

Gas transmission access code – governance options

Final report in light of submissions

14 June 2017



About Concept Consulting Group

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Concept has undertaken a wide range of assignments, including market development, market analysis, technical evaluations, regulatory and policy analysis, and project management.

Preparation of this report

This report was finalised on 14 June 2017.

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1 What this paper is about

1.1 Introduction and background

Gas Industry Co Ltd (Gas Industry Co) is currently working with First Gas Ltd (First Gas) and stakeholders to develop a new single gas transmission access code (GTAC) for New Zealand. This code would replace the existing Maui Pipeline Operating Code (MPOC) and the Vector Transmission Code (VTC). The target 'go live' date for the GTAC is October 2018.

As a potential input to the development process, Gas Industry Co asked Concept to develop a 'think piece' on governance issues. The Concept report focussed on the processes for amending the GTAC once it has been established. Concept considered each of the three key elements of the code amendment process:

1. Initiation – how does a potential code change get initiated?
2. Consultation and refinement – what process is applied to share information about a code change proposal and allow for its evolution to the point of final decision?
3. Decision – once a proposal has been crystallised into a final form, what is the process for deciding whether it will take effect?

In April 2017 Gas Industry Co published Concept's report, 'Gas transmission access code - governance options', (the Concept report) and invited stakeholder feedback. Gas Industry Co received nine submissions on the Concept governance options report:

- Contact Energy (Contact)
- Genesis Energy (Genesis)
- Greymouth Gas (Greymouth)
- Major Gas Users Group (MGUG)
- Methanex New Zealand Limited (Methanex)
- Nova Energy (Nova)
- Shell New Zealand Limited (Shell)
- Trustpower
- Vector Limited (Vector).

The Concept report and all the submissions received are available from Gas Industry Co's website at: <http://gasindustry.co.nz/work-programmes/transmission-pipeline-access/developing/gas-transmission-access-code-governance-options/>

The report was also discussed as part of a workshop on 17 May 2017.

1.2 Purpose of this report

Concept was asked to summarise the issues raised in submissions and the workshop, and set out its views in response to those issues.

This report is Concept's response to that request. It is structured around the three key elements of the code amendment process presented in the Concept report: code amendment initiation, consultation/refinement and decision.

A tabulated summary of the submissions is included as Appendix B of this report.

This report should not be construed as representing the view of any other organisation, including Gas Industry Co or First Gas.

2 Initiation of code change proposals

2.1 What the Concept report said

We thought the primary goal of the initiation phase should be to ensure that potentially worthwhile proposals can get onto the table. The most likely source for such proposals will be the persons affected by the code. However, the transmission access code will also affect parties that do not have a current contractual relationship with a TSP. These parties could claim a legitimate interest in code terms, and there did not appear to be a strong case to exclude them.

On balance, we recommended that the following parties be permitted to propose changes to the code:

1. Any person that is bound by code terms via transmission service or interconnection agreements including the TSP itself
2. Gas users
3. Gas market operators.

We thought this group was sufficiently wide to capture most likely proposers. Furthermore, a party that was not included should be able to find a sponsor (e.g. a gas user) if it has a proposal with worthwhile potential benefits.

We also recommended that if final decision-making rights reside with an independent body, it should not have proposer rights (as recommended in Chapter 4 of the Concept report). In our view, being able to both propose and approve changes would place too much power with one entity.

2.2 What submitters said

There was a reasonable measure of support amongst submitters for the recommended approach, although in some instances this was qualified. Others presented an alternative view. In summary:

- three submitters (Contact, Genesis and Vector) broadly agreed with the recommendation
- four other submitters supported the recommendation, but qualified their view:
 - Methanex agreed with option 2, but considered that a minimum size threshold should apply for gas users to be able to initiate code change proposals
 - Nova agreed with option 2, but on the condition that the final decision remains with the parties who have the commercial responsibility of operating within the terms of the Code
 - Trustpower was generally supportive of option 2, but queried whether proposal rights for prospective shippers were adequately provided for under the recommendation as described
 - Shell agreed with option 2, provided that the code includes an obligation on each party to act as a Reasonable and Prudent Operator (RPO obligation), including when proposing code changes
- two submitters did not support option 2, and instead presented alternatives that included filtering of code change proposals by a suitable entity:
 - Greymouth recommended an option where only code signatories and parties with interconnection agreements can propose code changes; others can propose changes to Gas

Industry Co which can filter out proposals it considers are not worthwhile and progress those it considers have merit

- MGUG considered that the goal of ensuring potentially worthwhile proposals get to the table is better met by not limiting who can make a proposal, but with a party such as First Gas filtering out proposals it identifies as ‘not worthwhile’. MGUG also considered that Gas Industry Co should be able to submit a proposal.

2.3 Concept views in response to submissions

Concept notes the broad support for option 2, and acknowledges the qualifications and alternative views presented.

After consideration of submissions, we remain of the view that option 2 strikes a reasonable balance between:

- ensuring that any person genuinely affected by the code is able to propose a change (either directly or via (say) a gas user)
- limiting the risk of undue transaction costs to the industry and (ultimately) gas consumers.

A number of submitters suggested that proposals should be filtered in some way, if a relatively broad group of parties have proposal rights (as we recommend).

While we agree with the rationale for filtering, we think that the consultation and refinement procedures (discussed in section 3 and section 5.3) will provide a natural filter. For example, proposals with clear potential merit are likely to generate strong industry interest, such as requests for a workshop, additional analysis and/or working group to consider the proposal in more detail. We would expect Gas Industry Co to be sympathetic to such requests for consultative support, provided a code change proposal attracts strong interest. Conversely, Gas Industry Co is unlikely to provide any discretionary assistance for a proposal that is clearly frivolous or vexatious. In such cases, the proposer would bear the entire burden of making the case for their change request.

We therefore do not consider that an explicit filtering process for change requests is necessary, or that a minimum size threshold for gas users to make proposals should apply.

We recommend the following parties should be permitted to propose changes to the code:

1. Any person that is bound by code terms via transmission service or interconnection agreements including the TSP itself
2. Gas users
3. Gas market operators

3 Consultation and refinement of code change proposals

3.1 What the Concept report said

We thought the consultation and refinement phase should be directed at achieving the following:

- Filtering initial proposals to ensure they are sufficiently clear
- Providing stakeholders with an opportunity to have input into draft proposals, so they can be refined and improved prior to a formal decision
- Providing stakeholders with an opportunity to consider final proposals, and communicate their views to decision makers prior to the formal determination on whether the code change will occur.

The existing codes address each of these issues, but in different ways and to varying degrees. The MPOC process places strong emphasis on the front-end, with an expectation that proposals will be submitted in a fully formed state. The VTC process places less emphasis on the initial proposal, but explicitly provides for change proposals to evolve in light of stakeholder input before they are submitted for final decision.

We preferred the evolutionary approach for the following reasons:

- Final change proposals are likely to be more robust with lower risk of unexpected consequences where they reflect input from multiple stakeholders
- Allowing proposals to evolve post-initiation should increase the level of stakeholder buy-in for code changes. The alternative approach carries a greater likelihood of polarising stakeholder views, as outcomes must be binary in nature
- Allowing proposers to submit change proposals in summary form should avoid creating an undue barrier for participation by less well-resourced parties
- An evolutionary approach reduces the scope for strategic behaviour by proposers, such as bundling a controversial measure with more popular but unrelated measures
- An evolutionary approach may provide a more streamlined overall process, with less likelihood of having to restart a process from the first step.

Overall, we favoured a VTC-like process for consultation and refinement of code change proposals. That process should define the steps and timeframes that relevant parties need to follow. The timeframes should allow sufficient time for parties to provide and consider feedback on proposals, while also minimising the scope for undue delays.

We therefore favoured a VTC-like process that allows for code change proposals to evolve post-initiation.

3.2 What submitters said

There was a strong measure of support amongst submitters for the recommended approach. Some submitters also raised additional issues to be considered. In summary:

- six submitters (Contact, Genesis, Greymouth, Methanex, Nova, Vector) agreed with the recommendation of a VTC-like process.
- three submitters also supported a VTC-like process, but qualified this support:

- MGUG’s support was subject to First Gas providing a filter on all proposals received (as described in section 2)
- Shell supported a VTC-like process, provided that the code includes an RPO obligation, including when developing and considering code changes
- Trustpower preferred a VTC-like process, but expressed concerns about Commerce Act issues (outlined in its submission) and considered that these would need to be addressed in the detailed design
- Genesis suggested a ‘black-out’ period for normal code changes over the Christmas and New Year period, during which time no new changes can be lodged
- Trustpower proposed the following:
 - a ‘working group step’ should be an express requirement prior to formal consultation, to ensure development of code changes through a collaborative working group process
 - a ‘drafting consultation step’ during the decision-making process would enable consultation on the actual drafting once the proposal is no longer subject to significant change.

3.3 Concept views in response to submissions

We note the strong support for a VTC-like process for consultation and refinement of code change proposals, and this remains our recommendation.

We suggest that issues such as the use of working groups, incorporating a ‘blackout’ period, addressing Commerce Act concerns are more appropriate progressed as part of the detailed design phase.

We recommend that:

1. The process for consulting and refining code change proposals be based on the VTC arrangements
2. Issues such as the use of working groups, incorporating a ‘blackout’ period, and addressing Commerce Act concerns are progressed as part of the detailed design phase.

4 Decisions on code change proposals

4.1 What the Concept report said

We thought the design objective should be to place authority with those who have the best information and incentives to make decisions that are in the wider interest (however that may be defined¹). This should ensure that:

- code change proposals with expected net benefits will proceed
- code amendments with expected net costs will not proceed.

Arrangements should also seek to provide a predictable and consistent framework for decisions. This is important because many assets in the gas industry have relatively long lives. Predictability will help to avoid unnecessary risk. Finally, the decision-making process should avoid undue costs.

Against this backdrop, we:

- thought an independent decision-maker is more likely to lead to robust outcomes over time than a voting-based mechanism
- considered candidates for the independent decision-maker role, and identified Gas Industry Co as the most suitable party
- identified the need for explicit decision-making criteria, and considered that the objectives in section 43ZN of the Gas Act were suitable for this purpose.

4.2 What submitters said

Submitters expressed mixed views on this aspect of the recommendations:

- Contact:
 - agreed that proposed code changes should be assessed against the Gas Act Criteria amongst other relevant criteria, but did not believe that Gas Industry Co is best placed to make that assessment. Provided the submission requirements include a condition that the submitter must show that the change meets (or potentially better) the objectives, then any party deciding on the change can determine if this is true
 - believed that the approval given on the proposed change request should be decided by vote from those parties who are contracted to the Code, but not the gas users or market operators (unless they have contracts under the code)
- Genesis:
 - is concerned that Gas Industry Co could have too much power under the governance framework recommended and that code signatories are better placed to act for the wider interest in making final decisions

¹ In this context, the relevant benefits and costs of a proposal could be those accruing to the contractual parties to the code, or more broadly to New Zealand Inc.

- instead suggested that Gas Industry Co plays an important role in recommending whether a proposal should pass by assessing it against the objectives in section 43ZN of the Gas Act. There should be guidance on interpreting the objectives
- proposed that code signatories vote on whether a code change is accepted (once Gas Industry Co has made its recommendation), with a 75 per cent majority required, unless First Gas would be materially negatively impacted (with Gas Industry Co determining this)
- noted that Gas Industry Co retains the power to regulate if it is not happy with final decisions made by the majority of code signatories
- Greymouth:
 - agreed that Gas Industry Co should make the assessment
 - expressed the view that Gas Industry Co is not independent, but considered that this should not be a barrier, as long as this is explicitly recognised
 - suggested further debate on whether the code should provide for Gas Industry Co's decisions to be able to be disputed or reviewed
 - favoured inclusion of the GPS in the assessment criteria
 - suggested exploring whether the code's own five objectives should either be the criteria or form part of it
- MGUG:
 - generally supported the recommendations
 - considered that the GPS should be included in the assessment criteria as it is a fundamental part of the Act, and within the duties of Gas Industry Co to consider
- Methanex supported Gas Industry Co being the independent body deciding on code change proposals
- Nova:
 - preferred a voting process, with all code signatories entitled to vote. The structure of the decision process and voting rights would be determined as part of the design phase
 - considered that Gas Act criteria in S43ZN remain relevant in the context of an appeal process within the new code governance provisions and also as a protection for consumers should industry participants vote through changes which are assessed to have an anti-competitive affect. In such cases the GIC would have the ability to regulate.
 - suggested that, if Gas Industry Co is given the decision role, then the process should also include provision for appealing decisions to a higher authority such as the courts
- Shell supported the recommendations, provided that Gas Industry Co also confirm that, in its informed view, the proposed change is equal to or better than good gas operating practice as determined by reference to proper and prudent practices recognised internationally
- Trustpower:
 - supported an independent decision-maker but queried whether Gas Industry Co is independent, among other things because of the presence of industry-affiliated directors on

its board, and whether this posed a risk of legal challenge under administrative law due to potential pre-determination and bias in decision-making

- considered that establishing bespoke guiding principles may be valuable rather than relying on the more generic criteria outlined in section 43ZN of the Gas Act
 - suggested a second phase of design work to consider the detailed assessment criteria for decision making and associated processes
 - believed that the code change process should include a clear role for tools such as cost benefit assessment and sound consultation process to ensure best practice regulatory decision making
 - identified other matters that should be considered further including how to balance the natural tensions between any decision-making objectives (or guiding principles), how the views of interested parties will be taken into account in decision making, and how the consultation processes will ensure procedural fairness
- Vector supports vote-based decision making, but considered Gas Industry Co to be well placed to make assessments against the Gas Act s43ZN criteria, and that it can make such assessments through submissions on code change proposals

4.3 Concept views in response to submissions

A range of issues were covered in submissions, and we have grouped them into three broad categories:

- Decision making by voting or independent body
- Identity of the independent decision maker
- Criteria for decision-making.

Each of these is discussed below. We also discuss the preferred mechanism for documenting these governance arrangements.

4.3.1 Decisions made by voting or by an independent body

We acknowledge that some submitters (Contact, Genesis, Nova, Vector) firmly believe that decisions should be made on the basis of voting by code signatories.² While we recognise the argument that ‘code signatories’ should be well placed to understand the implications code changes on them, we are unconvinced that this is sufficient to ensure that a voting mechanism will produce superior outcomes to an independent decision-maker over time.

In particular, we have not been able to identify a voting mechanism for code changes that would allocate votes in proportion to economic interests. That would necessarily mean some voters are over-represented and others under-represented, when considering the impact of code change proposals. We note also that code changes can have substantial effects parties who are not code signatories, and who

² <http://www.mbie.govt.nz/info-services/sectors-industries/technology-communications/communications/regulating-the-telecommunications-sector/review-of-the-telecommunications-act-2001/submissions/Trustpower%20submission.pdf>

would therefore have no voting rights at all. We also have a concern that a voting mechanism with a high change threshold (such as 75% as proposed by Genesis) would hinder innovation.

These concerns are reinforced by experience with voting-based arrangements adopted for other industry ‘codes’ – such as for electricity in New Zealand and parts of the United States – that were cited in our report. Trustpower’s submission³ cites similar concerns in relation to the New Zealand telecommunications industry, where the Telecommunication Forum (TCF) uses a voting-based mechanism:

“over the ten plus years of existence, [the TCF] has not been engaged in proactive engagement in identifying of barriers to competition and continuous improvement

the TCF voting rights favour the larger incumbent operators (particularly “Tier 1” members), relative to small entrant retailers (particularly “Tier 3” members), despite the latter representing the majority of the TCF membership.”⁴

Another point raised by some submitters in favour of voting is that the GTAC will form part of a private contract, and should therefore be shaped ultimately by the parties directly bound by the contract. While we acknowledge the first point, we think it is important to also recognise that the GTAC effectively determines the open access terms for the gas transmission system. As a result, the interested parties extend well beyond those directly bound by contractual obligations with First Gas.

In summary, submissions have not revealed any major new information that suggests a voting-based mechanism will perform better over time. If anything, there is additional information to support the alternative view. For this reason, we continue to prefer an independent decision-maker operating to a defined set of objectives.

4.3.2 Identity of the independent decision-maker

While some submitters expressed support for Gas Industry Co as the independent decision-maker (Greymouth, MGUG, Methanex, Shell), some others raised questions about its independence (Greymouth⁵ and Trustpower).

In particular, Trustpower suggested that the presence of industry-affiliated directors on the Gas Industry Co board might undermine the independence of decision-making – and expose decisions to a risk of review under administrative law. For these reasons, it suggested that consideration be given to the use of a retired Judge, or Commerce Commissioner or similar person.

³ Trustpower also provided further material after the workshop.

⁴ Trustpower submission on Review of the Telecommunications Act 2001 – see www.mbie.govt.nz/info-services/sectors-industries/technology-communications/communications/regulating-the-telecommunications-sector/review-of-the-telecommunications-act-2001/submissions/Trustpower%20submission.pdf, 3 November 2015

⁵ Although Greymouth questioned whether Gas Industry Co was independent, it did not see this as precluding it from being the decision-maker.

We have considered further the issue of independence. We have been advised that Gas Industry Co has a long-standing policy of delegating to the Independent Directors' Committee, the power to make decisions in relation to change requests to the Maui Pipeline Operating Code.⁶ As a result, MPOC change requests have in fact been determined by directors who are not affiliated to any industry participant, i.e. by independent persons.

If this practice were to be entrenched (it is potentially open to change) for the future GTAC, we believe that would satisfy the test of independence.

We have also considered further the alternative of tasking a retired High Court Judge or Commerce Commissioner with the role as independent decision-maker. In our view, those alternatives would have the following drawbacks compared to utilising the independent members of the Gas Industry Co board:

- Decision-making power is likely to be more concentrated (possibly in one individual) – we believe that collective decision-making will generally produce better outcomes, because there is more scope for open debate among decision-makers and testing of arguments before a decision becomes final
- Decision-making is likely to be more consistent over time because it involves a collective group who will (most likely) turn over on a progressive basis – whereas consistency will be harder to achieve with a single (or few) decision-makers who are replaced periodically
- A specialist decision-maker will have more difficulty in managing an uncertain and potentially volatile volume of change requests. By contrast, this would be easier to manage with a group of persons who are also working on other gas industry issues.

In summary, we recommend that the decision-making power in relation to code change proposals be vested in the independent directors. We further recommend that this be achieved via a mechanism that ensures decision-making powers cannot be modified by the independent directors acting by themselves. The options for achieving this are discussed in further in section 4.3.4.

4.3.3 Assessment criteria for a code change requests

We recommended that code change proposals be assessed against the objectives in Section 43ZN of the Gas Act. Most submitters were supportive of this, but some also suggested including the Government Policy Statement (GPS) in the assessment criteria and/or that bespoke guiding principles be developed.

We think bespoke guiding principles are not necessary because the Gas Act objectives already provide a suitable framework, especially the principal objective which is “to ensure that gas is delivered to existing and new customers in a safe, efficient, and reliable manner.”⁷ If bespoke objectives were to be developed, these could possibly be in tension with the Gas Act objectives – which could be problematic to the wider GTAC regime, and preclude the independent directors of Gas Industry Co from accepting a role as decision-maker.

⁶ This is set out in the Delegated Authorities Policy of the Gas Industry Co.

⁷ Section 43ZN of the Gas Act 1992.

A possible alternative would be to include both bespoke guiding principles and Gas Act objectives, and make the former subsidiary to the statutory objectives. However, this does not appear to offer any particular advantage over the Gas Act objectives alone.

On the issue of GPS provisions, we agree with submitters such as MGUG who believe that they augment the Gas Act objectives. Our concern was that the GPS provisions could be (relatively easily) amended (unlike the Act), and that this in turn might necessitate not infrequent amendments to the relevant GTAC provisions. MGUG pointed out that the GPS provisions have in fact been very stable over time.

Upon further consideration, we recommend that the independent decision-maker be required to:

- Assess code change requests against the objectives in section 43ZN of the Gas Act 1992, and
- When making such assessments, have regard to the provisions of any operative GPS issued under 43ZO of the Gas Act 1992.

We also suggest that this be achieved by making the GTAC cross-reference the clauses in the Act, rather than repeating the detail on those clauses in the GTAC. This approach should ensure there is no misalignment between decision-making criteria for GTAC change requests and the Act's provisions in relation to objectives and operative GPS provisions.

4.3.4 Mechanism for defining independent decision-maker's role

If the independent decision-maker model is adopted, a question arises about how best to document the governance provisions. In our view, recording the provisions entirely within the GTAC itself would be problematic.

The independent decision-maker would be able to change the GTAC – and could therefore alter its own role⁸ with no effective external check. Although this scenario is unlikely, it is nonetheless undesirable from a design perspective.

Greymouth's submission identified this issue and proposed a potential solution: being that the code should include a mandate for a Memorandum of Understanding (MOU) between First Gas and the decision-making body. We agree with the use of an MOU to create safeguards around the governance arrangements.

We recommend that the GTAC provide for decision-making authority on change requests be vested with the independent directors of Gas Industry Co, provided this is evidenced by an MOU between First Gas and Gas Industry Co.

Some submitters (such as Nova and Trustpower) also commented on the importance of procedural safeguards in relation to decision-making. We believe the MOU can usefully assist in this area by setting out procedural safeguards such as:

- A description of the processes that will apply to change requests – such as consultation requirements, when and whether draft decisions should proceed final decisions etc
- A description of timeframes that will generally apply to decision-making processes

⁸ Assuming a proposal was forthcoming.

- A description of how the benefits and costs of a proposed GTAC change will be assessed, and the circumstances in which a quantified cost-benefit analysis would be expected
- A requirement for draft and final decisions to be issued in writing, and contain reasoning to explain why the determination aligns with the decision-making criteria in the GTAC
- A requirement for final decisions to contain the date(s) at which any GTAC change(s) will come into effect.

Placing these provisions within the MOU will ensure that the decision-maker cannot unilaterally change the processes that will be used to make determinations.

Finally, we recommend that the MOU contain termination provisions. For Gas Industry Co, this would permit an orderly exit if the independent directors were unable to continue as decision-maker for any reason. We believe that First Gas should also have a right to terminate the MOU if it considered that the status quo was unworkable. While such a right would not be exercised lightly, it nonetheless provides a overall safeguard around the decision-making framework.

In both cases, we recommend that any termination require a period of prior notice and consultation with industry stakeholders.

4.4 Overall recommendations on GTAC decision-making

We recommend that final decisions on GTAC change proposals should be made by an independent body

We recommend that the independent directors of Gas Industry Co are the most suitable candidate for the role of independent decision maker on GTAC change proposals

We recommend that decision-makers be required to assess GTAC change proposals against the objectives in the Gas Act, and have regard to any operative Government Policy Statement on gas issues

We recommend that the GTAC provide for First Gas to enter a memorandum of understanding (MOU) with Gas Industry Co that documents the role of the independent directors of Gas Industry Co as decision makers and the procedural framework they will use

5 Other matters

This chapter addresses some matters that fall outside of the three elements in the code amendment process discussed in the previous chapters.

5.1 Urgent change provisions

5.1.1 What the Concept report said

Circumstances may arise in which there is a need to make an urgent code change. We recommended that urgent code changes be allowed without consultation, and that such changes would automatically lapse, unless they were ratified via the 'normal' change process.

5.1.2 What submitters said

Submitters generally supported this aspect of the recommendations.

5.1.3 Concept views in response to submissions

Our recommendation is unchanged.

5.2 Manifestly uncontroversial code changes

5.2.1 What the Concept report said

A need may arise to make code amendments that are manifestly uncontroversial, such as to correct typographical errors, or to update references to external sources that change, such as legislation or industry standards. We recommended provision be made to allow uncontroversial code changes to be made with notification rather than consultation. However, if any party objects during the notification period, the change would not take effect, but would instead need to be considered via the normal process.

5.2.2 What submitters said

There was a reasonable measure of support for this recommendation amongst those who commented on it:

- four submitters (Contact, Genesis, Greymouth, Methanex) supported the recommendation
 - Methanex also recommended that only those directly bound by the code should be able to object during the notification period
- MGUG believed a better approach would be to accumulate and provide a single update of minor corrections. If manifestly uncontroversial the industry will decide by limiting input into the submission process.

5.2.3 Concept views in response to submissions

Having considered submissions, we remain of the view that manifestly uncontroversial changes should be able to be made with notification rather than consultation.

If a party directly bound by the code objects during the notification period, the change would not take effect, but would instead need to be considered via the normal process.

5.3 Administration of code change processes

5.3.1 What the Concept report said

A core feature of our recommendations was that proposers would retain authorship of their proposals until the point of final decision. We saw this as important, and note that it is one of the characteristics that distinguishes a code change process from rules and regulations.

Having said that, it would be unreasonable to expect each proposer to undertake all of the administrative arrangements associated with code consultation in every case. We recommended that Gas Industry Co act as administrator.

5.3.2 What submitters said

Only three submitters commented on this aspect of the recommendations:

- Contact and Greymouth supported the recommendation that Gas Industry Co administer the code change process
- MGUG disagreed, and instead considered that First Gas (as the transmission service provider, TSP) should have this role, because accountability for the code sits with the TSP. Gas Industry Co could assist the TSP with facilitating industry technical groups if that is required.

5.3.3 Concept views in response to submissions

We consider it important that administration of the code change process be undertaken by a neutral body with no direct commercial interest in the design of access arrangements. We therefore remain of the view that Gas Industry Co should administer the code change process.

5.4 Limited veto for TSP

5.4.1 What the Concept report said

The TSP is subject to price-quality control under Part 4 of the Commerce Act. This means it faces a maximum revenue allowance and quality targets that are fixed within each regulatory control period.

It would be unreasonable for the TSP to face material costs or risks as a result of a code change, where these are inconsistent with a prevailing Part 4 regulatory determination. Accordingly, we recommended that a limited veto be provided to the TSP, along the lines of those included in the MPOC and VTC.

5.4.2 What submitters said

Three submitters commented on this aspect of the recommendations:

- Nova supported the recommendation, but believed there should be rights of appeal in such circumstances
- Genesis and Greymouth were generally supportive but sought further detail on the nature of the veto power
- Greymouth also:
 - drew attention to Commerce Commission determination issues that could be relevant

- believed that any actual or potential use of TSP veto should be tabled early in the code change process (to allow for submissions and for Gas Industry Co to rule on it), rather than as currently the case where it could be tabled at the end of the process (and then potentially be subject to dispute).

5.4.3 Concept views in response to submissions

We remain of the view that a limited veto be provided to the TSP, along the lines of those included in the MPOC and VTC. We consider that the nature of the veto, the process by which it is exercised and possible appeal rights, can be further developed as part of the detailed GTAC design phase.

5.5 Other matters raised in submissions

We note a few other issues raised in submissions:

- Greymouth and Vector raised dispute resolution, appeals and review rights, particularly in relation to GTAC change request decisions. We have not addressed these issues, as they are outside the scope of this report.⁹ However, we would make the following broad observations. First, there is a question about whether to rely on general law with the Courts as arbiter, or to create bespoke arrangements. Arguably, the latter approach may be better where there is a more knowledgeable body than Courts to act as appellate body, and/or a desire to step away from general law provisions. In the present context, we are not aware of any body with gas industry knowledge that would be expected to perform better than the Courts. Nor are we aware of any specific reasons to depart from the general law framework. However, as noted above, we have not explored these issues in detail.
- Greymouth and Vector raised the issue of ‘single issue’ v ‘multiple issue’ code change proposals. We consider that a VTC-like approach for the consultation and refinement process will help to ensure that inappropriately ‘stapled’ proposals do not progress, while not unduly limiting valid multi-issue proposals.
- Vector suggested that approval of a code change proposal should include a timeframe for implementation. This would provide certainty and sufficient time for the affected or potentially affected parties to consider the impact of the new arrangements in their business planning. We see merit in this approach, and suggest that implementation timeframes be addressed as part of MOU requirements (discussed in section 4.3.4).

⁹ As discussed in section 1 of this report.

Appendix A – Tabulated summary of submissions

Q1	The report recommends that code changes could be proposed by parties bound by the terms of the code, gas users and gas market operators. Do you agree with the reasoning and recommendation?
Contact	<p>Given the complexities of the code and operational use we expect those best placed to propose code changes are those with the contractual nexus and therefore responsible for the obligations and liabilities imposed by the code.</p> <p>However, we believe there is value in allowing gas users and market operators the opportunity to propose changes and be involved in the submission process as this should enable innovation.</p>
Genesis	Agree.
Greymouth Gas	<p>No – Concept seems to conclude that option 2 is favourable based on paragraph 2 of page 7 of the paper – i.e. basically that option 3 is too broad. However, there is really no difference between a gas user and the wider public because a large subset of the public are gas users or could quickly / cheaply become a gas user if they wanted to pursue a particular issue. Based on this reasoning (and that gas market operators should be covered under option 1), then option 2 should also be ruled out if option 3 is ruled out.</p> <p>GGNZ broadly agrees with Concept along the lines that any affected party should be able to have their say on the development of the industry. However, GIC and First Gas should not lose sight of the fact that the code is an agreement between the signatories to it (some of whom are losing change request voting rights as part of this process), and not the wider gas industry or the general public as represented by gas users. If change requests are to be proposed by industry members other than signatories to the code, there should be some process for ensuring that those proposed change requests are appropriate and relevant to the code. The involvement of the GIC could assist here.</p> <p>GGNZ therefore proposes an alternative for consideration, as follows:</p> <ul style="list-style-type: none"> • GTAC signatories (including First Gas) can propose code changes.

Q1	The report recommends that code changes could be proposed by parties bound by the terms of the code, gas users and gas market operators. Do you agree with the reasoning and recommendation?
	<ul style="list-style-type: none"> • Parties who are not GTAC signatories but who have a written and current Interconnection Agreement with First Gas can propose code changes. • The GIC can propose code changes (subject to some conditions as discussed in the next paragraphs). • No other party can propose code changes. • Proposal rights only apply to eligible parties, and not to related parties. <p>The logic is:</p> <ul style="list-style-type: none"> i) The priority of GTAC signatories is preserved, ii) Gas users are incentivised to sign up to the GTAC if they want an easier path for influencing industry development, iii) Any party unable to propose a code change itself has a new avenue via the GIC (in addition to retaining the status quo avenue via its gas retailer), iv) The GIC can filter out general proposals that are unworthy of consideration and the GIC can propose any proposal which in its view has merit in being debated, and v) GIC can ring-fence itself physically or contractually to manage the conflict of it also ruling on a proposal that it has tabled, should it be called to eventually do so. <p>A potential issue with this approach is that the GIC could use this avenue to progress regulatory changes – and that too much power would vest with it. If this is of concern (and it may be a valid concern), then either:</p> <ul style="list-style-type: none"> • GIC could only propose a code change that in turn is proposed to it by a third party (so as not to progress its own agenda – and to separate its regulatory and co-regulatory powers),

Q1	<p>The report recommends that code changes could be proposed by parties bound by the terms of the code, gas users and gas market operators. Do you agree with the reasoning and recommendation?</p>
	<ul style="list-style-type: none"> • GIC cannot propose a code change but FGL should be mandated to propose a code change proposed to it by a party not signed up to the code if it considers, acting reasonably, that there is merit in industry considering the proposal, or • GIC could propose any change, but any change proposed by it needs to go to an outsourced / independent party to rule on.
MGUG	<p>No.</p> <p>We agree that the primary goal of the initiation phase should be to ensure that potentially worthwhile proposals get to the table. This suggests not limiting who is able to initiate a proposal.</p> <p>The reasons forwarded for limiting input on the basis that a wider base is more likely to result in code changes being proposed that are “manifestly ill-conceived, frivolous or vexatious in nature” wouldn’t seem any less likely to come from the proposed parties. It is also noted as not being likely if the wider public was included.</p> <p>If the key perceived risk is to have to deal with ill-conceived, frivolous or vexatious changes then we’d suggest that the proper approach is to have these proposals identified as “not worthwhile” and to filter these out of proceeding to the next stage.</p> <p>We support change requests being supported by information as currently prescribed in MPOC. Based on the information supplied a decision can be made as to whether the proposed change is worthwhile or not. If needed, guidance notes for the form might suggest what reasons for the amendment would be accepted and which wouldn’t.</p> <p>Our suggestion is that First Gas be the party receiving these proposals to make the judgement call as to whether they should proceed, with an appeal route for the submitter to the GIC.</p> <p>We note the reasoning for not allowing the GIC to submit a change request if they are also the independent body deciding on the change. However there needs to be some mechanism other than regulations for the GIC to put forward changes that it thinks are necessary under its statutory duties under the Gas Act. Under these circumstances there should be provision in the Code to allow the appointment of another independent body to make the final decision.</p>
Methanex	<p>Yes, in part. Methanex does question if it is appropriate for individual gas users (e.g. residential users) to be able to initiate code change proposals and we believe that a minimum size threshold should apply.</p>

Q1	The report recommends that code changes could be proposed by parties bound by the terms of the code, gas users and gas market operators. Do you agree with the reasoning and recommendation?
Nova	Nova agrees with the proposal, but on the condition that the final decision remains with the parties who have the commercial responsibility of operating within the terms of the Code. Parties other than those that are required to be a party to the new arrangement may have a useful contribution to make, but are not directly accountable for day-to-day management of gas being injected, transported or drawn off the transmission system or for compliance with the new Code requirements.
Shell New Zealand	<p>Yes, provided that:</p> <ul style="list-style-type: none"> • all proposers are expected to develop and make the case for change as a Reasonable and Prudent Operator (see box below). • The code will have general obligation of each Party to act as a Reasonable and Prudent Operator in all its operations under code, including in developing and considering changes to the code.
Trustpower	While we are generally supportive of the proposed arrangements, section 3 of our submission outlines an issue around prospective shippers needing to be able to potentially propose changes to the Code which we do not think is covered by current description of Recommendation One.
Vector	<p>Yes.</p> <p>Over time, we expect a few parties to submit proposed code changes to address potential or perceived inconsistencies between the new gas transmission access code (GTAC) and the relevant regulations (which are also subject to amendments over time).</p> <p>We suggest that Concept Consulting also consider mechanisms for resolving the above inconsistencies through, or outside of, the code change process.</p>

Q2	The report recommends that code changes should be consulted on and refined through a process similar to the current VTC process. Do you agree with the reasoning and recommendation?
Contact	Yes. This was extensively debated at the time the new change request process was developed for the VTC and we do not believe the landscape has or will change to such a degree as to make this current process superfluous. It also allows for innovation and the advancement of ideas from gas users and other non-contracted parties so that they can voice issues and allow them to be discussed and debated before full commitment to defined code changes is made.
Genesis	<p>Agree, subject to the caveats provided below.</p> <p>As stated in the cover letter, Genesis Energy supports the evolutionary process for normal code changes.</p> <p>However, we suggest that there is a 'blackout' period initiated for normal code changes over the Christmas and New Year period annually, during which time no new changes can be lodged. From our perspective, over this period there is a risk that interested parties may lack the time and resource needed to respond to code-change proposals. This could see changes pushed through without sufficient oversight from stakeholders, resulting in code changes that lack support.</p> <p>Genesis Energy is also generally supportive of having criteria for change proposals that fall outside the ambit of normal – as per chapter 5 of the report - however we request further clarity is provided e.g. What would the recommended automatic lapse period be for an urgent code change? What is the limited veto power for First Gas?</p>
Greymouth Gas	Yes – this was also the conclusion reached during the GITAWG process (albeit just for the ex Vector transmission pipelines). However, the logic still holds true for the new code work for the reasons outlined in the paper.
MGUG	<p>Yes, subject to the filter test proposed in response to Q1.</p> <p>We disagree with the suggestion that allowing First Gas and/or the GIC to filter proposals would create unduly centralised power over code changes.</p> <p>Whilst First Gas has a commercial interest in the pipeline they are also the party developing and owning the code. It would seem anomalous that they would be prevented from making an initial assessment on whether changes to their code would still meet the aims of the code. The informational requirements and guide to acceptable/ non acceptable reasons should be able to act as a control</p>

Q2	The report recommends that code changes should be consulted on and refined through a process similar to the current VTC process. Do you agree with the reasoning and recommendation?
	<p>on the quality of the code change proposal to ensure that properly formed and argued code change requests are forwarded to the next stage.</p> <p>Should First Gas decide that a change request shouldn't proceed we believe that a submitter should be able to appeal to the GIC. The GIC is the regulator and in our view an objective party able to make a final assessment</p>
Methanex	Yes.
Nova	<p>Yes. Nova Energy believes that code changes can always be improved through engagement by parties with different perspectives on an issue, and even changed radically if alternative solutions can be found to the issues being addressed.</p> <p>The GIC can also be actively involved in helping refine proposals if it is not also the final arbiter of adoption of changes to the Code.</p>
Shell New Zealand	<p>Yes, provided that:</p> <ul style="list-style-type: none"> • Each party is expected to develop their arguments for support or rejection of any code change as a Reasonable and Prudent Operator. • The code will have general obligation of each party to act as a Reasonable and Prudent Operator in all its operations under code, including in developing and considering changes to the code.
Trustpower	<p><i>Adoption of process similar to current VTC process</i></p> <p>We prefer a Code change process that allows proposals to evolve post-initiation. This ensures that proposals can benefit from the views and experience of other parties and avoids the inefficiency of having to start the process again if the submitting party decides to modify the proposal.</p> <p>However, we would like to understand how the Commerce Act issues outlined in section 4 of our submission would be addressed in an iterative process.</p> <p>We consider that this needs to be addressed during this initial design phase to ensure a workable and robust Code change process is introduced.</p>

Q2	<p>The report recommends that code changes should be consulted on and refined through a process similar to the current VTC process. Do you agree with the reasoning and recommendation?</p>
	<p><i>Role of working groups and enabling feedback on proposed drafting</i></p> <p>Consistent with paragraph 2.1 above, we strongly support the development of Code changes through a collaborative working group process and consider that a “working group step” should be expressly required to occur prior to formal consultation beginning. Refer to section 4 of our submission for further details.</p> <p>We also suggest that specific consideration be given to how the Code change process will ensure that any revised drafting would operate as intended. This could either be addressed during the development of Code changes (towards the end of the process to enable evolution of ideas post-initiation¹⁰) or during the decision-making process.</p> <p>Our preference would be for a “drafting consultation step” to be included during the decision-making process as it would be more efficient to consult on the drafting when it is no longer subject to potential significant change as the proposal evolves.</p> <p>For example, the decision maker could consult on the proposed drafting during the formal consultation period and require the submitting party to adjust the proposed drafting to address any misalignment between the drafting and the proposal that either the decision maker or other interested parties identify.</p> <p>We do not consider designing a governance regime that would rely entirely on the decision maker to ensure that the drafting aligns with the intent of the changes would be aligned with regulatory best practice which acknowledges the benefit that other parties can provide in developing regulatory changes.</p>
Vector	Yes.

¹⁰ One option would be to require the party developing the proposal to publish drafting in the Draft Change Request (or equivalent under the new process). This would enable interested parties to provide feedback prior to the Final Change Request being developed and submitted to the decision maker. Major changes to the drafting in the Final Change Request (as could be anticipated during an evolutionary process) would require further consultation potentially leading to multiple rounds of consultation on drafting occurring. This would not be the most efficient approach for ensuring useful input into any drafting.

Q2	The report recommends that code changes should be consulted on and refined through a process similar to the current VTC process. Do you agree with the reasoning and recommendation?
	<p>We support a VTC-type evolutionary process for code changes. This would allow a proposed code change to be subject to robust assessment and refinements by stakeholders, including the GIC, during code change drafting and prior to its approval and implementation.</p> <p>Consistent with and as part of a VTC-type process, we support a vote-based approach in decision making on code change proposals.</p>
Q3	The report recommends that proposed code changes should be assessed against the Gas Act s43ZN criteria, and that Gas Industry Co is best placed to make that assessment. Do you agree with the reasoning and recommendation?
Contact	<p>Provided that code changes follow a similar process to that under the VTC as set out in Q2 above we agree that those proposed code changes should be assessed against the Gas Act Criteria amongst other relevant criteria. However, we don't believe it follows that the GIC are best placed to make that assessment. Provided the submission requirements include a condition that the submitter must show that the change meets (or potentially better) the objectives then any party deciding on the change can determine if this is true.</p> <p>Further Contact believes that the approval given on the proposed change request should be decided by vote from those parties who are contracted to the Code but not the gas users or market operators (unless they have contracts under the code). This again is in line with the current VTC code change process.</p>
Genesis	<p>Do not agree, for the reasons provided in the cover letter and below.</p> <p>We have raised the concern that GIC could have too much power under the governance framework recommended in the report and that code signatories are better placed to act for the wider interest in making final decisions.</p> <p>We instead suggest GIC plays an important role in recommending whether a proposal should pass by assessing it against the objectives in section 43ZN of the Gas Act. How these objectives should be interpreted is important, and we strongly suggest guidance on interpretation is developed e.g. does 'efficient' - as referenced in the principal objective in s.43ZN (a) - account for economic efficiency?</p>

<p>Q3</p>	<p>The report recommends that proposed code changes should be assessed against the Gas Act s43ZN criteria, and that Gas Industry Co is best placed to make that assessment. Do you agree with the reasoning and recommendation?</p>
	<p>When GIC has made its recommendations, code signatories can vote on whether a code change is accepted. We propose that if 75 per cent or more of code signatories vote in favour of a proposal, it should pass, unless First Gas would be materially negatively impacted. The GIC again would play an important role in this instance, determining if in fact First Gas would be so impacted.</p> <p>We consider this to provide a robust process for deciding on future code changes. The GIC, of course, retains the power to regulate if it is not happy with final decisions made by the majority of code signatories.</p>
<p>Greymouth Gas</p>	<p>No – re Gas Act criteria. GGNZ agrees with the reference to s43ZN of the Gas Act, but we favour also including the GPS. Concept seems to conclude against the GPS based on the last paragraph of page 18 of the paper – i.e. it duplicates the principal objective and decision making criteria needs to be stable over time. However, the GPS includes items not covered by the primary objective (e.g. re climate change) and criteria should be adaptive to reflect the changing industry. In addition, the GPS is made pursuant to the Gas Act and expressly says (paraphrasing) that it sets out the objectives / outcomes that the government wants GIC to pursue. Historically, this has been interpreted to extend beyond the regulatory and into the GIC’s co-regulatory role. On balance, the arguments favour the GPS being included in the criteria.</p> <p>In addition to the above, it is perhaps worthwhile debating whether the code’s own five objectives should either be the criteria or form part of it. If it is the former, then there would need to be a way of tying up the code with the Gas Act / GPS to ensure the code doesn’t drift away from central government expectations.</p> <p>Yes – re GIC making the assessment. GGNZ agrees with this recommendation from a quick look at the costs, benefits and alternatives (on the back of agreeing with question 2 above).</p> <p>As an aside, GGNZ thinks that the reasoning used to get to the conclusion is flawed. I.e. GIC is not independent because</p> <ul style="list-style-type: none"> a) GIC having a majority of independent board members does not necessarily prove that the company itself is independent, and b) GIC clearly has an actual or potential interest in what it is called upon to approve, and it could use this as a way to further its own objectives in addition to the government’s objectives. This issue is inherent to the coregulatory structure and should not be a barrier to a pragmatic code change process, as long as the position is front-footed. The proposal should therefore refer to Industry Body, rather than Independent Body. This would also work much better for industry optics.



<p>Q3</p>	<p>The report recommends that proposed code changes should be assessed against the Gas Act s43ZN criteria, and that Gas Industry Co is best placed to make that assessment. Do you agree with the reasoning and recommendation?</p>
	<p>As a further aside, it is good to see on GIC’s website and in the paper that GIC commissioned Concept to do the paper. This is the proper way to manage the potential conflict of interest in that the GIC (probably) pays Concept, and Concept recommends GIC has a role. It looks a bit funny, but the paper stacks up regardless and the transparency is commendable.</p>
<p>MGUG</p>	<p>In general, yes.</p> <p>We disagree with the analysis where it suggests that the Government Policy Statement (GPS) issued under the Gas Act is excluded from the decision-making criteria.</p> <p>s43ZZC(1)(b) of the Act makes it quite clear that the GPS is a fundamental part of the Act, and within the duties of the GIC to consider. The current additional objectives within the GPS are also central to issues of gas transport that should be considered in the code development.</p> <p>Furthermore, the suggestion that the GPS introduces some instability in the regulatory environment seems to overlook the fact the current GPS has been in force since 2008.</p>
<p>Methanex</p>	<p>Methanex supports GIC expanding its role to be the independent body deciding over code change proposals.</p>
<p>Nova</p>	<p>Not directly. The purpose of Gas Act s43ZN is to provide guidance for the GIC, but there is no direct basis for that to determine the commercial relationship between the gas transmission owner and shippers.</p> <p>While many overseas jurisdictions may opt for a regulator to determine Code changes, there are also many instances of industries where regulation plays a minimal role in determining access arrangements. For instance, New Zealand does not have a regulator determine detailed access arrangements for Rail, Ports, or Airports. These are left for commercial operators to deal with.</p> <p>The GIC itself is not empowered to set regulations and should address proposed Code changes on an advisory basis only, to ensure best process is followed.</p> <p>It is Nova’s view therefore that Code change decision process should be performed accordingly to a voting process with parties entitled to vote if they are signatories to the new code.</p>

Q3	The report recommends that proposed code changes should be assessed against the Gas Act s43ZN criteria, and that Gas Industry Co is best placed to make that assessment. Do you agree with the reasoning and recommendation?
	<p>Detail as to the structure of the decision process and voting rights is a level of detail that would have to be worked through in due course.</p> <p>The Gas Act criteria contained within S43ZN of the Gas Act still remain relevant in the context of an appeal process within the new code governance provisions and also as a protection for consumers should industry participants vote through changes which are assessed to be have an anti-competitive affect. In such cases the GIC would have the ability to regulate.</p> <p>Should the proposal to use the GIC as the decision maker on Code changes proceed, then the process should also include provision for appealing decisions to a higher authority such as the courts. Note that regulators such as the Electricity Authority have some characteristics that the GIC does not that influence governance structure, for example:</p> <ul style="list-style-type: none"> • The Official Information Act process does not apply to the GIC • The GIC Board has non-independent Directors; and • The Judicial Review process is only available in the case of regulatory bodies exercising statutory rights.
Shell New Zealand	Yes, provided that the GIC should also confirm that, in its informed view, the proposed change is “equal to or better than good gas operating practice as determined by reference to proper and prudent practices recognised internationally”.
Trustpower	<p><i>GIC as the independent decision maker</i></p> <p>While we support an independent decision-maker being put in place, we have concerns around whether the GIC is the most suitable candidate for this role.</p> <p>Section 5.3 of our submission assesses the current GIC Board arrangements against the Productivity Commissions dimensions of independent decision-making and identifies that against this criteria the GIC has a relatively low score for its independence, thus raising similar issues as are identified in the report for the vote based approach.</p> <p>Other concerns relating to the requirements of administrative law with respect to pre-determination and bias in decision-making are outlined in section 5.4.</p>

<p>Q3</p>	<p>The report recommends that proposed code changes should be assessed against the Gas Act s43ZN criteria, and that Gas Industry Co is best placed to make that assessment. Do you agree with the reasoning and recommendation?</p>
	<p>We suggest that these matters receive detailed consideration prior to making any recommendation around the GIC becoming the decision maker for any Code amendments.</p> <p><i>Assessment criteria for Code changes</i></p> <p>We consider that bespoke guiding principles may be valuable to establish rather than relying on the more generic criteria outlined in section 43ZN of the Gas Act. This idea should be explored further in conjunction with industry.</p> <p>We also suggest that a second phase of design work which considers the detailed assessment criteria for decision making and associated processes should be undertaken to ensure that a robust decision making process is established from the offset.¹¹</p> <p>The tools used by an independent decision maker such as a cost benefit assessment (CBA) and sound consultation process play an important role in ensuring best practice regulatory decision making¹². Ensuring that their role in the decision-making process is clear prior to the commencement of the new arrangements would ensure consistency with the Government’s expectations for good regulatory practice¹³. We see no reason why these cannot be incorporated within the Code change process itself.</p> <p>Concept Consulting outlines a few matters which would need consideration, including when quantitative CBA would be used or how the independent decision-maker would be expected to interpret the objectives/guiding principles. We have identified a number of other matters which require consideration:</p> <ul style="list-style-type: none"> • When a qualitative CBA will be used; • The consultation processes used to inform a CBA;

¹¹ We note a second phase of governance design work would only be able to occur once fundamental decisions like those considered in the current paper are made, i.e. that an independent decision maker will be put in place.

¹² This is reinforced by the Governments expectations for regulatory agencies to provide advice and assurance of the robustness of the proposed change and implementation support. Refer to page 4: <http://www.treasury.govt.nz/regulation/informationreleases/pdfs/good-reg-practice.pdf>

¹³ Refer to <http://www.treasury.govt.nz/regulation/informationreleases/pdfs/good-reg-practice.pdf>

Q3	<p>The report recommends that proposed code changes should be assessed against the Gas Act s43ZN criteria, and that Gas Industry Co is best placed to make that assessment. Do you agree with the reasoning and recommendation?</p>
	<ul style="list-style-type: none"> • How the natural tensions between any decision-making objectives (or guiding principles) will be balanced; • How submissions on the draft decision will be responded to; <p>How the views of interested parties will be taken into account in decision making¹⁴;</p> <p>How the consultation processes will ensure procedural fairness, i.e. reasons for a decision by the independent decision-maker should be published in a draft decision document to enable interested parties to respond.</p> <p>Note that this is not an exhaustive list and should be further developed with industry.</p>
Vector	<p>We consider the GIC to be well placed to make assessments against the Gas Act s43ZN criteria. The GIC can make such assessments through submissions on code change proposals.</p>

¹⁴ We note that this is particularly important if the GIC cannot make amendments to a proposal and relies on the submitting party to make any adjustments until the point of a final decision (including in response to its draft decision), i.e. if the GIC doesn't consider an issue has been addressed properly will it simply have to reject the proposal at the final decision stage or could it work with the submitting party to properly address the issue?



Q4	Are there any other matters that you believe are relevant to code changes and need to be considered?
Contact	Contact agrees with the recommendations in respect to urgent change request and uncontroversial changes as these are currently covered in this way under the current VTC process. Further that the administration of the process could be dealt with by the GIC.
Genesis	Yes. Genesis Energy sees value in having a 'Plan B': we recommend there is a review period included within the governance framework, where after a pre-defined period of time, the code-change process can be assessed on its merits and performance to date.
Greymouth Gas	<p>Yes – as follows:</p> <ul style="list-style-type: none"> a) GGNZ agrees with Concept's recommendation on urgent change provisions required to give effect to urgent legislation. b) Industry will need to debate whether other changes (not required by legislation) should be able to be fast-tracked. The concept sounds good, although recent VTC history has highlighted some risks with it like missing a short window to comment can lock a party out of subsequent voting. Loopholes could be fixed if the concept is supported. c) GGNZ agrees with Concept's recommendation on manifestly uncontroversial code changes. The GIC or submitting party should also be able to make minor changes to change requests that are quite advanced in the process, e.g. for previously missed spelling mistakes or logic errors (without having to restart the process). d) GGNZ agrees with Concept's recommendation on administration of code change processes e) GGNZ agrees with Concept's recommendation on limited veto for TSP provided that the detail is debated. There is a risk that (in any given period) the Commerce Commission's price path decision will make TSP highly reluctant to consider what it might otherwise have been open to considering. For example, the Commerce Commission seems to exclude items from the price-quality determination where such aspects of quality are already provided for in other legislation – e.g. gas safety and measurement which places some obligations with gas retailers even though TSP is best placed to control the obligations. The risk therefore is that an individual gas retailer may have reduced an HSE risk as low as reasonably practicable, but that the supply chain has not if TSP does not want to incur costs to fund an initiative that should ordinarily stack up. GGNZ therefore considers that the intention and context of the Commerce Commission's price quality determination should be considered in addition to the written determination itself.

Q4	<p>Are there any other matters that you believe are relevant to code changes and need to be considered?</p>
	<ul style="list-style-type: none"> f) To promote an efficient and proactive code change process, GGNZ also considers that any actual or potential use of TSP veto should be tabled early on in the code change process (to allow for submissions and for the GIC to rule on it), rather than as currently the case where it could be tabled at the end of the process (and then potentially subject to dispute). g) Industry should debate whether or not multi-issue change requests are allowed. There will be times where multi-issue proposals are sensible and efficient, but other times where it could include a single issue detrimental to industry that is clearly not required and / or is attempting to be approved on the back of a proposal that has an overall net benefit. Perhaps GIC should be able to approve all or part of a proposal. h) Assuming that GIC will not be a code signatory, then the new code should provide the mandate for an MoU between GIC and FGL. That mandate should include things like: timings, what the criteria is, detail on applying the criteria, how / when to use a cost benefit analysis, how to handle qualitative and quantitative analysis, consultation process, transparency of legal opinions and ToRs, the circumstances when GIC can propose a change request and how this impacts on its role as approver etc. FGL should be required to direct GIC to obtain a cost-benefit analysis on a material issue where 'x' % of code signatories want one. Ultimately, the MoU should not contain anything material that hasn't been able to be debated / instructed / constructed within the code itself. The MoU should also be changed to the mandate set out in the code changes. i) Industry should debate whether the party making the proposal, or whether the GIC, is to ensure that the proposed change complies with the Commerce Act and other legal requirements. The status quo under the MPOC does not make sense for the new code – i.e. to rely on the proposing party's opinion and for GIC to simply accept this at face value. It might make more sense for the GIC to sign off on this (via internal or external legal opinion) as part of its approval process. j) Industry should debate whether or not the code should provide for the GIC's decisions to be able to be disputed or reviewed. k) The timing / detail of the change process in the code should also be reviewed as part of giving effect to question 2).
MGUG	<p>Manifestly uncontroversial code changes</p> <p>We are uncertain who decides whether a change is manifestly uncontroversial. We believe a better approach is to accumulate and provide a single update of minor corrections. If manifestly uncontroversial the industry will decide by limiting input into the submission process.</p>

Q4	<p>Are there any other matters that you believe are relevant to code changes and need to be considered?</p>
	<p>This approach also avoids the issue of blocking the change by simple objection that the discussions contemplated.</p> <p>Administration of Code Change Process</p> <p>Accountability for the code sits with the TSP, not the GIC. Our view therefore is that the TSP (First Gas) should be allocated the role of administrator. This is on the basis that the code is owned by the TSP who is also currently developing it. We are unclear as to why they can develop a code but not administer code changes to it. The TSP should still be able to rely on the GIC to help facilitate establishment of industry technical groups if that is required.</p>
Methanex	<p>Methanex supports the recommendation which allows for urgent code change changes without consultation being time bound, and automatically lapsing unless ratified via the 'normal' change process.</p> <p>With regards to manifestly uncontroversial code changes we question whether it is appropriate that if 'any person' objects during the notification period that the changes would not take effect. We suggest that in this situation only persons directly bound by the code terms should be able to object.</p>
Nova	<p>With respect to the use of Veto rights by the TSP, Nova believes that there should be rights of appeal in such circumstances. The nature of the appeal process will depend on the circumstances and that may well be a general contractual right involving the Courts. There should also be the additional protection for consumers through the ability of the GIC to recommend regulations to the Minister</p>
Shell New Zealand	<p>No, provided that the code will have a general obligation on each party to act as a Reasonable and Prudent Operator in all its operations under code, including in developing and considering changes to the code.</p>
Trustpower	<p>We have not identified any further matters for consideration at this time.</p> <p>The Report is however very high level and we have some reservations as to how the proposed governance arrangement may work in practice.</p> <p>Ensuring continual input from industry during the detailed design phase will be vital to ensure the success of the final governance arrangements that are implemented.</p>

Q4	Are there any other matters that you believe are relevant to code changes and need to be considered?
	We strongly encourage the GIC to establish a working group which includes industry participants to provide advice during the detailed design phase.
Vector	<p>We suggest that Concept Consulting further consider the following issues:</p> <p>Cost-benefit analysis: Any cost-benefit analysis undertaken to support a code change proposal should assess its broader impact (or potential impact) on the gas sector, i.e. it should consider its impact on the gas upstream and downstream markets, not just on transmission.</p> <p>Single issue v multiple issue proposals: We encourage discussion on the merits and weaknesses of ‘single issue’ v ‘multiple issue’ code change proposals.</p> <p>Where a multiple issue code change proposal is allowed, we prefer each aspect of the proposal to be supported by its own cost-benefit analysis and potentially allow voting for each aspect separately.</p> <p>Implementation timeframe: The approval of a code change proposal should include a timeframe for implementation. This would provide certainty and sufficient time for the affected or potentially affected parties to consider the impact of the new arrangements in their business planning. This would also ensure that approved code changes are implemented.</p> <p>Dispute resolution: While we acknowledge that the Concept report does not cover dispute resolution arrangements, we encourage Concept Consulting (if not the GIC and/or First Gas) to explore options for addressing disputes at this stage of the code development process. This would further inform our views on this key aspect of GTAC governance.</p>