Checklist for terms of settlement

* Are parties correctly identified?
* Is the court proceeding correctly identified?
* Are there recitals giving brief background or context for terms of settlement, including a definition of any matters that are to be the subject of the release?
* Payment obligations –
* by whom?
* joint or several?
* to whom?
* how?
* when?
* Costs –
* Is the settlement inclusive of costs?
* If settlement is ‘plus costs’, how are they to be assessed?
* How are extant cost orders addressed?
* Taxes and duties –
* Is there GST on the settlement sum? If so, who will bear the GST?
* Is there capital gains tax consequences? If so, who will bear the CGT?
* Are there stamp duty consequences? If so, who will bear the duty?
* Is there an admission of liability or denial of liability?
* Are all specific obligations agreed by the parties recorded?
* Is the disposal of the proceeding recorded – discontinuance, dismissal, consent orders (including any past costs orders)?
* Releases -
* Will there be a release?
* Is it mutual?
* Has the client specifically agreed to the scope of the release?
* Is the release operative on signing the agreement or performance of agreement?
* Are there confidentiality and/or non-disparagement requirements?
* Have these been correctly described?
* Are there interests in land being addressed?
* Are the owners of the interest in land signing?
* Are directors’ guarantees required?
* Does the settlement need to be in the form of a deed?
* Is the settlement conditional on court approval?
* In the case of self-represented litigants, do the terms acknowledge that they have been invited to seek their own legal advice before executing the terms?
* Do the terms need to provide for the execution of counterparts?