Flyers Creek wind farm – the scope of the Assessment.

For some years now, the consistent message from the Department of Planning has been that the merit Assessment of a wind farm Modification can only consider the changes contained in the modification itself as the project approvals up to that point are set in concrete.
The Department's Mr Mike Young reinforced this once again in the transcript of the IPC/DPE meeting, July 8, 2019.

> "there are limitations about the nature and extent of the assessment we can do, because we are really confined to assessing that increment."

In an earlier Assessment for Flyers Creek wind farm Modification 2, Mr Young, as the senior signatory confirmed:

> "this assessment must focus on issues directly relevant to the modification application in accordance with the EP&A Act."

Where is the supportive evidence in the Act for that position?
The Act would appear to support the opposite:

> "In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified."

The first sentence gives the Commissioners great flexibility in determining relevance of matters such as "public interest", "social impacts" and "economic impacts", especially if they were poorly addressed, or more importantly, not addressed at all, in the original EIS all those years ago.
If the framers of the Act wanted to confine the matters in section 4.15 (1) to the modification itself, they would have done so.

The second sentence is even clearer on what you **must** do.

These two sentences in the Act are confirmed on the Department's web site in the section State Significant Development – Modifications.
(https://www.planningportal.nsw.gov.au/major-projects/assessment/state-significant-development/modifications)

> "Consent authorities must evaluate the merits of the MA [Modification Application] against the matters in Section 4.15 of the EP&A Act as well as the reasons for granting the original consent."

However, let us assume that the Act does limit the Assessment to the modification itself.
Why is this limitation only applicable to, and only enforceable on, the non-associated community?
Where it suits the developer and the Department for this modification and certainly Commissioners in the immediate past to be extremely flexible, they are.
As an example, the Department writes in the executive summary of the Flyers Creek Assessment:

> "The project would deliver a range of economic benefits, including up to 100 full time construction jobs and 10 full time operational jobs, with a capital investment of up to $300 million. Additionally, Infigen would contribute at least $107,000 a year through a voluntary planning agreement with Blayney Shire Council, of which $55,000 would contribute to a community enhancement fund.

> It would also increase the electricity produced by the wind farm and is consistent with the Commonwealth's *Renewable Energy Target* and the NSW *Climate* Change *Policy Framework* as it would generate approximately 445 GWh of renewable energy per year over its operating life, equivalent to 75,500 homes annually, with estimated emissions savings in the order of 428,000 tonnes CO2-e per year."

This clearly relates to the project as a whole, not just to the modification.
This data comes directly from the developer as you can see from Section 5 and 6 of the developer's presentation slides from their briefing to you on July 8, 2019. So the developer is also able to emphasise project wide benefits, a privilege not available to the community.
Should a non-associated resident write a similar submission covering the negative impacts of the project as a whole, it would be rejected.

These project wide impacts are repeated by the Department in the Evaluation section of the Assessment.

There are numerous references in the Assessment of updates in line with "contemporary" wind farm approvals. The most contemporary departmental publication is the Wind Energy Guideline 2016. To quote:

> "The Guideline also applies to applications for modification to an existing wind farm approval submitted after the date of publication of this Guideline."

Clearly, Infigen ignores this requirement, as does the Department. Commissioners cannot afford to.
The Visual Assessment Bulletin 2016 is also quite specific:

> "The Bulletin will apply to all new development applications for State Significant Development (SSD) wind energy projects through the Secretary's Environmental Assessment Requirements (SEARs) issued after the date of the Bulletin. It will also apply to any modification applications submitted after the date of the Bulletin that propose additional turbines, or a significant reconfiguration or increase in height to the approved turbines."

Infigen's chosen VI expert, Andrew Homewood from Green Bean Design ignores this requirement as he has done with more than one recent modification. The Department by its inactivity supports this approach. Commissioners, once again cannot afford to follow suit.
Mr Young seems more sensitive than normal about the impact this wind farm will have on non-associated residences, especially those within 2.15 km of a turbine. You might ask him whether a wind farm with 35 such residences (plus many more properties with residential rights for which the 2016 Guidelines require assessment) would survive the approval process if presented today.

Long before changes to the Conditions of Approval relied on the "contemporary" justification, the Department rewrote clause C5 coincident with Modification 3, significantly advantaging the developer, even though there was no request from Infigen to do so.

Government Agencies are also able to take advantage. For example, the DPE Assessment advises:

> The **Office of Environment and Heritage** (OEH) identified errors in the original biodiversity impact assessment and sought a range of additional information from Infigen but is now satisfied with the proposed mitigation measures, the findings of the biodiversity impact assessment and the proposed changes to the existing conditions to incorporate the proposal.

and:

> **Blayney Shire Council** supports the proposal but asked for the voluntary planning agreement to be revised to reflect the increased electricity generation of the project (see **Section 4**). It also asked for changes to strengthen the existing conditions relating to road dilapidation surveys, which have been included in the proposed notice of modification.

It seems that everyone is allowed to request modifications to, and re-evaluation of, the original approval except the impacted residents.

Let me pose a question on mitigation to the Commissioners. Mr Young still projects the belief that vegetative mitigation will solve the Visual Impacts (VI) of wind farms. If we confine ourselves to the mitigation of VI of the Modification, perhaps you can ask Mr Young how his VI mitigation solution works for the 10 metres of the turbine above 150 metres.

I notice that the speaker's roster for the public meeting called by the IPC had very few, if any, non-associated community representatives. Hopefully the community is saving their arguments for the next step.