

Want to sell but not decided on price?

The gardens are looking fabulous, and the pool is sparkling...

You have obtained a suite of new letting appointments since you purchased the business. You have received a top-up and are getting along with the body corporate. You are thinking about selling and have decided on a sales agent and a multiplier you want to achieve. You have also been keeping an eye on the market and have decided on a price range for your lot.

You have decided that if the price is right then it is time to sell.

All your efforts are paying off when your hard-working agent finds a buyer who agrees to your business sale multiplier and price for your lot. Everything is awesome except that you do not have updated figures for the net operating profit and the buyer wants to sign a contract ASAP.

Traditionally, buyers and sellers enter a contract with an agreed sale price for the business, which is calculated by multiplying the seller's net operating profit by a multiplier. The buyer then engages their accountant to



Amy McKee
Partner, Mahoneys
Gold Coast Office

confirm that the net operating profit for the business is the amount set out in the contract. If the review confirms the net operating profit is the amount set out in the contract the parties move forward with any other conditions that may be included in the contract (such as legal due diligence and/or finance). If the net operating profit is less than the amount set out in the contract, more often than not, buyers and sellers will negotiate the price based on the multiplier that was determined and agreed at the outset.

So, what can you do if you have not determined the net operating profit for the business and have not decided on a sale price?

At Mahoneys, we have recently acted for a number of sellers who had buyers with agreed multipliers for the sale but no current net operating profit from which the price could be determined. In these situations, we assisted the sellers to change the timing of when the price was calculated. The buyer and sellers went to contract with an agreed multiplier and an agreed process to determine the amount of the net operating profit.

In general terms, the process was as follows...

The contract is subject to both the buyer and seller being satisfied with the amount determined as the net operating profit. If it is too high or low for any reason, either party may terminate the contract.

The buyer is required to engage an industry specialist accountant to determine the amount of the net operating profit of the business and provide a report. The buyer must provide the report to the seller.

If the seller or their accountant disputes the report for any reason then the seller can trigger

discussions and negotiations between the buyer, seller, and their accountants. If the dispute is not resolved, then either party can terminate the contract.

If, following either the report being provided or the dispute being resolved, both parties are satisfied with the net operating profit; then this condition will be satisfied and the price for the business will be set as the agreed net operating profit multiplied by the agreed multiplier.

As can be seen, this approach is similar to the usual process but, instead of the buyer's accountant verifying that the net operating profit for the business is the amount set out in the contract, the buyer's accountant calculates the actual net operating profit for the business and both the buyer, and the seller, are given an opportunity to determine if they are satisfied to proceed based on that profit amount.

There is certainly not a one-size-fits-all approach, and, in the majority of cases, the more traditional method will be more suitable for buyers, financiers, and sellers alike. The above process carries risks for both buyers and sellers who need to engage accountants and lawyers before they know the sale price while giving the other party a right to terminate a contract if they are not satisfied with the price. However, this approach has proved successful for a number of Mahoneys clients in transactions where the sellers and the buyers were committed to a sale and purchase. ▲

Amy McKee heads up Gold Coast office and specialises in property, management rights and motels with particular expertise in New South Wales and other Australian jurisdictions.

