

Item 1: Proposed update to the Policy on the Appointment and Remuneration of Directors

PURPOSE OF THE REPORT | TE TAKE MO TE PURONGO

1. The purpose of this report is to consider the proposed recommendation for Council to adopt a revised Policy on the Appointment and Remuneration of Directors.

RECOMMENDATION | NGA TUTOHUNGA

2. That the Governance Subcommittee

1. **Note** the contents of this report; and
2. **Recommend** to Council that it adopt the revised Policy on the Appointment and Remuneration of Directors.

| | Prepared by: | Reviewed and Authorised by: |
|-----------|---|---|
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| Signature |  |  |
| Date | 24 January 2023 | 24 January 2023 |

CONTEXT | HOROPAKI

3. It is a requirement of section 57 of the Local Government Act 2002 (LGA 2002) that a local authority must adopt a policy that sets out an objective and transparent process for:

- the identification and consideration of the skills, knowledge, and experience required of directors of a council organisation; and
- the appointment of directors to a council organisation; and
- the remuneration of directors to a council organisation.

4. For the purposes of this policy, references to 'council organisation' include council-controlled organisations and council-controlled trading organisations, as defined by section 6 of the LGA 2002.

5. The Council adopted the current policy on 25 September 2014, and this has been reviewed by staff to ensure it remains fit for purpose. The policy itself includes (but is not limited to) defining the appointment process for directors, tenure, reappointment, chairperson selection, and removal of board members. It also sets the expectations of appointees, and the process for setting and reviewing remuneration.

6. The Governance Subcommittee is required to consider proposed amendments to the policy and recommend any changes to Council for adoption.

ANALYSIS AND ADVICE | TATARITANGA ME NGA TOHUTOHU

7. The 2014 policy has been reviewed by the Governance and Policy teams and amendments made to the proposed 2023 policy are as follows:

- Table inserted to confirm ownership of the policy, method of approval, effective from date and timeframe for review;
- Includes a more comprehensive definition of a council organisation (CO) in alignment with the description in section 6 of the LGA 2002 acknowledging that Council does have a number of COs to consider;
- Confirms the process for making appointments to COs through Mayoral recommendation and Council resolution which was not included in the previous policy;
- Expands references to conflicts of interests for officers and elected members to include reference to independent guidance from the Office of the Controller and Auditor-General | Tumuaki o te Mana Arotake providing opportunity to gain a better understanding of conflicts (potential, actual or perceived);
- Clarifies that references in the document to 'Director' may also apply to a trustee, manager or office holder (e.g. independent chair) where the policy is appropriately employed outside of the direct appoint for directors;
- In the unique context of the council-controlled trading organisation Queenstown Airport Corporation (QAC), the proposed amendment confirms an exception to the policy exists for the appointment of a director made by the minor shareholder, Auckland International Airport Ltd (referenced below as Auckland Airport Holdings (No. 2) Limited), under clause 15.14 of the QAC constitution. Note, cl15.14 of the QAC constitution states: *While it is a Shareholder holding 20% of the Shares in the Company, Auckland Airport Holdings (No. 2) Limited may, by written notice to the Company, appoint one (1) person to be a Director (Auckland Airport Director), re-appoint such Auckland Director at the expiry of his or her term, remove from office any such Auckland Airport Director appointed by it, and appoint a successor to the removed Auckland Airport Director;* and
- Confirms the delegation for the Governance Subcommittee, without referral to the Council, to reappoint an existing chair at the end of their tenure if they wish to stand again and in accordance with that body's terms of reference or constitution, *but* that the subcommittee may include consideration from the QAC Board members in the case that it is its chair that is seeking reappointment.

8. Formatting of the document has also been updated in alignment with current Council branding and policy document structure.

9. **Option 1** Recommend to Council that it adopt the revised Policy on the Appointment and Remuneration of Directors

Advantages:

- Progress is made on adopting an up to date, fit-for-purpose policy that will enable consideration of decisions relating to relevant appointments and remuneration.
- Council will have an updated policy to inform decisions that required this year, e.g. appointing a new QAC Board Director following the resignation of a current member.
- A date will be set for the next review of the policy.

Disadvantages:

- None; further updates if required may be made to the policy at any time via the same process.

10. **Option 2** Do not recommend to Council that it adopt the revised Policy and instruct officers to make further amendments

Advantages:

- Views of the subcommittee not anticipated through this review can be incorporated (if too significant to be included through a minor amendment).

Disadvantages:

- A future review cycle is not set for the policy.
- The existing policy remains in place that does not reflect additional clarification, references, and exceptions.
- Decisions made during a period of further review are not made using an up-to-date policy.

11. This report recommends **Option 1** for addressing the matter because it provides an up to date policy to inform upcoming decisions.

CONSULTATION PROCESS | HATEPE MATAPAKI

12. This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy because it relates to the structure and criteria by which appointment and remuneration decisions are made only. Decisions relating to appointments themselves may have a higher level of significance due to public interest.

13. The persons who are affected by or interested in this matter are members of COs, CCOs and CCTOs, and individuals interested in future appointments.

14. The Council will not undertake any consultation on this matter as it is not required or necessary to inform the subcommittee's decision on a recommendation nor to inform the update to the policy.

MAORI CONSULTATION | IWI RUNANGA

15. No specific consultation with Iwi is required or has been undertaken on this matter.

RISK AND MITIGATIONS | NGA RARU TUPONO ME NGA WHAKAMAURUTANGA

16. This matter relates to the '*Regulatory / Legal / Compliance*' category. It is associated with RISK00031 and description '*Ineffective Management and Governance over Legislative Compliance*' within the [QLDC Risk Register](#). This risk has been assessed as having a moderate inherent risk rating.

17. The approval of the recommended option will support the Council by allowing us to avoid the risk. This shall be achieved by maintaining and adhering to a current and fit-for-purpose policy in alignment with section 57 of the LGA 2002.

FINANCIAL IMPLICATIONS | NGA RITENGA A-PUTEA

18. There are no immediate financial implications relating to the potential adoption of the amended policy. However, it is recognised that the policy does relate to future decisions that will be considered by both the Governance Subcommittee and Council relating to remuneration of directors which will individually have a financial implication.

COUNCIL EFFECTS AND VIEWS | NGA WHAKAAWEAWE ME NGA TIROHANGA A TE KAUNIHERA

19. None applicable

LEGAL CONSIDERATIONS AND STATUTORY RESPONSIBILITIES | KA TURE WHAIWHAKAARO, ME KA TAKOHA KA WAETURE

20. The policy is a requirement of section 57 of the LGA 2002.

LOCAL GOVERNMENT ACT 2002 PURPOSE PROVISIONS | TE WHAKATURETURE 2002 O TE KAWANATAKA A-KAIKA

21. Section 10 of the Local Government Act 2002 states the purpose of local government is:

- (a) to enable democratic local decision-making and action by, and on behalf of, communities; and
- (b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future. *[explain how the item will deliver on this purpose in brief].*

22. As such, the recommendation in this report is appropriate and within the ambit of Section 10 of the Act by providing a transparent and consistent framework for making appointments to organisations that affect the local environment, culture, economic and community.

ATTACHMENTS | NGA TAPIRIHANGA

| Number | Title of Attachment |
|--------|--|
| 1. | Draft Policy on the Appointment and Remuneration of Directors 2022 |

Attachment 1 - 2023 Policy on the Appointment and Remuneration of Directors(1)

Policy on the Appointment and Remuneration of Directors



| | |
|------------------|---------------------------------|
| Team/Directorate | Governance / Corporate Services |
| Approved by | Council Resolution |
| Effective date | Month and year |
| Next review | Month and year |

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Policy on the Appointment and Remuneration of Directors



1 PURPOSE

The purpose of this policy is to set out, in accordance with Section 57 of the Local Government Act 2002 (LGA 2002), an objective and transparent process for;

- > The identification and consideration of the skills, knowledge, and experience required of directors of a Council organisation; and
- > The appointment of directors¹ to a Council organisation; and
- > The remuneration of directors of a Council organisation.

2 SCOPE

The terms “Council organisation”, “Council-controlled organisation”, and “Council-controlled trading organisation” are used as defined in Section 6 of the LGA 2002.

As at 1 December 2022, the Queenstown Lakes District Council (QLDC) operates only one CCTO; the Queenstown Airport Corporation (QAC). There are no other Council-controlled organisations or Council-controlled trading organisations. The Council may establish further CCOs or CCTOs during the life of this policy, and the provisions of this policy will apply to them.

Under section 6 of the LGA 2002 a CO means a company in which securities carrying voting rights at a meeting of the shareholders of the company are; a) held by 1 or more local authorities, or b) controlled, directly or indirectly, by 1 or more local authorities. It also means an entity in respect of which 1 or more local authorities have, whether or not jointly with other local authorities or persons; a) control, directly or indirectly, of 1 or more of the votes at any meeting of the members or controlling body of the entity, or b) the right, directly or indirectly, to appoint 1 or more of the trustees, directors, or managers (however described) of the entity.

3 PRINCIPLES

The following principles underlie this policy:

- > Appointment of directors will be made on the basis of merit and aligned with the purpose of the CCO/CCTO, e.g. relevant skills, knowledge and experience.
- > Appointment of directors will aim to ensure a diverse range of membership to bring relevant expertise to the organisation with complementary skills and experience to ensure ideas are challenged and tested and that decision-making is robust.
- > The Council will follow governance best practice and guidance as provided by the Controller and Auditor-General Tumuaki o te Mana Arotake.
- > Directors of CCOs/CCTOs will be appointed on the basis of the contribution they can make to the organisation, and not on the basis of representation.
- > All Council appointed directors must comply with the Council’s Code of Conduct for Directors (see *Appendix 1*).

Except where express provision is made to the contrary, the provisions of this policy will apply equally to all current and

¹ In the context of a Council Organisation which is not a company, the term ‘director’ may also mean trustee, manager, or office holder (see LGA 2002 s6(3)(b))

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future CCTOs, CCOs, and COs.

4 APPOINTMENT OF DIRECTORS

No directors will be appointed to a CCTO, CCO or CO Board other than through the processes as defined by this policy².

The process for selecting directors for CCTOs and CCOs will be undertaken by the Governance Subcommittee, comprising;

- > The Mayor;
- > The Deputy Mayor; and
- > The Chief Executive.

The Governance Subcommittee will consider all applications and make a formal recommendation for appointment of directors to the Full Council.

The process for selecting trustees for COs will be undertaken by the Mayor by making a formal recommendation for appointment to the Full Council.

4.1 IDENTIFICATION OF REQUIRED SKILLS, KNOWLEDGE AND EXPERIENCE OF DIRECTORS

The required skills, knowledge and experience for director appointments to a Board are assessed in the first instance by the Governance Subcommittee of the Council, in consultation with the Chairperson. External assistance may be used by the Subcommittee in some cases.

Reference is made to the current governance best practice in this area, as encapsulated in the Institute of Directors New Zealand *Four Pillars of Governance Best Practice* and other relevant material.

The mix of skills and experience on the Board will be taken into account and consideration given to complementing and reinforcing existing skills and reducing any known weaknesses where necessary.

The skillsets and attributes required of candidates will generally include:

- > Intellectual ability;
- > Commercial experience;
- > Understanding of governance practice and issues;
- > Sound judgement;
- > High standard of personal integrity;
- > Commitment to the principles of good corporate citizenship;
- > Understanding of the wider interests of the publicly-accountable shareholder;
- > Understanding of the wider interests and objectives of the Council, including (but not limited to) the community wellbeings as described by section 10 of the LGA 2002, Vision Beyond 2050 and the Climate & Biodiversity Plan;
- > Able to maintain the trust of Council;
- > Able to maintain a close, but independent, working relationship with the CEO;

² Noting the exception of the QAC which provides for the appointment of one director by the minor shareholder in clause 15.14 of its constitution.

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- > Ability to harness the collective skills of the Board and executive team to achieve the business objectives, obligations under the LGA 2002, and maintain the confidence of the shareholders;
- > Ability to lead Board evaluation process;
- > Ability to demonstrate leadership and good interpersonal skills;
- > Ability to efficiently conduct meetings;
- > Ability to effectively participate in Board deliberations;
- > Ensure timeliness and relevance of information to the Board;
- > Ability to be the spokesperson for the company;
- > Ability to retain the confidence of the community and able to build relationships within the community's networks.

It is expected that all appointees to Boards will undergo, or already have undergone, formal corporate governance training or have the requisite experience in this area.

4.2 THE APPOINTMENT OF OFFICERS OR ELECTED MEMBERS AS DIRECTORS

Neither Councillors or Council staff are precluded under this policy from appointment to Boards for CCTOs and CCOs. Staff or elected representatives (including the Mayor, Councillors and Community Board members) acting as directors of commercial companies are to be particularly conscious of their responsibilities in the role of director, and the role of an impartial advisor and/or objective decision maker. Conflicts of interest must be avoided between these roles and should be managed in accordance with *Conflicts of Interest* guidance provided by the Controller and Auditor-General Tumuaki o te Mana Arotake.

There may be special circumstances where an elected representative or Council officer may be the most appropriate person to be appointed as a director. These special circumstances should be fully recorded by the Governance Subcommittee and Council in making that decision. All other parts of this policy should be considered and applied to such an appointment.

4.3 APPOINTMENT PROCESS FOR DIRECTORS

When a vacancy arises, the Governance Subcommittee (or their delegated Council officer) will identify the skills, knowledge and experience for the position (in consultation with the Chairperson). The process to make the appointment is detailed below.

- > The vacancy will be advertised via the Institute of Directors New Zealand or any appropriate local and national media; or
- > Where a suitable candidate has been identified and advertising is not expected to add significant value to the selection process (for example where specialist knowledge or experience exists), the Governance Subcommittee may choose not to advertise but must provide its reasoning in making a recommendation to the Full Council.
- > Candidates will be requested to supply:
 - A curriculum vitae which establishes how well they meet the role specification for the directorship role;
 - A letter detailing why they are interested in the particular role; and
 - A report on any conflicts of interest their appointment may cause, including how those conflicts are proposed to be managed.

Interview

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- > Following the search process, the Governance Subcommittee will draw up a short list of candidates.
Note, the Governance Subcommittee may engage a specialist consultant or advisor to assist with shortlisting suitable candidates for consideration.
- > Where appropriate and if one exists, the Subcommittee will co-operate with the minority shareholder in the selection process.
- > Each candidate will be interviewed by the Governance Subcommittee. The Subcommittee will then decide its preferred candidate(s), check all references and report back to the Full Council with a recommendation for appointment.

Appointment

- > The report recommending the candidate(s) will be “public excluded” in order to protect the privacy of the individual(s) concerned (LGOIMA 1987 S7(2)(a)). The Council will consider the report from the Subcommittee and make its decision on selection.
- > Public announcement of the appointment will be made as soon as practicable after the Council has made its decision and candidate(s) formally advised.

Tenure

- > Rotation of all directors is to be encouraged to the extent that it is practical under the law and constitution of the organisation.
- > Directors will normally be appointed for terms of three years (unless the constitution of the organisation provides otherwise).
- > At the end of each term of an appointment, the incumbent will be asked to provide a report on their contribution to the organisation concerned.

Reappointment

- > Where a director’s term of appointment has expired and they are offering themselves for reappointment (within the allowances of the constitution) a representative of the Governance Subcommittee will consult on a confidential basis with the Chairperson with regard to;
 - Whether the skills of the incumbent add value to the work of the Board;
 - Whether there are other skills which the Board needs; and
 - Succession planning matters.*Note, if it is the Chairperson seeking reappointment consideration will be made by the Subcommittee alone or in consultation with a minor shareholder where one exists. It is at the Subcommittee’s discretion to engage the Board in discussions around reappointing a Chairperson.*
- > The Governance Subcommittee will consider the information obtained and, taking into account the director’s length of tenure, form a view on appropriateness of reappointment or making a replacement appointment.
- > Where reappointment is considered appropriate, the Governance Subcommittee is authorised to approve the reappointment without further decision of Council. Any reappointments made by the Subcommittee will be reported to Full Council for noting via the Chief Executive’s report.
- > Where it is not intended to reappoint the existing incumbent, the appointment process outlined above will apply.

Chairperson selection

- > It is the responsibility of the Council (on the recommendation of the Governance Subcommittee) to appoint the Chairperson. However, normally the Subcommittee will consult the Board (and minor shareholder where one exists) on the person to be appointed, and where appropriate, will seek its view on who it considers to be the appropriate person to fill the Chairperson’s position.

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Chair succession planning

- > The aim of a succession plan is to provide for smooth transition of leadership in the event of a planned or unexpected retirement of an incumbent Chairperson. It is expected that the Chairperson will identify and develop potential successors or advise the Governance Subcommittee if there are no candidates suitable for the role of Chairperson.

Removal of Board members

- > Board members hold office at the pleasure of the Council and may be removed at any time by Council resolution.
- > Without limiting the right of the Council, reasons which would justify removal of a Board member would be where that Board member:
 - Is regularly absent from Board meetings without good justification;
 - No longer has the confidence of the Board and/or the Council;
 - Has breached ethical standards and this reflects badly on the Board and/or Council;
 - Does not act in the best interests of the organisation;
 - Breaches the confidence of the Board in any way, including speaking publicly on Board issues without the authority of the Board; or
 - Does not act in accordance with the principles of collective responsibility.
- > Where the Board has concerns regarding the behaviour of one of its members, it should be considered by the Board in the first instance and, where necessary, the Board may recommend the removal of the Board member to the Governance Subcommittee. The Council will not make any payment by way of compensation to Board members who have been removed from Boards.

4.4 PROVISIONS SPECIFIC TO COUNCIL ORGANISATIONS

The Council may have a non-controlling interest in numerous COs. These will be not-for-profit bodies.

Appointments to COs are made for a number of reasons. These include:

- > To provide a means of monitoring where the Council has made a grant to that body;
- > To enable Council involvement where the CO's activity is relevant to the Council;
- > To satisfy a request from the CO that the Council appoint a representative; or
- > Statutory requirements.

Appointments to a CO are generally for a three-year term and are made after the triennial elections, by the Council. The Council will endeavour to minimise the number of appointments where the benefit to the Council of such an appointment is minimal.

Identification of required skills, knowledge and experience of CO directors, and appointment

- > The range of reasons for the appointment of Council representatives to COs results in a wider range of desired attributes for appointees to these bodies.
- > The Council will determine the required skills, knowledge, and experience for each appointment. Candidates are not restricted to Councillors. In some cases it may be more appropriate to appoint Council staff or external people with affiliations to the Council.

Remuneration of CO directors

- > CO directors appointed by the Council will receive the remuneration (if any) offered by that body. Council staff members appointed to such bodies will not accept any remuneration.

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4.5 EXPECTATION OF APPOINTEES

Directors must adhere to the code of conduct annexed as Appendix 1 to this policy.

Directors are appointed to CCTOs or CCOs for the value and skills they can add to the organisation and not as Council representatives. The first expectation of appointees is that they will satisfy requirements of the role and pursue the requirements of the body's constitution. Where it is consistent with that role the appointee will have regard to the policies of Council and will seek to advance such policies.

DRAFT

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5 DIRECTOR REMUNERATION POLICY

5.1 REMUNERATION

Council may consider a level of remuneration for Board appointees that is appropriate to the relevant market, while recognising the public service element to a CCTO or CCO. Professional advice may be sought where necessary.

The Council also supports the payment by CCTOs or CCOs of directors' liability insurance and the indemnification of all directors.

Any remuneration earned by Councillors or staff as directors of a CCTO or CCO will be remitted to the Council.

5.2 REMUNERATION REVIEW AND FEE SETTING

Periodically, the Governance Subcommittee may review the level of remuneration (if any) made available to the Boards of the CCTOs or CCOs for distribution amongst directors on each Board.

Any fees will be reviewed on an annual basis for each CCTO or CCO, leaving the Board of that CCTO or CCO to apportion the fee between Board members as it sees fit. Under exceptional circumstances, Council may approve an application from a CCTO or CCO for additional fees; for a special project, a temporary increase in workload for the Board, difficulties in recruiting particular skills, or similar considerations.

In performing any review of remuneration, the Subcommittee will have regard to the following factors:

- > The need to attract and retain appropriately qualified directors;
- > The levels of remuneration paid to comparable companies in Aotearoa New Zealand;
- > The performance of the CCTO or CCO and any changes in the nature of its business;
- > The size and scale of the CCTO or CCO (e.g. turnover, value of assets, number of employees);
- > Complexity and scope of operations (e.g. complexity of issues, level of guidance for decision making, relationship management responsibilities);
- > Accountability (e.g. scale of market risk, public interest and profile, potential risk to director reputation, and other key risks);
- > Skills, specifically the type of expertise and specialisation needed; and
- > Any other relevant factors.

The final decision on directors' remuneration will be made by a resolution of Council.

6 REFERENCES

| | |
|---------------------------|---|
| | |
| Local Government Act 2002 | https://www.legislation.govt.nz/act/public/2002/0084/latest/whole.html#DLM171482 |

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| Controller and Auditor-General Tumuaki o te Mana Arotake <i>Governance and accountability of Council-controlled organisations</i> | https://oag.parliament.nz/2015/cco-governance |
| Institute of Directors New Zealand <i>Four Pillars of Governance Best Practice</i> | https://www.iod.org.nz/resources-and-insights/4-pillars-landing-page/# |
| Controller and Auditor-General Tumuaki o te Mana Arotake <i>Conflicts of Interest</i> | https://oag.parliament.nz/good-practice/conflicts-of-interest |
| Local Government Official Information and Meetings Act 1987 | https://www.legislation.govt.nz/act/public/1987/0174/latest/DLM122287.html |

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7 APPENDIX 1 – CODE OF CONDUCT

- a) Directors must act honestly and in good faith in what the director believes to be the best interests of the company. Directors must ensure that all shareholders and classes of shareholder are treated fairly according to their rights as between each other.
- b) Directors must carry out their duties in a lawful manner and use reasonable endeavours to ensure that the company conducts its business in accordance with the law and with a high standard of commercial morality.
- c) Directors should avoid conflicts of interest so far as is possible. Where a conflict or potential conflict arises, as a minimum they must adhere scrupulously to the procedures provided by law and by the constitution of the company for dealing with conflicts and with the position of directors having an interest in a particular contract or issue. A director who has a continuing conflict of interest of a material nature should consider resignation as a director of the company.
- d) Directors should be diligent, attend Board meetings and devote sufficient time to make and keep themselves familiar with the nature of the company's business and the environment in which it operates. They should be aware of all statutory and regulatory requirements affecting their company and, where applicable, the requirements of bodies such as the NZX New Zealand Exchange, and see that these are observed.
- e) Directors must observe the confidentiality of non-public information acquired by them as directors and not disclose it to any other person without the authority of the Board. A director who is nominated by, or who has special allegiance to a particular shareholder or group of shareholders, may only disclose confidential information to such shareholders with the authority of the Board and in strict compliance with any procedures prescribed by law or the constitution of the company.
- f) Directors of public issuers should ensure that their company has in place an approved procedure for the buying and selling of shares or securities in the company by directors or their relatives or associates. Directors should not engage in short term trading in the company's shares or securities. Directors should notify the Board in advance of any intended transaction by them or their relatives or associates involving shares or securities in the company.
- g) Directors must act in accordance with their fiduciary duties. They should comply with the spirit as well as the letter of the law and remember that in addition to purely legal requirements there is a standard of ethical and moral behaviour against which all their actions can be judged.
- h) A director should not bind himself to a pre-determined stance or course of action in the public arena which may then significantly impact on decisions taken at the Board table.
- i) A director may not publicly criticise the Council, the company or its subsidiaries, or dissent from a collective Board decision in a manner likely to damage confidence in the company or its subsidiaries or Council.
- j) Directors must familiarise themselves with the legal risks, both to the company and to the individual director involved with the position, and take all reasonable steps to minimise such risks