionally at all times and this direction was explicitly recorded in the Operation Orders.

FINDING

The Operation Eight Termination Orders were comprehensive, detailed and largely complied with applicable policy.

What role was envisaged for Police Iwi Liaison Officers?

128. Police established an internal infrastructure comprising a National Manager and a network of District Iwi Liaison officers in the 1990s as part of a comprehensive Māori Responsiveness Strategy. The purpose of this infrastructure was to:

- advise on, co-ordinate and contribute to the Police Māori Responsiveness Strategy;
- establish and maintain effective partnerships between Police, iwi and hapū;
- advise Police officers on appropriate Māori custom and protocol;
- facilitate the inclusion of Māori perspectives into Police strategic and operational planning;
- develop and implement district Māori Responsiveness Plans; and
- advise the Police Commissioner on performance under those plans.

129. Police currently have 42 Iwi Liaison officers in addition to a National Manager: Māori & Pacific Ethnic Services. The National Manager has advised the Authority that the six key functions of Iwi Liaison officers are providing:

129.1 advice on cultural issues;

129.2 advice, guidance and support on developing relationships;

129.3 advice and assistance on working with Māori and Pacific on investigations and intelligence collection;

129.4 advice on problem solving;

129.5 advice on managing politically sensitive issues that have a national or regional impact; and

129.6 leadership on special operations having a national impact.

130. Operation Eight was a Police investigation into possible criminal offending. The target individuals were a disparate group comprising Māori and Pākehā who resided throughout the country. The termination of Operation Eight involved recovering evidence from individuals in order to link them to the training camps, which had been taking place at four-to-six weekly intervals, and to support criminal charges.

131. The Termination Operation Orders set out the tasks for all officers involved. In respect of Iwi Liaison officers the tasks were recorded as follows:

- Maintain contact with local iwi and hāpu to identify and report any potential issues or conflicts which arise.
- Establish dialogue with the leaders of the community and clearly convey the Police statement of intent to the group.
- Maintain communication with the forward commander and remain available for taskings.

132. There is ambiguity around when these tasks were to commence and whether there was a role for Iwi Liaison officers on the day of termination. The overarching 'Operation Order for Termination' prepared by the Operation Commander on 11 October 2007 refers only

to briefing the Iwi Liaison Group after termination and defining their roles in relation to providing assistance with the recovery plan.

133. The Authority has received complaints and accounts from individuals and organisations expressing concern that the local Iwi Liaison officers were not included in the planning or termination of Operation Eight. Some expressed to the Authority feelings of hurt and anger that local Iwi Liaison officers had not been trusted or involved, and yet were subsequently asked and expected to assist with the recovery plan.

134. The Special Investigations Group within AMCOS did not have any Iwi Liaison officers and there was no consultation with the local Iwi Liaison officers in the Bay of Plenty during the planning stages for termination. Police took the view that an attempt to bring the activities to an end through the involvement of Iwi Liaison officers acting in collaboration with local kaumātua would have been unlikely to succeed, and was of such high risk as to be unacceptable. Significantly for Police, the group being investigated was not wholly comprised of Tūhoe or controlled by Tūhoe leadership.

135. The Authority is satisfied that Police did carefully consider what role should be carried out by Iwi Liaison officers in the termination of Operation Eight. Police did not want to compromise the standing of Iwi Liaison officers within the community, or damage established and trusted relationships.

136. In light of the general role and functions of Iwi Liaison officers, and safety fears, the Special Investigations Group did not consider it appropriate to include Iwi Liaison officers in the teams executing the search warrants at addresses in Ruatoki.

137. Iwi Liaison officers did play an important role in the recovery plan. The Authority is aware from its investigation that Iwi Liaison officers were briefed early on the day of termination and were involved with the local community that morning.

138. In February 2008 there was a second phase in the termination of Operation Eight. The plan was to apprehend, interview and, where appropriate, charge three individuals with Arms Act offences as a result of further evidence which had been obtained. Two of those individuals lived in Ruatoki and the plan was for those two individuals to be approached by local Iwi Liaison officers and arrangements made for them to be taken to a Police station for interview.

FINDING

Given Police's assessment that there was a high level of risk to public and Police safety, and the decision to use Iwi Liaison officers post termination in the recovery plan, it was reasonable for Police not to involve Iwi Liaison officers in the execution of search warrants, or arrest of target individuals, at properties in Ruatoki on 15 October 2007.

The recovery plan

139. The Termination Operation Orders for Bay of Plenty refer to an extensive recovery plan that would be required after termination. Police officers were directed to consider the ramifications of the nature of the operation on community-Police relations and ensure that it was undertaken in a thoroughly professional manner.

140. A recovery plan should be conciliatory in nature. The recovery plan for Operation Eight was stated to be aimed at explaining the reasons for Police actions, taking the opportunity to gain additional information and possible evidence from members of the community, and minimising damage to relationships between Police and the community. The Authority would have expected Police, during the planning stages, to have undertaken an assessment of the likely impact on the community from their operation. This would have assisted in formulating the recovery plan.

141. An important part of the recovery plan should have considered coordination of communications, and included a strategy for engaging with media on the day. However, there were difficulties in this regard that exacerbated tensions between Police and the local community in Ruatoki.

142. The headquarters for the operation was in Auckland. All media enquiries were being dealt with at Police National Headquarters (PNHQ) in Wellington. There were some issues about communication due to different communications systems being used by some groups. STG and AOS used a secure radio channel while general duties staff used non-secure general channels. The rugged terrain in Ruatoki limited cell phone coverage. The geographic distance of the headquarters group in Auckland from the regional headquarters and particularly the forward command in the Bay of Plenty slowed the immediacy of instructions and fluidity of communication.

143. Throughout the day on 15 October 2007 media commentary escalated as the Police operation unfolded. Inquiries were dealt with by Police media personnel at PNHQ. These personnel were not in a position to actively search for and obtain information to address developing issues in a timely manner. This was demonstrated by their inability to obtain information for a number of hours about whether AOS officers had stopped and searched a kōhanga reo bus full of young children in Ruatoki. (This matter is dealt with in detail in the road blocks section at paragraph 227 below.)

144. Another key component of the recovery plan was Police's engagement with the community from the outset. Shortly before 8.00am on the day of termination, Iwi Liaison officers were in Ruatoki liaising with the community, making inquiries and assisting with the recovery plan. Police also purport to have engaged with members of the Ruatoki community by conducting an area canvass immediately after termination. A standard questionnaire was prepared for officers to use and note down the replies. People were advised that Police had been investigating a group that had been training with firearms

and explosives and whose actions were believed to be unlawful. They were advised that the majority of the training had occurred within the Ruatoki valley area. Individuals were asked:

- how long they had lived in Ruatoki;
- whether they had any knowledge of the training occurring;
- whether they had heard periods of gunfire or explosions in the bush or river bank area in Ruatoki;
- whether they had any knowledge of a group within the Ruatoki area wanting to be involved in an armed uprising and if so what their knowledge was of the group's activity;
- whether they knew who was involved in the training;
- how long they had been aware that the training had been going on;
- whether they had had any involvement with the group;
- whether they had been approached by anyone to take part in any training involving military type activities using firearms or explosives of any type; and
- if so, who had approached them and when that occurred.

145. From the Authority's analysis of the questionnaires completed it appears that between 15 October 2007 and 17 October 2007 Police visited 129 addresses in Ruatoki. Nobody was present at 17 of those addresses. The majority of people were not able to provide Police with any relevant information. One person explained to the Authority that they felt the questions were weighted and carried a heavy bias.

146. The Authority is of the opinion that the area canvass should more properly be considered as an evidence-gathering exercise rather than part of any recovery plan aimed at mitigating damage to relationships between Police and the community.

147. Another feature of the recovery plan was ongoing discussion by Police management with staff including the Iwi Liaison network and the Māori Focus Forum. The forum is a group of iwi leaders appointed by the Commissioner of Police to provide strategic guidance and advice to Police on Māori responsiveness.

148. In the days and months following the termination of Operation Eight the Commissioner of Police was actively involved in meetings and discussions with senior kaumātua and Police staff concerning the Police handling of the termination.

FINDINGS

The recovery plan was deficient in that it was primarily aimed at gathering evidence rather than mitigating damage to Police and community relationships. It would have been desirable for Police, during the planning stages, to have undertaken an assessment of their operation's likely impact on the community to assist in formulating the recovery plan.

Difficulties in internal communications within Police led to delays in responding to media requests. This exacerbated tensions between Police and the local community which was undesirable.

HOW DID THE ROAD BLOCKS IMPACT ON THE COMMUNITY?

149. The Authority has received complaints or accounts from 36 people affected by the establishment of the road blocks on 15 October 2007. These related to:

- the location of the road block on the *'confiscation line'* in Ruatoki displaying insensitivity to Tūhoe;
- stopping and searching vehicles;
- searching individuals;
- the nature of the details requested;
- photographing drivers and occupants (including with identifying numbers) and without consent;
- the use of armed AOS in *'black role'* and the impact this had, particularly on vulnerable people;
- stopping kōhanga reo buses;
- the inconsistency in explanation and information provided by Police;
- the lack of choice, i.e. people feeling they had to comply with Police requests and instructions due to Police being armed; and
- the proportionality of the road block given that it affected the whole community.

RATIONALE AND PURPOSE OF A ROAD BLOCK

150. The plan recommended by STG included establishing a road block in Ruatoki at an identified point where AOS could stop and search vehicles leaving the area for illicit firearms and offensive weapons. AOS would also prevent any vehicles coming into Ruatoki until it was deemed safe for vehicles to enter.

151. Police policy at the time defined a road block as *"any form of barrier or obstruction preventing or limiting the passage of vehicles."*

152. The rationale provided by Police for establishing this road block was two-fold:

152.1 to ensure targets did not escape the area of operations; and

152.2 to ensure others did not enter the area and be placed in danger.

153. In effect, the purpose of the road block was to restrict all vehicle access into Ruatoki until the area was deemed secure by Police, and to prevent the escape of targets or movement of firearms. The Operation Orders covering the Bay of Plenty area directed that the road block be maintained until all Police activity in the area had been completed.

154. The Tactical Group's Operation Orders tasked the AOS Officer in charge of the road block to undertake the following:

- establish an AOS road block at the southern intersection of Reid and Awahou Roads, Ruatoki Valley at 0600 hours (pursuant to section 342A of the Local Government Act 1974);
- maintain that road block throughout the day and until stood down by the STG Tactical Commander;
- stop and search vehicles leaving the Ruatoki Valley for illicit firearms and offensive weapons and seize the same (pursuant to section 202B of the Crimes Act 1961);
- assist with the lawful arrest of any identified offenders passing through the road block;
- prevent members of the public entering the valley through the road block until instructed otherwise by the STG Tactical Commander;
- maintain a log of all vehicles passing through the road block and occupants within; and
- wear standard *'black role'* kit.

155. Although the Tactical Group's Operation Orders refer to the establishment of only one road block, in fact two separate road blocks were established at approximately 6.00am on 15 October 2007:

155.1 The Ruatoki road block was approximately 50-100 metres south of the intersection of Reid Road and Awahou Road, Ruatoki. This was staffed by eight AOS officers in accordance with the directions given at paragraph 154 above. All vehicles travelling out of Ruatoki were stopped and searched, and details taken of the drivers and occupants. No vehicles travelling into Ruatoki were allowed to pass without authorisation from the Tactical Commander.

155.2 The Taneatua road block was set up in Taneatua on the corner of SH2 and Reid Road (intersection of Reid Road, Tuhoe Street and McKenzie Street). This was staffed by three or four uniformed officers. This was in effect a road closure. Police cars and officers were positioned to ensure vehicles attempting to travel towards Ruatoki were not allowed to continue, but were stopped and turned around. No vehicles were searched at this road block. No details were taken from the drivers and occupants.

156. While eight AOS members were tasked with staffing the Ruatoki road block, another eight AOS members were also present, forming a mobile ready response, awaiting deployment. They are likely to have been visible to members of the public for some time.

157. These road blocks continued until 11.02am when they were initially lifted. However, at 11.12am the road blocks were again established due to information received that some firearms were potentially being moved and needed to be located and intercepted. The Ruatoki road block was finally removed at 1.05pm. It is unclear when the Taneatua road block was cleared.

158. The maps at Appendix A show the locations of these road blocks.

WAS THE INITIAL ESTABLISHMENT OF THE ROAD BLOCKS LAWFUL AND JUSTIFIED?

159. Section 342A of the Local Government Act 1974 was in force in 2007. It allowed Police (specifically the senior member of Police for the time being in charge at any place) to temporarily close a road where there was reasonable cause to believe that:

- public disorder existed or was imminent at or adjacent to that place; or
- danger to any member of the public existed or may reasonably have been expected at or adjacent to that place; or
- an indictable offence had been committed or discovered at or adjacent to that place.

160. Police policy at the time directed that these powers should be invoked only in appropriate circumstances and that the legislation was intended to cover such emergency situations as:

- unlawful assemblies, gang confrontations and serious public disorder;
- armed offenders incidents, IED (Improvised Explosive Device) reports and dangerous goods accidents such as LPG or petrol spills; and
- crimes such as homicide, aggravated robbery and rape.

161. Under the legislation, a road block could only be maintained for such a period as is reasonably necessary. This required an ongoing assessment as to whether the road needed to remain closed, balancing any danger to the public against the inconvenience and disruption caused by the road closure. Section 342A of the Local Government Act 1974 required such an ongoing assessment to be undertaken by the person *"for the time being in charge of"* the place to which the road block related. Additionally, this assessment was necessary to give effect to the public's right under section 18(1) of the New Zealand Bill of Rights Act 1990 to move freely in and around New Zealand.

The Ruatoki road block

162. The purpose of the Ruatoki road block set out at paragraph 153 above was to ensure targets did not escape the area of operations, and to ensure others did not enter the

area, placing them in possible danger. The STG Tactical Commander has advised the Authority that in formulating his plan, and specifically the need for a road block, he considered the safety of Police staff, the safety of the public and the potential threat within the area of operations from unidentified members of a *"local group"* that were believed to be in that area. The decision to establish the road block was taken prior to 15 October 2007.

163. At termination, Police had to execute search warrants at three properties in Ruatoki. In addition Police had to search the area where the training camps had taken place. Cordons were placed around only one address in Ruatoki, as the risk assessments conducted did not indicate there was a high risk to Police at the other two addresses.

164. The Authority's investigation has found that no Police officer on 15 October 2007 considered the requirements of section 342A of the Local Government Act 1974, decided that these were met, and then implemented the road block. While the STG Tactical Commander made a prior assessment and determined that a road block was required, there is no evidence that an ongoing assessment of the need for the road block was made by those in the area on that day. This was essential for Police to demonstrate that there was reasonable cause to believe one of the necessary circumstances was met to temporarily close the road.

165. In any event, the Authority is satisfied that the justification provided for the establishment of a road block in Ruatoki does not meet the criteria set out in the Local Government Act 1974:

- There was no public disorder, nor was there evidence to suggest it would be imminent.
- Any danger to the public arising directly from the execution of the search warrants had been assessed and only one property in Ruatoki was judged to be high risk. A cordon was established around that property until it was made safe. In any event that property was not at or adjacent to the location of the road block.
- No indictable offence had been committed or discovered adjacent to the location of the road block.

166. Police maintain that the establishment of the road block to prevent vehicles entering Ruatoki was lawful and reasonable both because they were dealing with a volatile group who were known to possess a variety of firearms and because they had some evidence of an unknown group of sympathisers in the area. They suggest that the requirement that the danger be at or *"adjacent to"* the place must be given a broad meaning and considered in the context of the type of danger presented.

167. While the Authority has not been able to locate any reported Court decisions on the ambit of the section 342A power, it acknowledges that the words *"adjacent to"* merely require that the danger be in the proximity of the area of the road block and that this

should not be construed too narrowly. But the Authority has found insufficient evidence of any danger that would have justified the road block, even if the words *"adjacent to"* are interpreted to include the whole valley.

168. In relation to the targets of the searches, it has already been noted that Police perceived the need to place a cordon around only one of the properties being searched in the locality. If a general threat from those being searched had materialised, the establishment of a road block might have been justified at that point, and some planning for that eventuality might have been expected. However, the creation of a road block as a pre-emptive measure before a danger had emerged was contrary to law.

169. In relation to the possibility that there was an unknown group of sympathisers who might react to the fact that searches were taking place and pose a danger to the public, this was highly speculative and devoid of any real evidence. Again, the creation of a road block in case a danger emerged was contrary to law.

170. There was therefore no lawful basis or justification for establishing the Ruatoki road block at 6.00am on 15 October 2007.

FINDING

Police actions in establishing and maintaining the Ruatoki road block were contrary to law, unjustified and unreasonable.

The Taneatua road block

171. The Taneatua road block is not referred to in any of the Operation Eight termination orders or STG planning documents. Despite the Authority's inquiries, it remains unclear who made the decision to temporarily close that road, when that decision was made and the reason for it.

172. One officer has indicated to the Authority that this was a *"courtesy road block"* and the purpose was to inform people that they would be turned around at a road block further down the road, i.e. at the Ruatoki road block. Accordingly, people were being advised there was little point in going any further. Police have described this as a *"public early warning"*.

173. The stopping of vehicles at Taneatua merely to provide an early warning of the existence of a road block ahead may have been justifiable under the Land Transport Act 1998, if the Ruatoki road block itself had been legal. However, the Authority has found that it was not. Moreover, the evidence is that those stopped at the Taneatua road block were not merely advised of the existence of a road block ahead; they were invariably stopped and turned back. In reality, therefore, it was clearly a road block. While the decision taken by Police to close the road at Taneatua was pragmatic, there was no legal basis under the

Local Government Act 1974 for the establishment of such a road block, since there was no evidence of any danger at or adjacent to it.

174. Police could have achieved their objective by placing officers at the intersection of Reid Road, Tuhoe Street and McKenzie Street in Taneatua to advise the public of the existence of the Ruatoki road block without closing the road. There was no lawful basis for Police stopping vehicles and preventing people from proceeding along the road.

FINDING

Police actions in establishing and maintaining the Taneatua road block were contrary to law, unjustified and unreasonable.

175. The Authority has examined all of the Police actions when planning for and conducting the road blocks. Despite the above findings that Police had no legal basis or justification for establishing the road blocks, the Authority believes it is appropriate to report its conclusions following its investigation into issues raised by those affected by the road blocks. These are discussed in the sections below.

DID POLICE PLAN ADEQUATELY FOR THE ROAD BLOCKS?

Location of the Ruatoki road block

176. The Ruatoki road block had been intended to be established at the intersection of Reid Road and Awahou Road. This is the site of the *'confiscation line'* which, as previously outlined, demarcates land remaining in Tūhoe hands from land confiscated by the Crown in the 1860s. The term *'confiscation line'* is painted on the road at that intersection. The *'confiscation line'* is a tangible symbol for Tūhoe and culturally significant to the community.

177. On the morning of 15 October 2007 the Officer in charge of the Ruatoki road block was advised of the existence of the *'confiscation line'*. Having been made aware of the sensitivities and cultural importance, he (with the approval of his commanding officer) relocated the road block some 50-100 metres south of the intersection. It was therefore not placed at the intersection where the words *'confiscation line'* are painted.

178. The Authority notes that people approaching the road block from Ruatoki still associated that area with the *'confiscation line'* and those approaching from Taneatua had already passed the intersection where the *'confiscation line'* was marked when they encountered the road block.

179. The Authority nevertheless accepts that, if there had been a danger to travelling members of the public, the proposed location of the road block at the intersection of Reid

Road and Awahou Road was the most appropriate strategic position. The Authority has already addressed, at paragraph 105 above, that Police failed to sufficiently consider cultural and historical issues when planning for termination in Ruatoki. However, it is likely that, even if such matters had been fully considered, Police would have felt that safety and strategic issues overrode such considerations when determining the location of the Ruatoki road block.

The format of the Ruatoki road block

180. The Officer in charge of the Ruatoki road block received a briefing on 13 October 2007 in advance of termination, and he formulated a plan regarding the road block prior to the termination date. This plan was approved by his immediate superior. In formulating the plan, the Officer in charge considered the safety of officers, drivers, occupants and vehicles (both entering and while being stopped inside the road block), and the need to ensure there were efficient processes to allow for a consistent flow of traffic. Tasks for AOS officers were rotated throughout the day:

180.1 Forward and rear security (with primary and secondary weapons[8]) – to slow vehicles down as they approached and inform drivers of the legal authority and reasons for the road block. This also created an inner cordon in accordance with Police policy.

180.2 Searchers (with secondary weapons) – to search vehicles that had entered the road block and seize any exhibits located.

180.3 Cover person (with primary and secondary weapons) – to deal with any threat and provide security for searchers and intelligence gatherers.

180.4 Intelligence gatherers (with secondary weapons) – to obtain details of drivers, occupants and vehicles.

180.5 Spare (with primary and secondary weapons) – to assist where required within the road block.

181. Template forms were prepared prior to termination day, to record the details of vehicles and persons stopped. Fifty forms were made available on 15 October 2007.

182. STG did undertake some strategic planning in respect of the road block, most notably the geography of the area and the best tactical location for the road block. However this planning did not include any assessment of the impact a road block would have on the

8 Primary weapons involved carrying rifles and secondary weapons meant holstered pistols.

Ruatoki community. No information was gathered about the expected traffic flow at that time of day on a Monday morning and there was no consultation with local Police about the community demographics or the anticipated impact of the establishment of a road block. These issues have already been considered in the section on *'Planning and Preparation for Termination'* at paragraph 98 above.

183. The AOS officers staffing the Ruatoki road block recorded that they were surprised at the volume of traffic. Indeed they made a request at 7.41am for further forms to be provided.

FINDING
Police failed to adequately plan for the Ruatoki road block. Police did not ascertain the likely volume of traffic at the time of termination. Police failed to assess or consider the impact the road block would have on the local community. Police's failures in this regard were unreasonable.

The Taneatua road block

184. Despite making extensive inquiries, the Authority found no evidence of planning by Police in respect of the Taneatua road block.

185. Police did not stop or search vehicles at that road block; rather vehicles were prevented from continuing down the road into Ruatoki. No records were kept by Police of the numbers of vehicles that were turned back.

186. Police gave no consideration to the impact on the community of establishing this road block.

FINDING
Police failed to plan at all for the Taneatua road block. This lack of planning was unreasonable.

DID POLICE HAVE A LEGAL BASIS AND JUSTIFICATION TO STOP AND SEARCH VEHICLES?

187. The directions provided to the Officer in charge of the Ruatoki road block included stopping and searching vehicles leaving Ruatoki for firearms and offensive weapons and seizing any that were discovered. The power was purportedly exercised pursuant to section 202B of the Crimes Act 1961. This allowed any constable to stop and search a person or a vehicle without a warrant if he or she had reasonable grounds for believing that the vehicle contains a knife, offensive weapon or disabling substance.

188. Any member of Police using this power of warrantless search was required to identify themselves as a member of Police, tell the driver that he or she was being stopped under section 202B of the Crimes Act 1961, and explain the authority to search contained in that section.

189. Police policy, applicable at the time, provided that if a constable believed, on reasonable grounds, that a person had with him or her any knife, offensive weapon or disabling substance in a public place without lawful or reasonable excuse, the constable could without warrant:

- stop the suspect, or the car the person was travelling in or had alighted from; and
- search the suspect, vehicle and any package or receptacle in the person's possession; and
- detain the person and/or vehicle as long as necessary for the purpose of the search; and
- seize any knife, offensive weapon or disabling substance found.

190. Policy clearly stated it was not sufficient for a constable to have a **suspicion**. A constable needed to have reasonable grounds for **believing** that the person had an offensive weapon.

191. Police are unable to clarify the number of vehicles that were stopped and searched on 15 October 2007. Police have advised the Authority that the purpose of the road block was not to obtain a definitive count of the number of vehicles stopped. Police also accept that stopping and searching all vehicles at the road block as they were leaving Ruatoki was not in accordance with the law.

192. The Authority's investigation, from reviewing the Police records, has ascertained that between 6.00am and 1.05pm:

- Police record conducting 131 stops.
- 172 people are recorded as being stopped by Police (this includes drivers and passengers).
- Two individuals are recorded as being stopped twice in the same vehicle.
- One individual is recorded as being stopped twice in two different vehicles.
- One of the vehicles is recorded as being driven by two different individuals.

193. Therefore Police records show that 169 people in 128 vehicles were stopped and searched by the AOS team at the Ruatoki road block. The searches involved people being asked to alight from their vehicles while the vehicles were searched, including glove boxes and any bags in the vehicle. The vehicles' boots and bonnets were searched and a mirrored wand was used to examine underneath the vehicles.

194. Instructions were given to stop and search vehicles for firearms and offensive weapons. The STG Tactical Commander has confirmed that he expected the road block team to

undertake individual assessments of the vehicles and individuals approaching the road block to ensure the officers acted in accordance with the provisions of section 202B of the Crimes Act 1961. He did not anticipate that every vehicle would or should be stopped and searched.

195. It is clear that the Officer in charge of the Ruatoki road block interpreted the instruction as requiring all vehicles leaving Ruatoki to be stopped and searched. This impacted on people going to work, taking their children to school, or otherwise going about their daily business. Police have not recorded any reason for believing any of these vehicles stopped would contain weapons.

196. AOS officers at the road block adopted a general approach of stopping and searching all vehicles. The officers who stopped the vehicles and conducted the searches did not record the basis or justification for exercising this power in respect of any vehicle. As outlined, Police have acknowledged to the Authority that they had no legal grounds for stopping and searching all vehicles at the road block.

197. The Ruatoki road block was removed at 11.02am and re-established at 11.12am due to information received about the movement of firearms. The identity of the individual and make, model and registration number of the vehicle believed to be moving firearms was known to Police, and indeed this person and vehicle was located by Police at a separate location in Ruatoki at 11.55am. As a result there was no legal basis or justification for Police to stop and search other makes of vehicles from 11.12am until the road block was finally cleared at 1.05pm.

FINDING

Police did not have reasonable grounds to stop and search vehicles at the Ruatoki road block. Police actions in this regard were contrary to law, unjustified and unreasonable.

DID POLICE HAVE A LEGAL BASIS AND JUSTIFICATION TO OBTAIN PERSONAL DETAILS?

198. The directions provided to the Officer in charge of the Ruatoki road block included maintaining a log of all vehicles passing through the road block and occupants in those vehicles. No further instruction was provided regarding the nature of information to be recorded in the log. The STG Tactical Commander has confirmed to the Authority that he would have expected this log to contain details of the vehicles and registration numbers.

199. The forms prepared for use at the road block included provision for the following:

- date
- location
- time

- details of the vehicle (make, model, registration and colour)
- details of the driver (name, address, date of birth, occupation and *"Photo: Yes/No"*)
- details of any passenger (name, address, date of birth, occupation and *"Photo: Yes/No"*)

200. If Police stopped a vehicle, the provision of the Crimes Act 1961, applicable at the time, empowered them to require any person in or on the vehicle to state his or her name, address, and date of birth, or such of those particulars as the member of Police may specify. This provision did not extend to details of a person's occupation.

201. The Authority has found that Police acted contrary to law in stopping the vehicles and, consequently, Police had no legal basis for exercising the incidental power to obtain details from persons in those vehicles.

202. The Authority accepts that individuals can voluntarily provide information to Police. However, the accounts given to the Authority indicate that Police words and actions made people feel that they were obliged to comply with requests and instructions to provide details to AOS officers at the road block. In some instances individuals indicated that the presence of AOS officers with guns and dressed in standard *'black role'* was intimidating and they did not feel they had any choice.

FINDING

Given that Police had no legal basis for stopping the vehicles at the Ruatoki road block, Police also had no legal basis or justification for obtaining details of people in those vehicles. Police actions in obtaining personal details were contrary to law, unjustified and unreasonable.

DID POLICE HAVE A LEGAL BASIS AND JUSTIFICATION TO TAKE PHOTOGRAPHS?

203. Section 57(1) of the Police Act 1958 applied at the time of termination. This provided Police the power to take particulars of a person who was *"in lawful custody on a charge of having committed an offence"*. The particulars included a photograph. This provision did not apply to this circumstance, as none of the people stopped at the road block had been charged with an offence.

204. Arguably Police may have a residual power to take photographs as part of their mandate to keep the peace and to uphold the law, as has been recognised in a number of other jurisdictions. This common law power to photograph citizens is, however, subject to strict limits. In particular, photographs can only be taken by Police for proper law enforcement purposes, such as the prevention and detection of crime, the investigation of alleged offences and the apprehension of suspects or persons unlawfully at large.

205. The Authority has found that Police acted contrary to law in establishing the road block and stopping and searching the vehicles.

206. The people stopped at the Ruatoki road block were using the public highway; they were not suspects, targets of the investigation, people named in search warrants or otherwise involved in the matters comprised within Operation Eight. These people were being unlawfully detained by Police at the time that the photographs were taken.

207. Even if Police had established the road block in accordance with the law, the Authority would still have concerns about photographs taken in these instances.

208. Many people stopped at the Ruatoki road block have explained to the Authority that they were instructed by Police to stand in front of their vehicle's number plate and photographed. Some have also explained that they were instructed to hold up a piece of paper with a number written on it while photographed. Many found this degrading. Some indicated that drivers and passengers, including children in some instances, were required to be photographed, while in other instances it appears this related only to drivers.

209. People felt compelled to comply with Police's instructions. One person advised the Authority that she specifically refused consent for a photograph, but believes Police nevertheless took it. Police did not ask anyone to confirm in writing that they consented, nor did they provide any explanation as to what would happen to the photograph.

210. The Privacy Act 1993 governs the way in which Police collect, use and disclose personal information about identifiable individuals. The taking of photographs is a collection of personal information. Accordingly, Police must ensure that their actions comply with the relevant privacy principles.

211. Privacy Principle 1 states that personal information shall not be collected unless the information, connected with a function or activity of the agency (in this instance Police), is collected for a lawful purpose, and necessary for that purpose.

212. Privacy Principle 3 requires that Police, when photographing an individual, take reasonable steps to ensure that the individual is aware of the fact that the photograph is being taken, the purpose for which their photograph is being taken, who will receive and hold the photograph, the legal basis on which Police have taken the photograph, and the individual's rights of access and where the photograph will be held.

213. The Authority's analysis of the forms and notebook entries shows that Police recorded that photographs were taken of 66 drivers and 15 passengers. Only one form has a recording of no photograph; this section on the rest of the forms is simply not completed or there is no record in the notebook entries as to whether a photograph was taken or not. In some of those cases where the photograph section is not completed, those

individuals have confirmed to the Authority that their photograph was in fact taken. The photographs were not retained by Police. Accordingly it is impossible to ascertain how many of the 128 drivers or 41 passengers were in fact photographed by Police.

214. Police have explained that initially they were not photographing people stopped at the Ruatoki road block but within the first hour, and definitely by 8.30am, they had set up the process of photographing the occupants by their vehicle where the number plate, vehicle and occupant could be identified.

215. The Officer in charge of the road block states this was due to the fact that they had been surprised at the volume of traffic they were encountering and they believed this would speed up the process. He has been consistent in his explanation since the time of termination. He also states that photographs were taken only by consent. The Officer in charge of the road block has advised that it is not standard operating practice to take photographs of the occupants of vehicles stopped at road blocks.

216. The Authority's analysis of Police documents shows that the first record on a form of a photograph being taken is of a driver stopped at 6.36am. The pre-prepared forms contained a section to record whether a photograph was taken of drivers and passengers.

217. The Authority has received an account from an individual stopped at 6.24am who states she was photographed. However, the section of the Police form in respect of this individual is not completed.

218. The explanation for photographing people provided by the Officer in charge of the road block, namely that it was due to the volume of traffic, is difficult to understand. Since Police continued to take details of names and vehicle registrations, photographing could have done nothing to alleviate traffic delays. In any event, the explanation is not consistent with the fact that photographing started by at least 6.36am, just over half an hour after the road block was established. According to the Authority's analysis of Police records this was only the seventh vehicle stopped.

219. A different reason for taking photographs has been provided to the Authority by the AOS Commander, namely that the photographs were authorised as an intelligence source for the investigation, to assist Police in identifying individuals if required during the ongoing investigation. The Authority notes that in accordance with Privacy Principle 1 this may be a necessary and justified reason for Police taking photographs. However, this would still not justify the taking of photographs following an unlawful detention, as occurred in this instance. Nor would it provide a justification for photographing every person stopped at a road block.

220. If photographs were taken as an intelligence source, the Authority would have expected this to feature in the planning for the road block and be recorded in the instructions to

the road block staff. However, none of the Termination Operation Orders makes reference to photographing drivers or occupants of vehicles stopped at the road blocks. The STG Tactical Commander has confirmed that photographing individuals did not form part of planning for the road block and was not discussed prior to the day of termination. In addition none of the briefings provided to officers mentions the need to photograph those stopped at the road block for intelligence purposes.

221. It is clear that armed AOS officers instructed people to get out of their cars, stand by their number plates and be photographed. It is equally clear that people felt compelled to comply and accordingly did so.

222. The Termination Operation Orders did not include a plan to take the photographs of individuals stopped at the Ruatoki road block on 15 October 2007, or set out a necessity or purpose for such action. This decision was taken locally and there was no proper consideration by those in charge of the termination of Operation Eight of the legal basis, justification or necessity for such photographs. Police did not comply with Privacy Principles 1 or 3 when taking those photographs.

FINDING

Police had no legal basis or justification for photographing people stopped at the Ruatoki road block. Police actions in this regard were unjustified and unreasonable.

DID POLICE SEARCH INDIVIDUALS?

223. The Authority has received accounts from two people who state they were searched by AOS officers. The Authority has been unable to identify these officers.

224. The Officer in charge of the Ruatoki road block has advised the Authority that clear instructions were given to the AOS team and they were not instructed to search people stopped. He further advised that the only person searched was a man arrested at the road block for obstruction and the search was subsequent to his arrest.

225. Police have the power to search people upon arrest or pursuant to a specific statutory or common law power, such as a search for firearms under the Arms Act 1983, if a Police officer has reasonable grounds to suspect that a person in a public place is in possession of a firearm.

226. The notebooks of all AOS officers at the road block have been analysed by the Authority. There is no record of any person being searched, other than the man arrested.

FINDING

The Authority has insufficient evidence to substantiate the claim that Police searched persons stopped at the Ruatoki road block, other than one individual upon arrest. The Authority is not able to make an unequivocal finding on this issue.

DID POLICE SEARCH A KŌHANGA REO BUS?

227. The Authority has been advised during its investigation that there were three operational kōhanga reo buses in the Ruatoki and Taneatua area on 15 October 2007. The Authority has interviewed three drivers who were working that day and the administrator of the Ruatoki Kōhanga Reo.

228. While some media reports suggested that armed Police boarded and searched a kōhanga reo bus carrying young children, this claim has not been substantiated by the Authority's investigation.

229. A kōhanga reo bus which was taking children from Whakatane to Ruatoki was contacted by the administrator while it was on its journey and advised that there was a road block in Taneatua. This bus did not continue on its route to Ruatoki but turned around to take the children home before encountering any road block.

230. The driver of the kōhanga reo bus taking children from Taneatua to Ruatoki has confirmed to the Authority that, while he was in a queue of cars leading up to the Ruatoki road block, an AOS officer approached him. Upon seeing children inside, the officer asked if he was transporting children to kōhanga reo and when he confirmed that he was, the officer assisted him to overtake the queuing vehicles and he was allowed through the road block without being stopped or his vehicle searched. This driver encountered both the Ruatoki and Taneatua road blocks throughout the morning, and was *"waved through"* each time without being stopped and searched.

231. Another unmarked kōhanga reo bus encountered the Ruatoki road block while on the way to collect children. This vehicle contained only the driver, his wife and 14-year-old grandchild. This bus was stopped and searched, and details of the driver, his wife and grandchild were recorded. Photographs were taken of all three people by Police. As with all other vehicles, Police did not have reasonable grounds to believe or suspect that the unmarked kōhanga reo bus contained a firearm, knife, offensive weapon or disabling substance.

FINDINGS

Police did not stop and search a kōhanga reo bus full of young children as was reported in the media.

Police did stop and search an unmarked kōhanga reo bus containing only two adults and a 14-year-old young person. Police actions in stopping and searching this vehicle (as with all other vehicles) were contrary to law, unjustified and unreasonable.

WHAT INFORMATION DID POLICE PROVIDE TO THOSE STOPPED AND SEARCHED?

232. The Officer in charge of the Ruatoki road block has advised the Authority that he gave clear instructions to his team of the legal basis for the road block, namely that it was pursuant to the Local Government Act 1974. He also advised them that their authority to stop and search vehicles was pursuant to the Crimes Act 1961 and the Arms Act 1983. This is recorded in a number of the AOS officers' notebooks.

233. Despite this, many people who were stopped at the Ruatoki road block have informed the Authority that they were not told the reason for the road block. Some have stated they were informed that Police were stopping cars under the Terrorism Suppression Act; some were told Police were looking for weapons; and others have said no reason was given.

234. If Police are exercising a power to stop and search a vehicle for an offensive weapon or firearms they have a duty to identify themselves and inform the person of the legislative provision which gives them power to conduct the search.

FINDING

Due to the varying accounts, the Authority has insufficient evidence to make an unequivocal finding on the nature of the information Police provided to those stopped and searched.

THE STAFFING OF THE RUATOKI ROAD BLOCK

235. Eight AOS officers were deployed at the Ruatoki road block. The Termination Operation Orders directed these officers to wear *'black role'*. The term *'black role'* refers to the standard full AOS operational uniform. This involved officers wearing flame retardant overalls, boots and a balaclava/Nomex hood as well as body armour and an equipment vest. These officers were armed as outlined in paragraph 180 above.

236. The decision that armed AOS officers should conduct the Ruatoki road block was based on the risk assessment undertaken which centred on three main considerations:

236.1 Police were concerned that they had not identified all of the individuals who had attended the training camps, and so there could be other people who presented a risk in the local area.

236.2 It was possible there were local sympathisers who might present a risk to Police.

236.3 Ruatoki is a remote location, some significant distance from comprehensive medical facilities.

237. Police have explained that the standard full operational uniform and kit afforded AOS officers the maximum protection against all reasonable threats they might face. This decision was taken for safety reasons given the risk assessment undertaken by Police.

238. While safety must always be the primary consideration, this should have been balanced against other considerations when deciding to use AOS officers in *'black role'*. Such considerations should have included:

238.1 the impact on the community of armed AOS officers in *'black role'* ;

238.2 the ability of general duties staff to undertake this function (as occurred at the Taneatua road block), with AOS officers in support nearby in case they were required;

238.3 using AOS officers but modifying their dress; and

238.4 the impact of the timing of the road block early on a Monday morning.

239. The Authority has received numerous accounts from the people in the local community of their experience at the Ruatoki road block. The image of armed AOS officers conducting the Ruatoki road block has been extensively associated with the Police termination of Operation Eight.

240. It is clear from the Authority's investigation that the use of armed AOS officers in *'black role'* caused anxiety to many members of the community. It instilled a level of worry or fear, and gave rise to a feeling of intimidation as outlined earlier. For example, many people indicated that they felt they had to comply with directions and did not think they could refuse a search of their vehicle or the taking of their photographs.

241. The Authority has received accounts of vulnerable members of the community, specifically children and the elderly, being particularly affected by the experience of seeing and being stopped by armed AOS officers.

242. The Officer in charge of the Ruatoki road block was not informed when the search warrants had been executed at the properties in the immediate vicinity, and the target individuals taken into Police custody. Had he been informed this may have led to a

reassessment of the road block operation, specifically whether AOS officers were still required or whether full *'black role'* was still necessary. It would have been possible to adapt the type of uniform worn to changing circumstances; for example, the helmets and hoods initially worn by AOS officers could have been removed if the assessed risks had abated, or general duties staff could have taken over the conduct of the road block.

243. Policy at the time required those setting up such road blocks to maximise staff safety by ensuring that officers wear high-visibility clothing, although the AOS Commander had discretion to waive the requirement. Policy also stated that Police should consider having a uniformed member wearing a hat and high visibility vest or jacket giving drivers the *'signal to stop'*. That approach could have been adopted, with AOS providing cover.

FINDINGS

The failure by Police to consider the effect caused by Police wearing full *'black role'* at the Ruatoki road block was unreasonable.

The failure by Police to adapt to the changing circumstances and reassess the risk and threat posed was unreasonable.

THE AUTHORITY'S INVESTIGATION IN RELATION TO PROPERTY SEARCHES

244. The Authority has received complaints or accounts from people during the course of its investigation, concerning searches undertaken by Police at 11 properties. These properties were located as follows:

- 4 properties in Ruatoki
- 2 properties in Whakatane
- 2 properties in Auckland
- 1 property in Gisborne
- 1 property in Taupo
- 1 property in Wellington

245. As has been outlined at paragraph 68 above, Police obtained search warrants for 41 properties on 10 October 2007. In addition Police obtained other search warrants and searched other properties or vehicles in accordance with provisions under the Arms Act 1983 when information became available during the termination of Operation Eight.

246. Ten of the properties considered by the Authority were the subject of the search warrant application. The other property was searched on the day of termination, in accordance with provisions under the Arms Act 1983, due to information received by Police.

247. A number of general themes arise from the complaints and accounts received. These general themes will be addressed; but in addition, where the Authority has received complaints of a specific nature which affect only individual complainants, the Authority has reported directly to those concerned.

248. Given the Authority's functions prescribed by legislation, its investigation is limited to the complaints received, which amount to approximately a quarter of the properties actually searched by Police. While some general themes have been identified by the Authority from its investigation of Police actions at the 11 properties, it should not be assumed that these issues were common to all properties searched by Police during the operation.

TREATMENT OF OCCUPANTS BY POLICE

249. Most of the complaints and accounts received by the Authority, in relation to Police's actions during the execution of warrants or property searches, were from occupants who were not the targets of the Police operation. Understandably, there were other people at the properties such as flatmates, relatives and, in some cases, children. The common complaints raised by these occupants were:

- having their freedom of movement restricted or being detained;
- the length of time it took to conduct the search;
- feeling that they were being treated as a suspect; and
- being personally searched.

250. The Search and Surveillance Act 2012 has introduced new provisions which impact upon these issues. The new provisions are examined in detail in the section below: '*Reflections on Police policy, practice and procedure*'.

Were occupants detained by Police?

251. The New Zealand Bill of Rights Act 1990 states that everyone has the right not to be arbitrarily arrested or detained.

252. Police policy applicable at the time states that, for the purposes of the Bill of Rights Act 1990, the people present on the premises while a search is conducted are not being detained.

253. At the time, the Arms Act 1983 provided Police the right to detain a person for the purpose of any search of the individual under the Act. It did not give Police the right to detain a person for the purpose of the search of a property or vehicle.

254. It is standard Police practice to remove people from the immediate area at the outset of the execution of the search in order to determine their identity and any possible grounds for arresting or charging those people. When the execution of a search warrant is in progress, persons may be excluded from an area if that is necessary to secure a search scene and ensure they do not impede or obstruct Police in conducting the search. The power to exclude is not a power to detain or confine.

255. Once suspects have been identified, other occupants should not continue to be detained by Police.

256. Some officers have maintained that occupants were not detained, and said that the occupants were advised of their rights or specifically told they were free to leave.

257. While persons are not detained by Police merely because they have not been advised of their right to leave, they are detained if Police, by their words or actions, indicate that this

is the position. The Authority's investigation has concluded that, at five of the properties investigated by the Authority, the Police officers by their actions and instructions led the occupants affected to have reasonable cause to believe that they were being detained. Most were faced with armed officers, either STG, AOS or armed general duties officers. Many of these officers have stated that occupants were detained for the purposes of conducting the search. Those officers appear to have believed such detention was lawful, justified and in accordance with standard Police practice. Some have justified this detention on the basis of preserving the scene of the search and others on keeping the occupants safe while the search was conducted. Some officers have indicated that it was common Police practice to advise people that they were being detained for the purpose of Police searching the property.

258. These occupants' movements were restricted in different ways. Some were not allowed to enter the property but kept confined in a specific place outside. Others were allowed only in a designated area of the house, accompanied by officers if they went to another area, and led to believe that they were not free to leave. Some occupants were taken to a Police station in circumstances that gave rise to the reasonable perception that they had no choice in the matter.

259. In these cases the detentions lasted from just under two-and-a-half hours to almost nine hours. It is clear that all of the occupants who provided accounts to the Authority did not understand their rights. In particular they did not feel that they were free to leave the property and reasonably concluded that they had to comply with Police instructions.

FINDING

Police actions led occupants at five properties to have reasonable cause to believe that they were being detained while the search was conducted. The detention of occupants at these properties was contrary to law, unjustified and unreasonable.

Was the time it took to conduct the search reasonable?

260. A number of occupants complained about the length of time it took for Police to conduct the searches. As would be expected, the length of time taken varied significantly, depending upon the type and size of property and number of officers conducting the search.

261. Police policy sets out how a search of a property is to be undertaken. In addition, the individual files prepared for each target address contained detailed instructions for Exhibits Officers as to how to deal with items seized. These instructions required all items to be photographed in situ before being recorded, labelled and packaged.

262. There is an expectation that Police conduct a search thoroughly and professionally to ensure that all items contained in the search warrant, relevant to the investigation, are obtained.

263. On one occasion considered by the Authority there was a significant delay of over one-and-a-half hours between AOS entering and securing the property, and the search team arriving to commence the search. This was however an isolated incident. That property was searched on the day of termination, in accordance with provisions under the Arms Act 1983, due to information received by Police, rather than being a planned execution of a search warrant.

264. The Authority considers that the time taken to conduct the searches was reasonable. It should though be acknowledged that if all occupants had been fully advised and understood that they were free to leave and chose to do so while the search was conducted, rather than having their movements restricted, the duration of the search would not have had the same impact on occupants.

FINDING

The length of time Police took to conduct the searches was reasonable.

Were occupants treated as suspects by Police?

265. Some occupants have told the Authority that they felt they were being treated by Police as suspects. In most cases these were the partners or immediate family of target individuals. This belief arose from their detention as outlined above, being read their rights and on many occasions then being interviewed and asked to make a statement. Some occupants were brought to a Police station for those statements to be taken. The combined impact of those actions by Police engendered in people the feeling of being treated as suspects.

266. Police inquiry and search staff have consistently advised that no occupants who were not the targets of the operation were treated as suspects, and that officers consider they were acting appropriately in securing the scene, providing people with details of their rights (even though that was not strictly necessary if they were not suspects) and trying to ascertain if the occupants had any information relevant to the Police investigation.

FINDING

Police did not view occupants who were not the targets of the operation as suspects. However, Police actions caused some occupants to feel that they were being treated as suspects. This was undesirable.

Were the personal searches of occupants by Police justified and reasonable?

267. Four people at three different addresses have told the Authority that they and/or their family members or flatmates were subject to personal searches by Police. The searches varied from a pat down search to a search where outer clothing was lifted up during the search.

268. The New Zealand Bill of Rights Act 1990 states that everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, correspondence or otherwise.

269. Police officers have given various explanations for the reason for the personal searches, such as to ensure officer safety or for the safe execution of the search of the properties.

270. Police policy applicable at the time expressly states that Police cannot search the people present on the premises unless:

- there is a statutory power to do so which is cited on the search warrant; or
- their consent to the search is obtained; or
- following arrest.

271. The occupants were not asked to consent to the personal searches. The searches were not conducted during an arrest process as none of these individuals was arrested. There was no power cited on the search warrant for these searches.

272. There are also specific provisions in the Crimes Act 1961, the Arms Act 1983 and the Misuse of Drugs Act 1975 which allow Police to undertake personal searches in specific situations. There is no evidence to suggest that such situations applied to these individuals.

273. The Authority has reported to the relevant individuals on its findings in relation to the specific personal searches conducted by Police. Police did not have a legal basis or justification to conduct any of those personal searches.

FINDING

Police had no legal basis or justification for personally searching occupants. These searches were contrary to law, unjustified and unreasonable.

Did Police adequately plan for the presence of occupants?

274. The Operation Orders and individual files prepared by Police in relation to the addresses which were subject to search warrants contained detailed information on what was known by Police concerning the suspects. The information collected by Police about other occupants who could be present at those addresses varied in its quality and quantity.

275. There were no instructions in the Operation Orders or policy applicable at the time on how to deal with other occupants while a search was conducted, and in particular more vulnerable persons such as children or the elderly.

276. The Authority has received accounts directly from young persons present at properties where search warrants were executed. In three of the cases examined by the Authority where search warrants were executed, children were present and issues were raised as to how these children were treated by Police.

277. A child's or young person's perception of these events involves a higher level of fear and anxiety than an adult's, particularly when a parent or relative is arrested or detained by Police and the child or young person is separated from familiar caregivers.

278. The Authority has reported back to the individual families on its findings concerning the specific issues raised. In each of these three cases the Authority has found that there were deficiencies in that Police did not adequately plan for the eventuality of children being present at those addresses.

279. The gap in policy and guidance has subsequently been recognised by Police and policy has been amended to provide instruction, when executing search warrants, in relation to people requiring special consideration. This is addressed in the section below: *'Reflections on Police policy, practice and procedure'*.

FINDINGS

The lack of policy regarding Police planning for, and response to, vulnerable occupants was undesirable.

EXECUTION OF SEARCH WARRANTS, SEIZURE OF ITEMS AND EXHIBIT HANDLING

280. On 10 October 2007, Police obtained search warrants pursuant to section 198 of the Summary Proceedings Act 1957, as outlined in paragraph 68 above, in respect of 41 addresses (relating to 37 individuals), one business entity's address and eight vehicles. These search warrants listed the items that Police sought to obtain as evidence to support the charges of Participating in a Terrorist Group, Unlawful Possession of Firearms and Unlawful Possession of Restricted Weapons.

281. The law, reflected in Police policy, allows Police to search only for items that are specified in the warrant, and only in places that could contain them. The officer executing the search warrant must have the warrant with him and produce it if required to do so.

282. Police policy in relation to exhibit handling required all exhibits to be documented on a Property Record Sheet. These are standard Police forms, provided in triplicate and self-

carbonating. Policy required that the original of the Property Record Sheet be given to the person from whom the property was seized, with the duplicate being the file copy and the triplicate attached to the item seized.

283. The files prepared for each suspect contained detailed instructions for the designated Exhibits officer on the procedure to be adopted and blank forms to be used. These specified that all items seized from individual addresses were to be referred to as *"items"* not exhibits, and would only become exhibits when they were deemed to be relevant to the inquiry. Exhibits officers were instructed to record the date, time and location of an item on the individual record sheets provided. The items were to be photographed in situ, recorded, labelled and packaged. They were then handed to the District Exhibits Officer who would arrange for the items to be delivered to the Officer in charge of exhibits for Operation Eight, based in Auckland. The Officer in charge of exhibits then completed the Property Record Sheet.

284. These Operation Eight specific instructions did not contain any direction about providing a copy of the record sheet or inventory of items to the person from whom that property was seized, as is required by general Police policy. This led to inconsistent practice being adopted by officers. A number of people reported to the Authority that they were not provided with details of the items seized by Police. The Authority has addressed those specific complaints directly with those concerned.

FINDING

The instructions to Exhibits Officers should have included a requirement to provide details of the items to the person from whom that property was seized. This failure was contrary to applicable policy at the time and undesirable.

Reflections on Police Policy, Practice and Procedure

THE POLICE DEBRIEF

285. Police policy applicable in 2007 required that a debrief should take place as soon as possible after an operation. This enables Police to undertake a subsequent examination of the operation and is necessary to:

- critically examine the operation;
- record successful actions and techniques, for inclusion in future plans and training;
- evaluate what went wrong, so that it will not happen again;
- solicit suggestions for improvement and consider valid criticisms; and
- identify any need for welfare assistance or support, and provide that assistance if required.

286. There are guidelines in policy that detail how to undertake a debrief. It is standard practice in a case of any significance for a formal debrief meeting to be held. Police policy was amended in 2012 in relation to debriefs and a more detailed procedure has been introduced. This requires a formal or multi-agency debrief to be held no later than four weeks from the date of the incident.

287. The debrief meeting in respect of the termination phase of Operation Eight occurred on 10 December 2007. The terms of reference were to consider Police readiness from 1 October 2007, the Police response on 15 October 2007 and the recovery phase up until referral to the Solicitor-General on 29 October 2007.

288. Key phase commanders and executive members of Police involved in the investigation were represented at the debrief meeting. This was chaired by the then Deputy Commissioner: Operations.

289. Minutes from the debrief were finalised and supplied to the then Commissioner of Police on 19 December 2008, some 12 months later. Six recommendations were made by the then Deputy Commissioner: Operations as a result of the debrief process in respect of the following areas:

289.1 The Operations Group should conduct a review of communications and available technology in light of the different systems and difficulties that had been encountered.

289.2 Consideration should be given to ensuring that a specific individual, within an investigative group on complex inquiries, is tasked with providing a quick response to issues raised by the media.

289.3 The Operations Group should review standard operating procedures in relation to information collection processes at road blocks which should include photographing persons and vehicles.

289.4 The Commissioner should engage with local iwi, Māori leaders and their communities in Ruatoki (subject to agreement) for certain identified purposes, namely to provide information in relation to the following:

- the key considerations identified by Police when determining the tactical approach to termination;
- Police's obligation to investigate and apprehend persons suspected of serious criminal offending with minimal compromise to public safety;
- Police's recognition of the difficulty in balancing the discharge of its duty and avoiding alienation of iwi;
- an acknowledgement of, and regret about, the disproportionate effect the termination activities had on the wider community perceptions of Police interactions with Māori; and
- affirming Police's commitment to constructive, ongoing engagement and dialogue with iwi.

289.5 The National Manager: Māori & Pacific Ethnic Services should consult with local Māori and Iwi Liaison officers to identify lessons learned, assess the need for improvements to communication between Police and Māori, and provide recommendations to the Commissioner about any amendments that should be made to current engagement practices.

289.6 The Operations Group should review AOS policies, general instructions and standard operating procedures against current best practice. This was to incorporate an explicit assessment of the impact the presence of armed Police has on public perceptions and to consider their standard dress in *'black role'*.

290. The then Commissioner of Police considered these recommendations. The Authority has ascertained that Police have taken some actions following these recommendations.

Communications

291. Technology and communications processes have developed since 2007. Police have instigated a large project to reform Police operational communications technology. The Authority considers that all technology adopted by Police needs to ensure that Police have the ability to provide real time information between different groups and to media personnel to avoid the delays and issues that occurred during termination of Operation Eight.

292. The termination of Operation Eight highlighted the need for Police to have additional media staff and to ensure that such staff are strategically placed to ensure there can be a timely response to changing circumstances, particularly at critical times.

Photographing of vehicles and persons by Police

293. A recommendation made following the debrief was for the Operations Group to review standard operating procedures in relation to information collection processes at road blocks. This was to ensure that these procedures aligned with best practice and complied with legislative intent, and to consider whether any amendment of relevant policy was necessary.

294. The review looked at the issue of Police taking photographs of those stopped at the road block. The conclusion reached was that photographing these persons was lawful and justified, as it was for necessary and proper law enforcement purposes, namely for identification of persons in relation to the objectives of Operation Eight. This is in contrast to the Authority's finding on this issue.

295. The Authority notes that there is nothing generally unlawful about the taking of photographs in a public place. The extent to which Police are able to do so is governed by privacy principles. These principles have been examined at paragraphs 210-212 above.

296. Following the review conducted by Police there have been no amendments to policy in relation to photographing people. There is no specific reference or guidance contained in current Police policy about when, or in what circumstances, Police can photograph people, other than following arrest. Police policy needs to be reviewed and appropriate amendments made to rectify this situation.

297. The Authority considers that the current policy in relation to road blocks is deficient. Specifically there is no guidance or instruction in the current Perimeter Control policy concerning road blocks as to what information can be collected by Police from those persons stopped at a road block, and the processes that must be followed.

Engagement with Māori

298. The targets of Operation Eight were not exclusively Tūhoe or indeed Māori. However, Police state that they identified that the operation was likely to have an impact on the local Ruatoki community and on the relationship between Police and Māori more generally. Police state that the recovery plan they formulated reflects that situation.

299. Police acknowledge that they underestimated the focus on Ruatoki and on Tūhoe that emerged. Police have advised that, given that the termination of Operation Eight was countrywide and that the majority of targets were not Tūhoe and did not live in Ruatoki, they did not foresee that the focus of attention, media in particular, would be on Ruatoki and Tūhoe. Police did not anticipate the level of attention that in fact occurred.

300. After the termination of Operation Eight, the then Commissioner of Police assisted by the National Manager: Māori & Pacific Ethnic Services, sought to engage with Māori and build on the Māori Responsiveness Strategy. The Commissioner's National Māori Focus Forum, which comprises prominent Māori leaders, is consulted on issues of national importance where Māori are affected. The then Commissioner brought together the Māori Focus Forum shortly after termination of the operation. The purpose was to conduct a detailed debrief of the operation and provide the reasons for it from a Police perspective. The Commissioner subsequently travelled around the country with senior Māori officers, visiting 12 marae, to talk through the issues, obtain feedback and thus affirm Police's commitment to ongoing engagement.

301. The Police debrief recommended that the National Manager: Māori & Pacific Ethnic Services should consult with local Māori and Iwi Liaison officers to identify lessons learned, assess the need for improvements to communication between Police and Māori, and provide recommendations to the Commissioner about any amendments that should be made to current engagement practices.

302. The Authority has been informed by Police that the National Manager: Māori & Pacific Ethnic Services, together with three Iwi Liaison officers, attended a meeting on 16 October 2007 at Otenuku marae in the Ruatoki Valley. This meeting was chaired by members of the Tūhoe Tribal Executive and was attended by approximately 60 members of the local community. Police say this was the beginning of a process to engage further with the people of Tūhoe. The National Manager: Māori & Pacific Ethnic Services has advised the Authority that his unit continued to engage with the Tūhoe Tribal Executive leaders on behalf of Tūhoe and there have been a number of meetings with Te Kotahi ā Tūhoe over the years with a view to rebuilding relationships between Police and Tūhoe.

303. However, the Authority has received numerous accounts during its investigation, both from Tūhoe leaders and residents from Ruatoki and Taneatua, which in the Authority's view demonstrate that the local community did not and still do not accept that Police have undertaken an effective engagement process. The accounts received by the

Authority over the intervening years since the termination of Operation Eight continue to show there is a lack of trust and confidence by Tūhoe in Police and policing.

304. Police have a responsibility to act to maintain trust and confidence in Police from all sectors of the community. It is apparent from the recommendations made by Police during the debrief process that Police identified that steps needed to be taken with the local community in Ruatoki to identify lessons learned and improve engagement. While the Police executive has undertaken some discussion with Iwi Liaison officers and Tūhoe Tribal Executive leaders, in the view of the Authority there has been no meaningful, effective, sustained engagement with Tūhoe.

305. The Authority acknowledges that ongoing criminal proceedings would have impacted on the nature of the discussions that could have occurred between Police and Tūhoe. These criminal proceedings have now been concluded.

306. The Authority recommends that the Commissioner re-engage with Tūhoe in the light of the Authority's findings, and in particular take appropriate steps to build bridges with the Ruatoki community with a view to increasing trust and confidence in Police and policing. This recommendation is dealt with at paragraph 395 below.

AOS uniform

307. The use of armed AOS officers in *'black role'* greatly impacted on the community of Ruatoki and is probably the image most commonly associated with the termination of Operation Eight.

308. Police undertook a review in 2008 to consider the impact that the presence of armed AOS has on the public. This review focused on:

- whether there is a need for AOS members to take all their personal equipment with them on each occasion they deploy;
- the wearing of the Nomex hood/balaclava, and whether that is a necessary part of their equipment;
- whether there are alternatives to the colour of the overalls other than black; and
- what processes exist, or should exist, to consider whether deployments will impact on public opinion.

309. The review concluded that AOS personal equipment and uniform *('black role')* is both necessary and appropriate when deploying to emergency call outs. This includes the use of the Nomex hood/balaclava, which should be retained as part of the full AOS operational kit. However, a recommendation was made that specific instructions be issued that the Nomex hood/balaclava is only to be worn in conjunction with the ballistic helmet.

310. The review also recommended that there is scope to adopt a differential approach in pre-planned operations and give consideration to whether *'black role'* is required. This approach for pre-planned operations should include a Community Impact Assessment which looks at the intelligence received, the known environment and the population to be policed when assessing the potential impact of the AOS presence.

311. As a result of the review, new policy was introduced in August 2009 in relation to the wearing of the Nomex hood/balaclava. This does direct that AOS members shall wear full operational kit which includes the Nomex hood on all emergency call outs. Policy though differentiates this from pre-planned operations and directs that the nature of the operation should dictate the level of AOS response, and provide scope for a different approach in terms of uniform, equipment and tactics. It is accepted in the policy that there will be occasions when Nomex hoods may not be required. The decision as to whether they should be worn must be for sound tactical and operational reasons or for staff safety. Nomex hoods are not to be worn simply as a matter of routine.

312. Due to concerns about how changes to uniform occur informally, the then Commissioner of Police introduced a uniform committee which conducted a full review of Police uniforms and provided a control of the process of any uniform change. This committee has now been amalgamated into the Operations Advisory Committee (OAC) which is chaired by the Assistant Commissioner: Operations. The OAC's purpose is to provide robust advice and effective governance on key New Zealand Police operational issues. This includes uniform issues. In April 2011 policy concerning the governance procedure for uniform, dress standards and appearance was published. This sets out how any changes to uniform are to be approved and defines the role of the OAC in that regard.

313. The Authority is satisfied that the governance procedure for uniform, dress standards and appearance ensures Police have appropriate systems concerning the uniform worn by all Police staff and the process for any change to the uniform.

314. The new AOS policy does not set out that a Nomex hood should only be worn in conjunction with the ballistic helmet and not by itself. This recommendation in the review was based on the fact that the Nomex hood is justified for safety reasons as it provides protection to the area of the face and head not covered by the ballistic helmet. However, there is a concern that the wearing of a Nomex hood/balaclava without a ballistic helmet could be viewed as being intimidating or as a means to conceal identity which Police do not view as a legitimate reason for its use. The Authority considers that the AOS policy needs to be amended to incorporate that stipulation.

THE SEARCH AND SURVEILLANCE ACT 2012

315. The Search and Surveillance Act 2012 is significant new legislation which codifies, and in some areas clarifies, the law in relation to the way Police carry out surveillance, enter places and vehicles, conduct vehicle stops and search and secure people, places and vehicles. This legislation was the result of the Law Commission's recommendations in its report on Search and Surveillance Powers, dated 30 June 2007. The Act came into force fully on 1 October 2012.

316. This Act clarifies the nature and scope of search and surveillance powers. Previously some areas of the law, such as detention, developed through case law which in some instances made a definitive position difficult to ascertain.

317. The Act's stated purpose is to facilitate the monitoring of compliance with the law and the investigation and prosecution of offences in a manner that is consistent with human rights values by:

- modernising the law of search, seizure, and surveillance to take into account advances in technologies and to regulate the use of those technologies; and
- providing rules that recognise the importance of the rights and entitlements affirmed in other enactments, including the New Zealand Bill of Rights Act 1990, the Privacy Act 1993 and the Evidence Act 2006; and
- ensuring that investigative tools are effective and adequate for law enforcement needs.

318. The Introduction of the Search and Surveillance Act 2012 has meant that Police policy has been substantially amended to reflect the new provisions, powers and responsibilities. The legal powers are now definitive and it is therefore easier to provide training to Police. The Authority is aware that Police have invested heavily in training all officers on the new provisions and introducing new procedures and systems to comply with the new requirements.

319. The Authority has made findings in the section on Property Searches that Police actions in relation to the detention and searching of occupants were contrary to law. The Authority considers that there should have been no doubt that these actions were unlawful and the relevant officers should have been aware of this at the time, particularly those responsible for planning and directing the operation.

320. The Authority believes that the training Police have undertaken in relation to the new legislation will mean that all officers should be fully aware of their powers and responsibilities, and that such unlawful actions should not recur. The Authority notes that it is particularly incumbent on senior staff planning an operation to ensure what they propose to do is within the law.

321. The introduction of the Act has had a significant bearing on the recommendations the Authority is making arising from its investigation into Operation Eight. In the normal course of events the Authority would have made recommendations in relation to issues of detention and searching of people given the findings made. Such recommendations are no longer appropriate in light of the changes to law and policy recently introduced.

Applications for search warrants

322. In accordance with new law and policy on search warrants, all written applications must now be made through an online search and surveillance system and follow set procedures. Currently, only one target can be included on a search warrant and, where multiple targets are concerned, a separate search warrant and application for each must be completed.

323. The Authority understands that Police intend to modify their online system in the future to allow for a single application in respect of multiple targets. When this occurs, and Police are compiling a compendious application in respect of multiple targets, as occurred in Operation Eight, care should be taken to ensure that clear, specific information relevant to each individual is presented in a structured way.

Execution of the search warrant

324. Under the Search and Surveillance Act 2012, Police must, before their initial entry, announce their intention to enter and search the place or vehicle under a statutory power, identify themselves by name or unique identifier and, if not in Police uniform, produce evidence of identity.

325. Additionally, either before or on initial entry Police must provide to the occupier of the place or the person in charge of the vehicle a copy of the search warrant or, in the case of a warrantless search, state the name of the enactment under which Police are searching and the reason for the search. The exceptions and limitations to this obligation are now clearly set out.

326. The Authority received a number of accounts from individuals who felt Police did not provide a copy of the warrant quickly enough or at all. The requirement for Police to do so (subject to specified exceptions) is now clear and should be adhered to.

Securing the scene to be searched

327. The Search and Surveillance Act 2012 enables Police to secure a search scene and control and preserve that scene for the purpose of the search.

328. If Police are carrying out a search this enables them, in a manner and for a duration that is reasonable to carry out the search, to:

- secure the place, vehicle or other thing searched (scene), or any area within that scene, or any thing found within that scene
- exclude any person from the scene or area, or give them any other reasonable direction. This can only be done if Police have reasonable grounds to believe they will obstruct or hinder Police.

329. These powers would not have made any difference to the way in which occupants were treated in Operation Eight. The Authority did not find any evidence to suggest that any of the occupants behaved in a way that would cause Police to have reasonable grounds to believe they would be obstructive or hinder Police.

330. Police need to ensure that all staff are aware of the types of directions they are able to give to persons at a search scene.

Powers of detention incidental to searches of places and vehicles

331. The Search and Surveillance Act 2012 clarifies when Police may detain people in relation to a search.

332. When exercising a search power in relation to a place or vehicle, Police can now detain any person to determine whether there is a connection between them and the object of the search, if the person:

- was there at the start of the search; or
- arrives at the place or stops, enters, or tries to enter, the vehicle while the search is being carried out.

333. Police may use reasonable force to effect and continue the detention. Such detention may be for a reasonable period but no longer than the duration of the search. It starts when Police direct the person to remain and ends when Police tell them they are free to go.

334. The training provided to Police has made it clear that it is incumbent on an officer to immediately take steps to determine if there is a connection. Accordingly, these new powers only provide a very specific and limited form of detention. This would not have changed the Authority's finding in relation to the detention of those occupants considered during its investigation.

335. Police need to ensure that all staff are aware of the scope of the incidental power of detention, and their responsibility to take immediate steps to determine if there is a connection between a person and the object of the search.

Powers to search people

336. The Search and Surveillance Act 2012 clarifies the powers to search people. The chapter on searching people in current Police policy covers all Police searches of people, wherever

they are conducted. Policy outlines the general principles which apply to all searches, including:

- The search must be lawful i.e. Police must be authorised by the Search and Surveillance Act 2012 or another enactment to conduct a search, or conduct it with the person's informed consent.
- People being searched must be treated with such dignity, privacy, respect and sensitivity that the individual situation and safety of Police dealing with them will permit.
- Any force or restraint used on a person being searched must always be reasonable in the circumstances.
- Generally searches should be carried out by constables or authorised officers.
- Searchers should be the same sex as the person being searched.

337. When searching a place or vehicle, Police may now search any person:

- found at the place or in the vehicle; or
- who arrives at the place; or
- who stops at, or enters, or tries to enter or get into or onto the vehicle

if either

- an officer has reasonable grounds to believe that evidential material that Police are searching for is on the person; **or**
- an officer has reasonable grounds to suspect that the person has in their possession a dangerous item that poses a threat to safety and believes that immediate action is needed to address that threat.

338. As with detentions, these new powers would not have changed the finding made by the Authority in relation to searching occupants. The Authority's investigation did not reveal that there was any basis for Police to have reasonable grounds to believe any of these occupants had evidential material on their person, or for Police to have reasonable grounds to suspect they had a dangerous item in their possession.

339. Police need to ensure that all staff are aware of their powers to search persons so that unlawful searches do not occur in the future.

Notice and inventory requirements after search and seizure

340. At the completion of a search of a place or a vehicle Police must give the occupier or person in charge of the vehicle written notice about the search, including the reasons for it, who conducted it, and how inquiries about the search can be made. The notice must also include advice about whether or not items were seized.

341. If anything was seized, the person must be given an inventory of the things seized no later than seven days after seizure (unless this is provided at the time of seizure). This also includes information about rights to access the seized property and to bring claims of

privilege. There are procedures set down to cover the situation when no person is present at the property, and also where Police have reason to believe someone other than the person at the property or vehicle is the owner of the seized item.

342. This provision clarifies Police responsibilities in relation to providing notice of the search and items seized. The Authority received accounts that Police did not provide adequate information during property searches and has found that the instructions to exhibits officers did not include a requirement to provide details of items to the person from whom that property was seized. There is now a legal requirement for Police to do so which should be adhered to.

OTHER POLICE POLICY

Young people and vulnerable groups

343. On 24 May 2012, the Commissioner of Police acknowledged that innocent individuals, families and a community were frightened and inconvenienced when search warrants were executed in October 2007. He publicly stated that he very much regretted the fear experienced by innocent people in the Ruatoki Valley, especially the children, and apologised to those people.

344. A circular was issued by the Commissioner of Police on 13 July 2009 to provide interim instructions and guidelines while more detailed procedures were incorporated into the Police Manual. This circular covered the safety of children, young people and other vulnerable groups when executing search warrants.

345. The instructions directed Police to ensure that the needs of children, young people and other groups of vulnerable people were taken into account when planning and executing search warrants. It set out categories of people who may be vulnerable and require special contingency plans when executing search warrants. The examples provided are:

- Children and young people who by virtue of their age are vulnerable. Their safety and well-being must be considered and planned for to ensure they are not unnecessarily exposed to harm or trauma.
- Elderly persons whose physical and/or cognitive abilities must be considered to ensure their particular needs are met.
- People with disabilities such as physical, sensory, neurological, intellectual or other impairments who are particularly vulnerable and may require specific arrangements to ensure their needs are met.
- People with health or medical needs who may require medication such as asthma inhalers or diabetic injections. These needs can be established at the address.

346. The circular then sets out factors to consider and actions to take during planning and execution of search warrants as follows:

- meeting medical requirements by establishing if anyone requires special medical care and ensuring these requirements are met;
- planning and providing for the human necessities such as food and water, warmth and access to toilets, particularly if it is anticipated that there will be a need to detain people for lengthy periods;
- assigning someone as responsible for establishing the presence of children, young people or other vulnerable people on arrival at the premises where the search warrant is to be executed and taking action to address any identified needs;
- considering the type of Police resource being used to execute the warrant e.g. AOS. Police are directed to consider the impact on children and other vulnerable people of the sight of AOS and whether a less visible display of force is appropriate in places where children and vulnerable people are likely to be present.

347. These instructions and guidelines have been incorporated into current Police policy in relation to carrying out searches pursuant to the Search and Surveillance Act 2012.

348. The policy does not though contain any detailed guidelines or instructions on how these matters are to be dealt with in practice, particularly in a large operation, or make it clear that such matters should form a key part of both the planning and execution phases. The Pre-Search Warrant Risk Assessment form which Police complete before every search warrant is executed does not make any specific reference to identifying and planning for the presence of vulnerable people, or the practical steps to be taken when such people are present when a search warrant is executed.

349. The primary consideration for children should be that they require the presence of, and support from, a familiar caregiver who can reduce any anxiety experienced. It should be incumbent on Police to ensure that this occurs. In particular, if the target of an operation is a child's caregiver and is being arrested, Police must ensure that appropriate arrangements are made for alternative caregivers. To that end, they should, as a first step, enquire of the caregiver as to who is available as an alternative caregiver. They should attempt to contact that person or, failing that, should ensure that an experienced Police officer or social worker remains with the child until alternative care arrangements can be made.

350. The Authority considers that Police policy needs to be reviewed and amended to address these issues. The Authority is making a recommendation in relation to this issue which is dealt with in paragraph 395 below.

Community Impact Assessments

351. A policy on AOS Community Impact Assessments was introduced in August 2009. This was as a result of the review Police conducted in 2008 to consider the impact that the presence of armed AOS members has on the public. The details of that review are provided in paragraph 308.

352. The policy requires the Officer in charge of a pre-planned AOS operation to conduct a community impact assessment based on known intelligence, the known environment, the population to be policed and the wider community. A community impact assessment form must be completed. The aim is that this, coupled with a risk assessment, will enable the officer in charge to make determinations about equipment, dress and tactics.

353. Although this policy was introduced in August 2009, inquiries by the Authority have revealed that the policy has not been fully implemented by all AOS squads around the country. Six out of 12 squads approached by Police confirmed they did not complete the form, one squad said it was occasionally used and one stated it had only been used since February 2011. Police have confirmed to the Authority that a new directive has been issued in March 2013 ensuring that all AOS squads now use the operational report which includes the community impact assessment.

354. There is nothing in the Police Manual or general instructions that require Police, other than AOS, to conduct a community impact assessment either during the planning stages, when undertaking a risk assessment or when assessing how an operation was conducted.

355. The Authority has found in relation to Operation Eight that there were significant cultural, historical and other pertinent issues which were not fully considered or addressed by Police during the planning stages. There was inadequate planning in respect of the road block in Ruatoki and no assessment of the impact such a road block, staffed with armed AOS members, would have on the community. Had such an assessment been undertaken this may have altered the decisions taken, or at least provided information to better determine the issues that needed to be addressed in the recovery plan.

356. The Authority does not believe such assessments should only be conducted by the AOS. The Authority also believes that a review of the community impact assessment process should be undertaken.

357. Community impact assessments should be a routine part of all risk assessments and be conducted during the planning stage of all operations where there is potential for a significant adverse impact on a community. There should then be an evaluation of this assessment during the debrief after every such operation.

358. Police policy needs to be reviewed and amended to address these issues.

Major operations

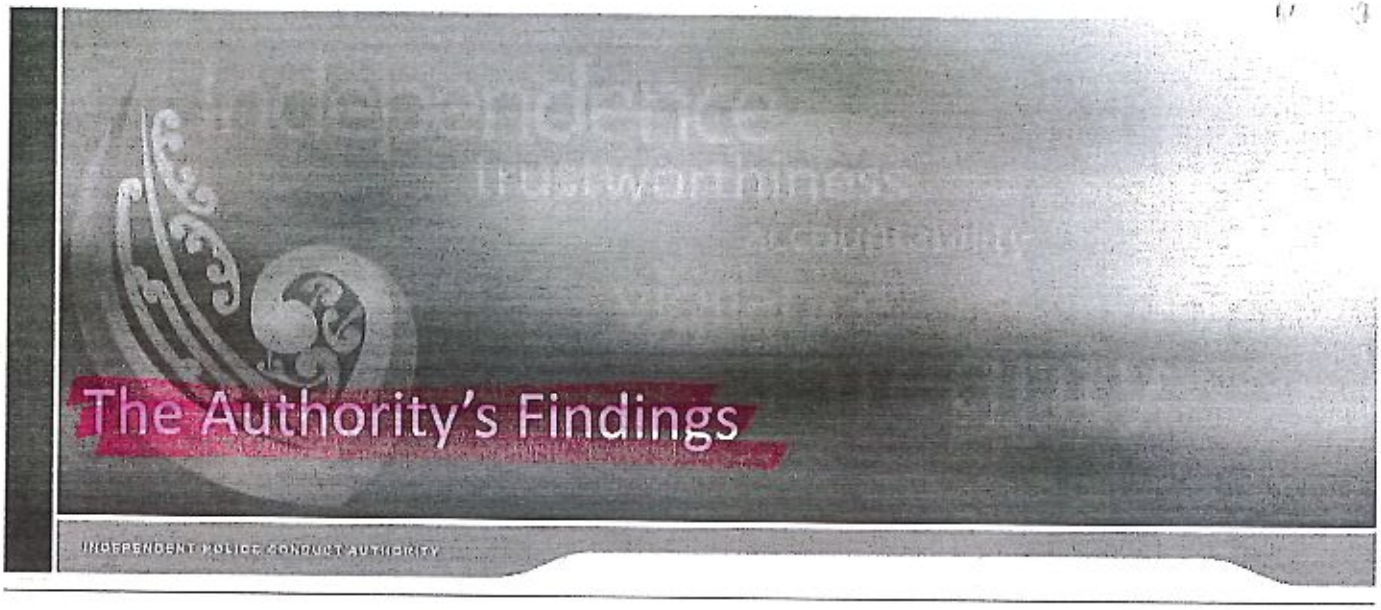
359. There is no specific separate policy concerning major operations. The Authority accepts that this should not be necessary. The current policy on Planning and Command applies equally to all Police operations as should be the case. There are though additional features in a major operation which make decision-making during the planning phases more complex and the accurate recording of such decisions more vital, particularly given

that major operations can be very lengthy and involve large numbers of staff at different levels.

360. The Authority is aware that some commanders of operations maintain a log and will record decisions in that log. This is good practice at all levels but is not consistently applied.

361. The Authority believes that it would be beneficial for there to be consistency in recording decisions made during the planning phases of a major operation. It would be good practice for Police to develop a major operation key decision log to record in one document the events that occur and key decisions that are taken during the planning phases, including who made the particular decision, the factors that were considered and the reason for it.

362. This practice should be adopted for all major operations and incorporated into policy on planning and command.



363. Section 27(1) of the Independent Police Conduct Authority Act 1988 (the Act), requires the Authority to form an opinion as to whether or not any act, omission, conduct, policy, practice or procedure which was the subject-matter of an investigation was contrary to law, unreasonable, unjustified, unfair or undesirable.

364. Pursuant to section 27(1) of the Act, the Authority has formed the following opinions.

FINDINGS IN RELATION TO THE POLICE OPERATION EIGHT INVESTIGATION

365. Apart from those actions that the Supreme Court has found to be unlawful, Police actions during the initial evidence gathering phase, prior to October 2007, were reasonable. Police were entitled, on the information they had, to view the threat posed as real and potentially serious, necessitating investigation. Police sought legal advice on the evidence obtained and were entitled to rely upon the advice provided.

366. The final search warrant application should have been more structured and contained clearer specific information about the evidence available against each individual included in it. There should also have been more specific details about some of the items being searched for. Police's failure in this regard was undesirable.

367. Police should have undertaken a more formal documented review and approval process in respect of the final search warrant application. Their failure to do so was unreasonable.

368. The then Commissioner of Police's decision on 10 October 2007 to authorise termination of the operation was reasonable and justified.

369. Although Police identified significant cultural, historical and pertinent issues, these were not fully addressed or considered when planning for termination in Ruatoki. The failings in this regard were unreasonable.

370. The Operation Eight Termination Orders were comprehensive, detailed and largely complied with applicable policy.

371. Given Police's assessment that there was a high level of risk to public and Police safety, and the decision to use Iwi Liaison officers post termination in the recovery plan, it was reasonable for Police not to involve Iwi Liaison officers in the execution of search warrants, or arrest of target individuals, at properties in Ruatoki on 15 October 2007.

372. The recovery plan was deficient in that it was primarily aimed at gathering evidence rather than mitigating damage to Police and community relationships. It would have been desirable for Police, during the planning stages, to have undertaken an assessment of the operation's likely impact on the community to assist in formulating the recovery plan.

373. Difficulties in internal communications within Police led to delays in responding to media requests. This exacerbated tensions between Police and the local community which was undesirable.

FINDINGS IN RELATION TO ROAD BLOCKS

374. Police actions in establishing and maintaining the Ruatoki road block were contrary to law, unjustified and unreasonable.

375. Police actions in establishing and maintaining the Taneatua road block were contrary to law, unjustified and unreasonable.

376. Police failed to adequately plan for the Ruatoki road block. Police did not ascertain the likely volume of traffic at the time of termination. Police failed to assess or consider the impact the road block would have on the local community. Police's failures in this regard were unreasonable.

377. Police failed to plan at all for the Taneatua road block. This lack of planning was unreasonable.

378. Police did not have reasonable grounds to stop and search vehicles at the Ruatoki road block. Police actions in this regard were contrary to law, unjustified and unreasonable.

379. Given that Police had no legal basis for stopping the vehicles at the Ruatoki road block, Police also had no legal basis or justification for obtaining details of people in those vehicles. Police actions in obtaining personal details were contrary to law, unjustified and unreasonable.

380. Police had no legal basis or justification for photographing people stopped at the Ruatoki road block. Police actions in this regard were unjustified and unreasonable.

381. The Authority has insufficient evidence to substantiate the claim that Police searched persons stopped at the Ruatoki road block, other than one individual upon arrest. The Authority is not able to make an unequivocal finding on this issue.

382. Police did not stop and search a kōhanga reo bus full of young children as was reported in the media.

383. Police did stop and search an unmarked kōhanga reo bus containing only two adults and a 14-year-old young person. Police actions in stopping and searching this vehicle (as with all other vehicles) were contrary to law, unjustified and unreasonable.

384. Due to the varying accounts, the Authority has insufficient evidence to make an unequivocal finding on the nature of the information Police provided to those stopped and searched.

385. The failure by Police to consider the effect caused by Police wearing full '*black role*' at the Ruatoki road block was unreasonable.

386. The failure by Police to adapt to the changing circumstances and reassess the risk and threat posed was unreasonable.

FINDINGS IN RELATION TO PROPERTY SEARCHES

387. Police actions led occupants at five properties to have reasonable cause to believe that they were being detained while the search was conducted. The detention of occupants at these properties was contrary to law, unjustified and unreasonable.

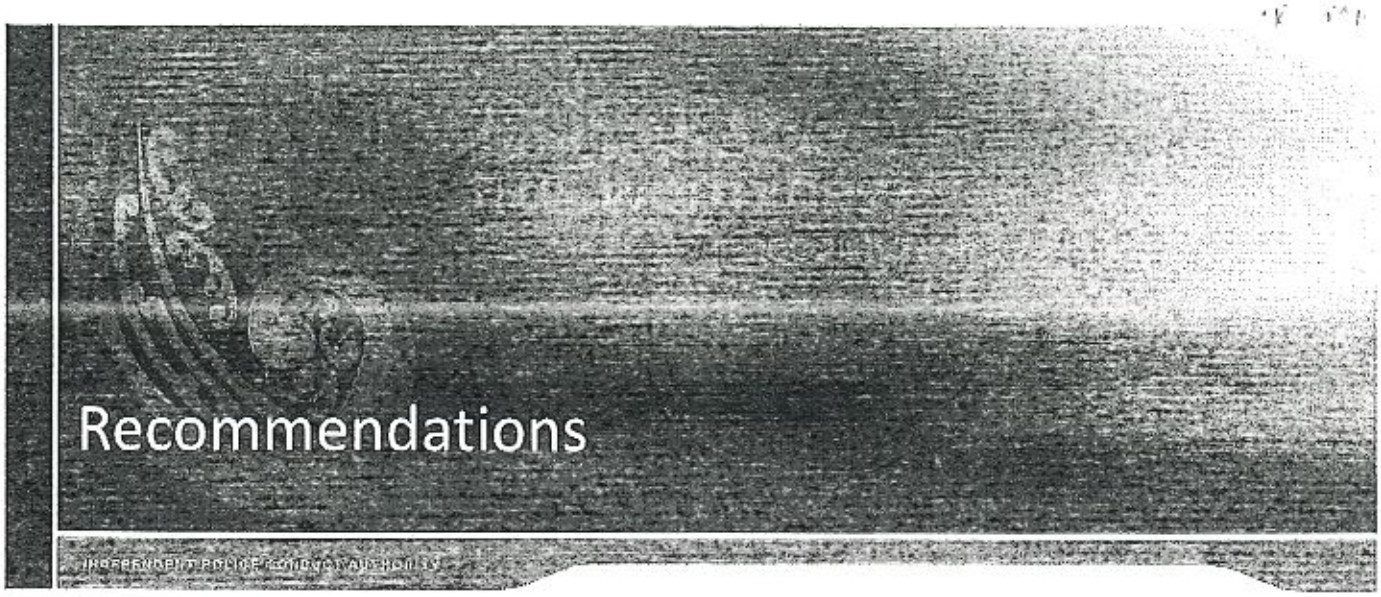
388. The length of time Police took to conduct the searches was reasonable.

389. Police did not view occupants who were not the targets of the operation as suspects. However, Police actions caused some occupants to feel that they were being treated as suspects. This was undesirable.

390. Police had no legal basis or justification for personally searching occupants. These searches were contrary to law, unjustified and unreasonable.

391. The lack of policy regarding Police planning for, and response to, vulnerable occupants was undesirable.

392. The instructions to Exhibits Officers should have included a requirement to provide details of the items to the person from whom that property was seized. This failure was contrary to applicable policy at the time and undesirable.



393. At the conclusion of an investigation the Authority may make such recommendations as it thinks fit pursuant to s27 (2) of the Independent Police Conduct Authority Act 1988.

394. The introduction of the Search and Surveillance Act 2012 has codified and clarified the law in relation to searches of property, vehicles and individuals. As can be seen throughout this report, the Authority has found that Police actions in some respects were contrary to law, unjustified and unreasonable in accordance with the legal position as it stood in 2007. In the normal course of events the Authority would have made recommendations concerning those issues around detaining and searching occupants. However, such recommendations are not appropriate given the introduction of the Search and Surveillance Act 2012.

395. The Authority recommends that the New Zealand Police:

1) Re-engage with Tūhoe in the light of the Authority's findings, and in particular take appropriate steps to build bridges with the Ruatoki community with a view to increasing trust and confidence in Police and policing.

2) Amend the Planning and Command chapter of the Police Manual to include provision for a log to be maintained of all decisions during the planning phase of major Police operations.

3) Amend AOS policy on Nomex hoods/balaclavas to specifically state that Nomex hoods/balaclavas should only be worn in conjunction with a ballistic helmet and not alone.

4) Review and introduce policy requiring Police generally to undertake a Community Impact Assessment for all operations where there is a potential for a significant adverse impact on a community. This should be a component part of all appreciation documents or risk assessments and include a process for the Community Impact Assessment to be evaluated during the debrief process.

5) Review and amend the policy on planning for children and vulnerable people in the Police Manual chapter on executing search warrants to set out the standard practical steps that are to be taken by Police whenever children or vulnerable people are present during the execution of a search warrant. In particular, this should include the obligation on Police to make enquiries of a sole caregiver who is to be removed from the premises as to an alternative caregiver, and to contact that person or, failing that, another appropriate caregiver, so that suitable arrangements can be made.

6) Review and clarify the policy in respect of road blocks or road closures in the Perimeter Control chapter so that the policy:

- provides an explanation of the legal position concerning photographing people at road blocks or road closures and Police's obligations concerning privacy;
- provides guidelines on when, and in what circumstances, photographs can and cannot be taken;
- sets out the information that needs to be provided to people who are photographed;
- determines how Police can use such photographs; and
- sets out a process for how such photographs should be stored and when they are to be destroyed.

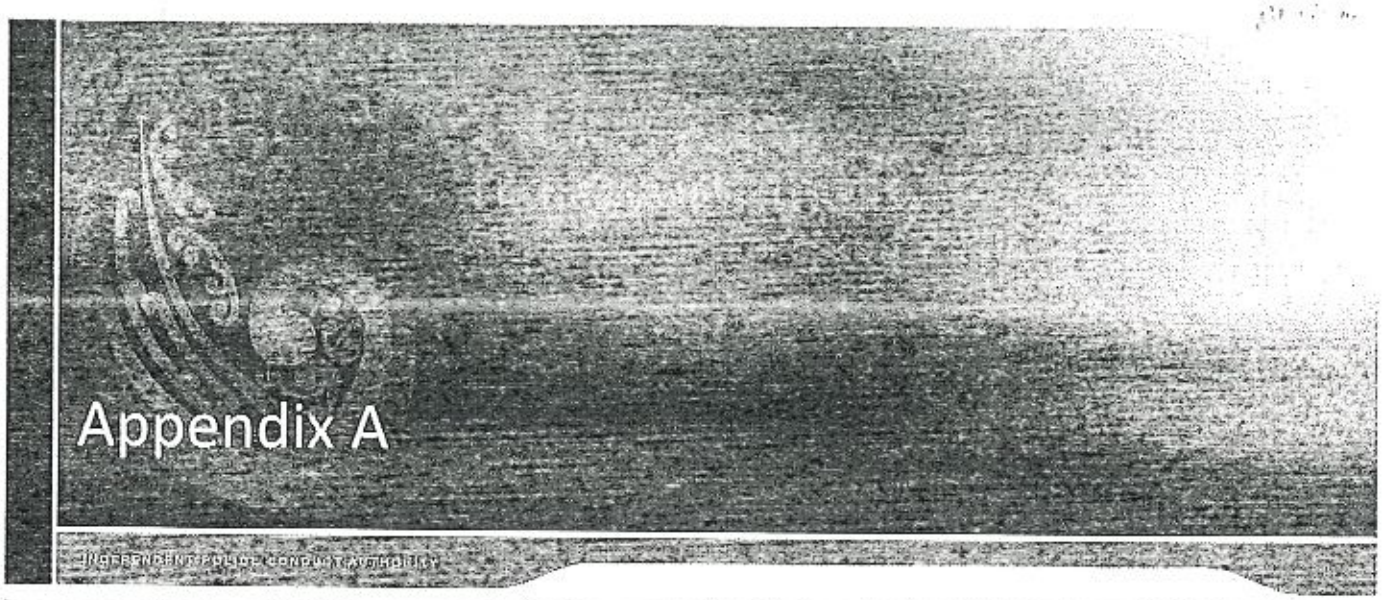
7) Ensure that any amendments or clarification of policy are reflected in Police training.

JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

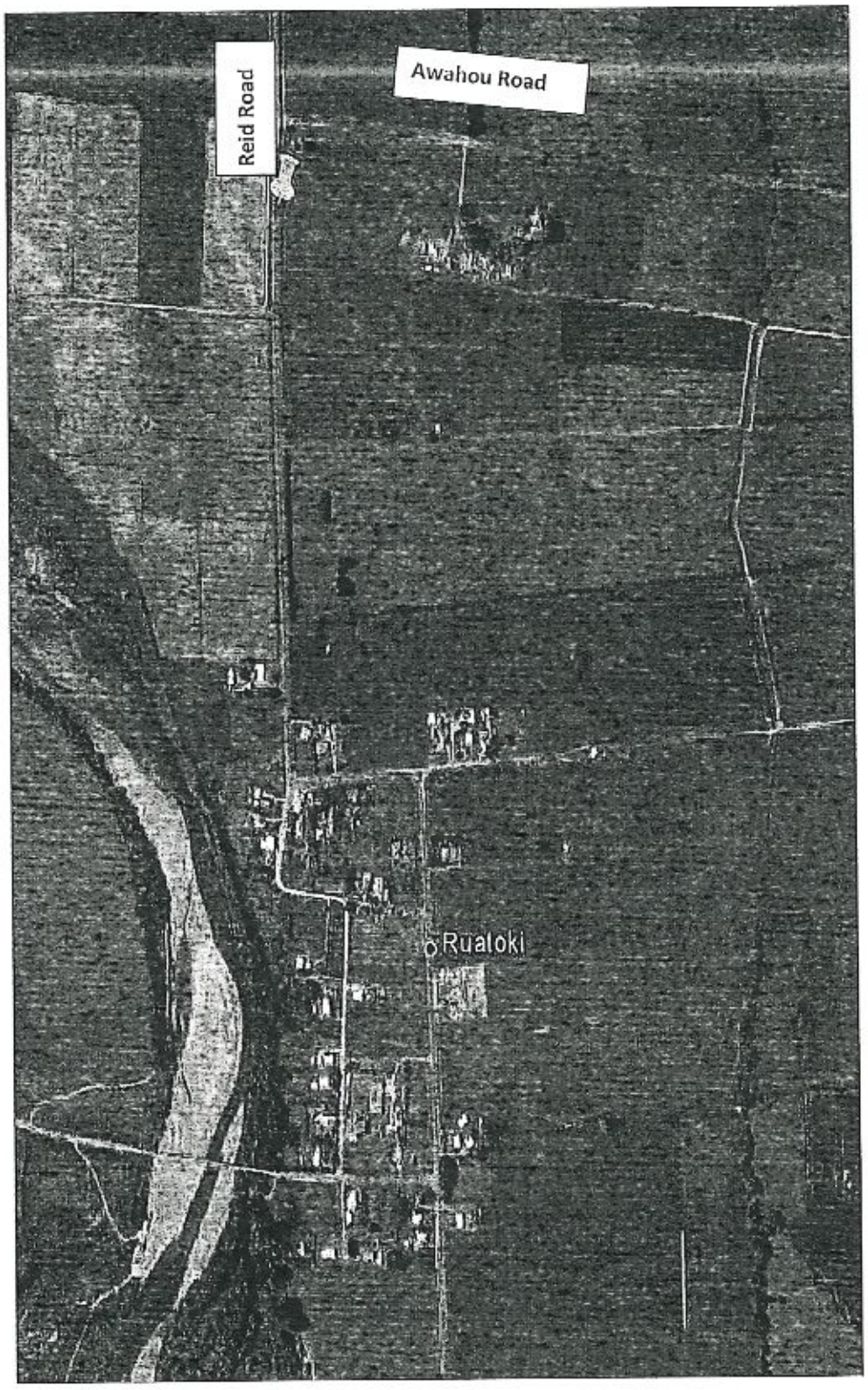
22 May 2013



Map 1: Ruatoki road block

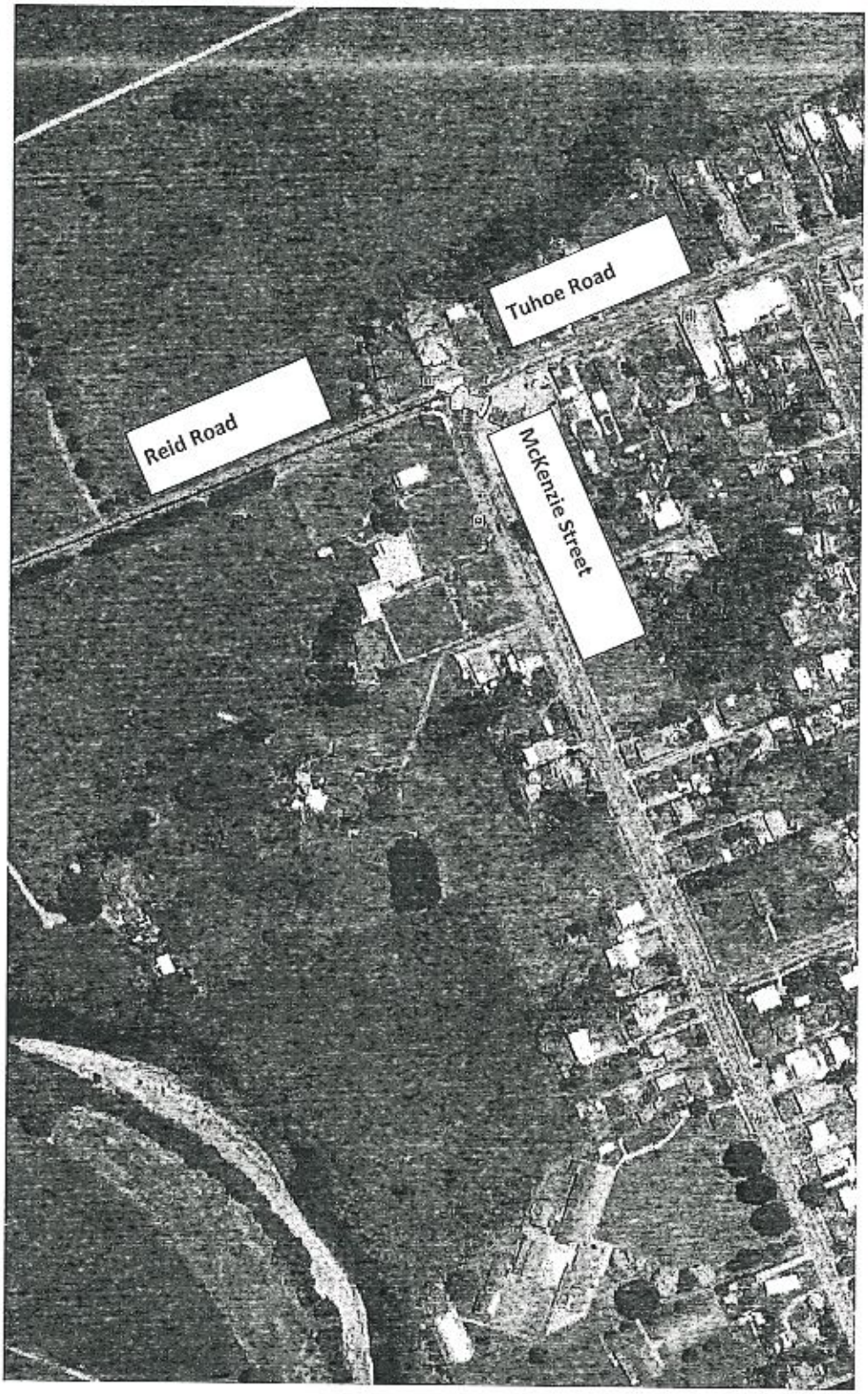
Map 2: Taneatua road block

Map 3: Distance and possible routes between the two road blocks

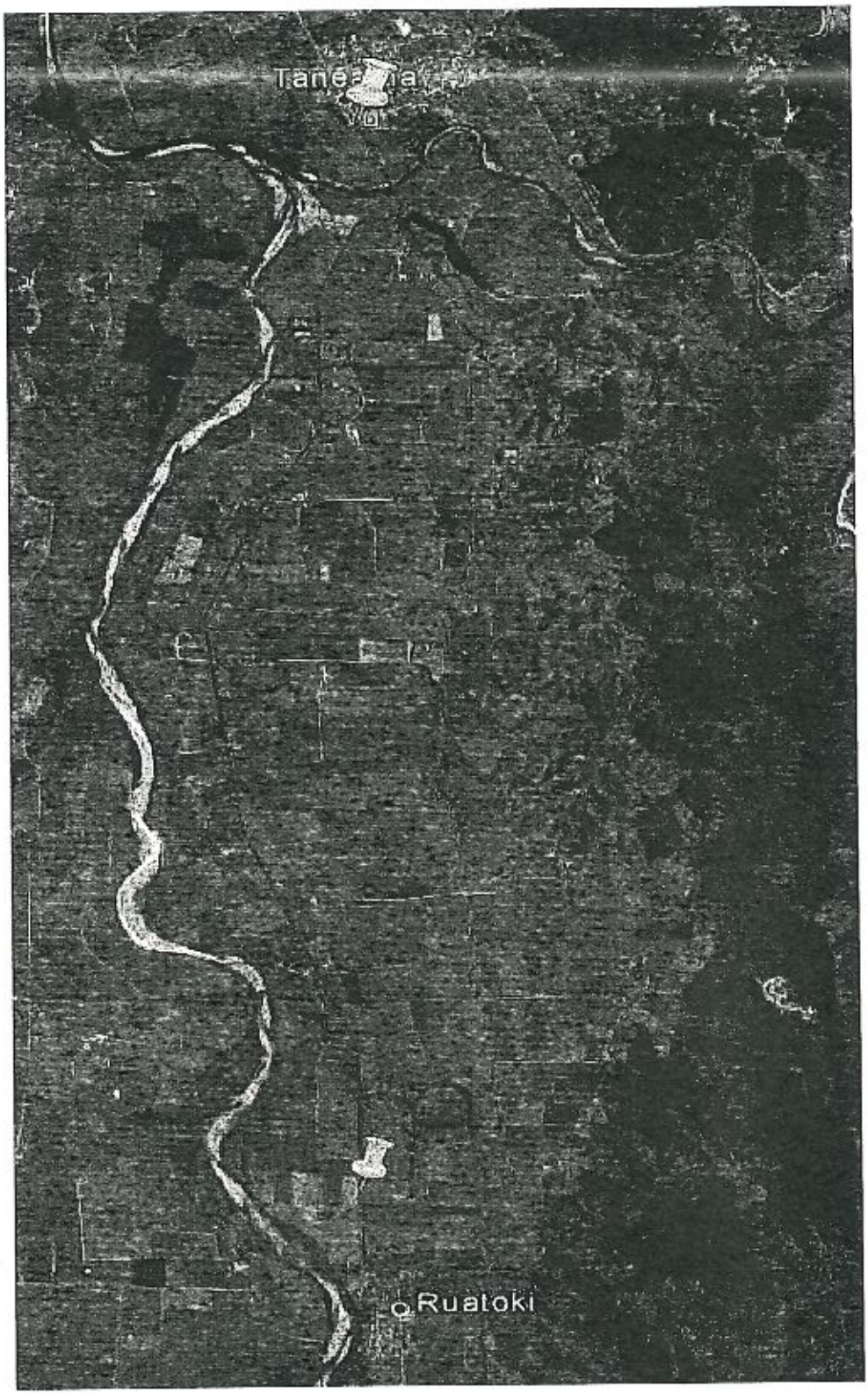


Ruatoki road block:

(Approximately 50-100m south of the Reid Road and Awahou Road intersection)



Taneatua road block: Intersection of McKenzie/Tuhoe/Reid



Distance and possible routes between the two road blocks

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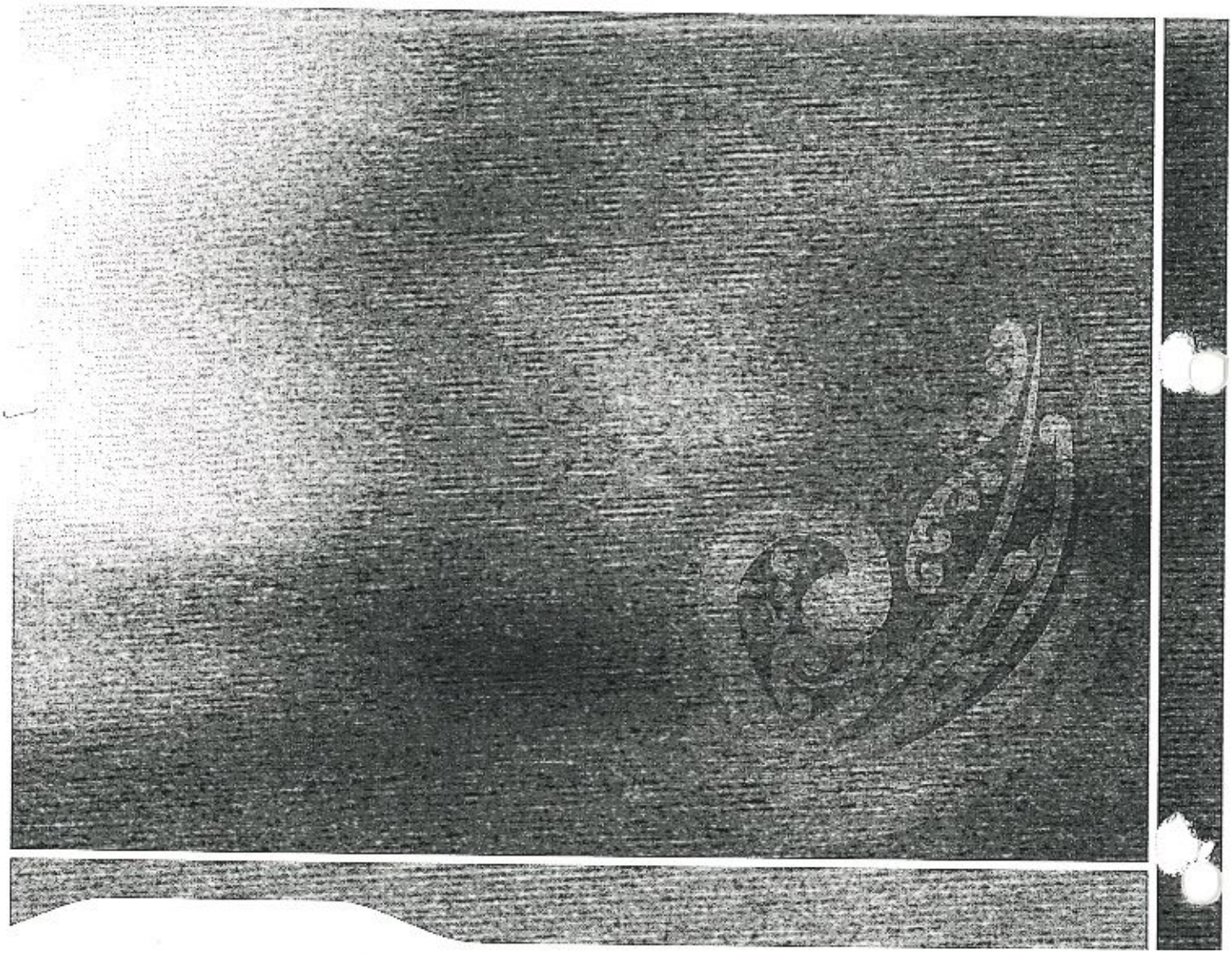

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