

DRAFT NOTICE OF APPEAL

COURT DETAILS

Court	Supreme Court of New South Wales, Court of Appeal
Registry	Sydney
Case number	

TITLE OF PROCEEDINGS

First appellant	Clough Projects Australia Pty Ltd (ACN 109 444 215)
Number of appellants	3
Respondent	Elecnor Australia Pty Ltd (ACN 168 435 658)

PROCEEDINGS IN THE COURT BELOW

Title below	Elecnor Australia Pty Ltd v Clough Projects Australia Pty Ltd & Ors
Court below	Supreme Court of New South Wales
Case number below	2024/467526
Dates of hearing	28-29 May 2025
Material date	19 June 2025
Decision of	Justice Stevenson

FILING DETAILS

Filed for	Clough Projects Australia Pty Ltd, Salvatore Algeri and David Orr , appellants
Filed in relation to	Whole decision below
Legal representative	Justin Vaatstra, Arnold Bloch Leibler
Legal representative reference	011930312
Contact name and telephone	Justin Vaatstra, (03) 9229 9961
Contact email	JVaatstra@abl.com.au

HEARING DETAILS

This notice of appeal is listed for directions at

TYPE OF APPEAL

Commercial arbitration appeal

DETAILS OF APPEAL

- 1 This appeal is brought under *Supreme Court Act 1970* (NSW), s 101(2)(e).
- 2 Leave to appeal was granted on

3 The appellant has not filed a notice of intention to appeal.

4 The appellant appeals from the whole of the decision below.

APPEAL GROUNDS

1 The primary judge erred in finding that there are two “matters” in the proceeding for the purposes of s 7(2) of the *International Arbitration Act 1974* (Cth), being:

- a. “a dispute or controversy about the engagement and enforcement of the compulsory acquisition process set out in clause 21.3 of the JV Deed” (“the Clause 21.3 Matter”); and
- b. “a dispute or controversy in relation to [the first appellant’s] entitlement to contribution for the call on its security by [NSW Electricity Operations Pty Ltd] that forms the basis of the Cross-Claim” (“the Call Contribution Matter”)

(cf *Elecnor Australia Pty Ltd v Clough Projects Australia Pty Ltd* [2025] NSWSC 610 (J) [102], [107]).

2 The primary judge erred in finding that the “Clause 21.3 Matter”, but not the “Call Contribution Matter”, is incapable of settlement by arbitration (cf J [110], [128]).

3 The primary judge erred in finding that whether the second and third appellants were claiming “through or under” the first appellant in relation to the respondent’s claims was “in issue” (cf J [123], [128]).

4 The primary judge erred in finding that the arbitration agreement in cl 23.3 of the JV Deed was not “inoperative” by reason of any repudiation, waiver or abandonment by the respondent (cf J [128]–[131]).

5 In the alternative to grounds 1 to 4 above, the primary judge acted upon a wrong principle, took into account an irrelevant matter and/or failed to take into account material considerations in declining to stay the “Clause 21.3 Matter” or any part thereof on the basis that “[r]esolution of the controversy between the parties as to the acquisition of Clough’s interest will not depend on the outcome of the arbitration of the [second and third appellants’] claim for contribution for the call on [the first appellant’s] security” (cf J [135]).

ORDERS SOUGHT

1 Appeal allowed.

2 Orders 1 to 3 of 19 June 2025 of the court below be set aside.

3 In lieu thereof:

- a. the notice of motion filed by the respondent on 27 March 2025 be dismissed with costs; or
- b. alternatively:
 - i. the respondent's claim be stayed pending the determination of any arbitration; and
 - ii. the respondent pay the appellants' costs.

4 The respondent pay the appellants' costs.

UCPR 51.22 CERTIFICATE

The right of appeal is not limited by a monetary sum.

SIGNATURE OF LEGAL REPRESENTATIVE

This notice of appeal does not require a certificate under clause 4 of Schedule 2 to the [Legal Profession Uniform Law Application Act 2014](#).

I have advised the appellants that court fees will be payable during these proceedings.

These fees may include a hearing allocation fee.

Signature

Capacity

Date of signature

Solicitor on record for the appellants

NOTICE TO RESPONDENT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the orders sought in the notice of appeal and for the appellant's costs of bringing these proceedings.

Before you can appear before the court, you must file at the court an appearance in the approved form.

HOW TO RESPOND

Please read this notice of appeal very carefully. If you have any trouble understanding it or require assistance on how to respond to the notice of appeal you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the notice of appeal from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

Court forms are available on the UCPR website at www.ucprforms.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales, Court of Appeal Law Courts Building Queen's Square Level 5, 184 Phillip Street Sydney NSW 2000
Postal address	GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

PARTY DETAILS

A list of parties must be filed and served with this notice of appeal.

CERTIFICATION OF SUITABILITY FOR PUBLICATION

COURT DETAILS

Court	Supreme Court of New South Wales, Court of Appeal
Registry	Sydney
Case number	2025/00273969

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Filed in relation to	Whole decision below
Legal representative	Justin Vaatstra, Arnold Bloch Leibler
Legal representative reference	011929377
Contact name and telephone	Justin Vaatstra, 61 3 9229 9961
Contact email	JVaatstra@abl.com.au

CERTIFICATION

I, Justin Vaatstra, solicitor for the Applicants, certify pursuant to paragraphs 27 and 28 of Practice Note SC CA 01 – Court of Appeal that the Applicants' Draft Notice of Appeal filed 17 November 2025 is suitable for publication.

SIGNATURE

Signature of legal representative

A handwritten signature in black ink, appearing to be 'Julia V.', written over the printed text 'Solicitor for Applicants'.

Capacity

Solicitor for Applicants

Date of signature

12 November 2025