Merger, Acquisition and Takeover: How Trust is both the driver and inhibitor in not-for-profit sector growth strategies

Abstract

This research is a case study based on the "lived experience" of two not-for-profit organisations wanting to create synergies and efficiencies in back office operations and to increase the offerings of services to existing clients by joining together as one business unit. This research has followed the different stages of the proposed merger or acquisition from the initial signing of the Memorandum of Agreement (MOA), to the strategic planning for the new entity including the potential organisational structure, board structure and executive team recruitment. The negotiations have varied from the rejection of a takeover, to the proposal of a merger, to the eventual decision for the larger organisation to "acquire" the smaller organisation. These decisions were deliberated at great length by both organisations, but the clear driver in all negotiations was TRUST. Trust that at all times the outcomes should benefit clients, trust that the new Board would be represented in equal parts by both of the organisations and trust that the new senior executive team of the single entity would utilise the efficiencies gained to sustain the organisation. But this trust also became an inhibitor at times, where trust was used as an excuse to not carry out all due diligence governance processes (DDGP). This lived experience has shown that Trust is indeed an important factor in any proposed merger or acquisition but will never replace DDGP. In fact DDGP enhanced trust, and enabled for more transparent decisions to be reached by both parties at the negotiation table. The not-for-profit sector can learn a great deal from this case study that shows the benefits of societal needs of their clients in aged care, disability and transport by a merger or acquisition. It should be used by other not-for-profit organisations to put into practice strategic merger and acquisition processes to create an organisation that is run efficiently and for the benefit of their clients, with a combination of trust and DDGP.

Keywords: Strategic Merger, Acquisition, Trust, Due Diligence, governance, lived experience.

Introduction to Not-for-profit (NFP) sector

This research follows the due diligence governance processes of two not-for-profit entities considering a merger or acquisition of their two regional entities. This "lived experience" is documented from the initial discussion phase to the signing of the Memorandum of Understanding (MOU), to the implementation and governance phase of the new organisational structure, board structure and recruitment of the senior executive team of the larger organisation. It documents the time taken for the two organisations to make decisions, get legal advice and move forward with negotiations. The main driver of the merger or acquisition was based on Trust. Trust that the new organisation would be of significant benefit to their clients' needs in the disability, aged care and transportation NFP sectors, and trust in the due diligence governance process that both the individual entities and that of the merged entity would be created from was carefully executed.

Literature Review Mergers & Acquisition in the NFP sector

According to the Australian Bureau of Statistics (2016) there are approximately 600,000 not-for-profit (NFP) organisations in Australia, with the Australian Charities and Not-for-profits Commission (ACNC, 2018) registering nearly 56,000 of them. In 2016, Australian charities reported approximately $148.3 billion in income and more than $5.7 billion in turnover (ACNC 2018). The NFP sector is significant in Australia in terms of the contribution to employment, but most importantly in its contribution to societal needs such as the provision of aged care, transport and disability support, particularly in regional areas.

According to the ACNC (2016), NFP entities were considering mergers and acquisitions to better further the mission of the organisation, to achieve economies of scale, to access innovations and resources as well as being opportunistic or being approached by another NFP to merge. Why NFPs undertake mergers was researched by the Australian Institute of Company Directors (2016) with the top 5 reasons being:

- Better to meet our mission (16%)
- Market Share (14%)
- Improve service (13%)
- Improve efficiency (12%)
- Increase size (10%).

A merger is simply when two organisations join together to form a new entity, either by merging into one of the existing entities and trading with that name and executive team or creating a whole new entity transferring all assets and liabilities into the new entity (AICD, 2018). A merger is essentially a merger of two equal parties together as one. According to Buckley et al (2012, p7) "a merger is one of the most challenging steps a voluntary organization can make…..and *can* lead to permanent and irreversible change".

A merger in the not-for-profit sector can be different to that in the private sector (La Piana & Hayes 2005) in that the key drivers are usually different. For example in the private sector the main driver is money, but in the NFP sector it is usually mission that plays an essential role.

According to the ACNC (2016 p, 1), charities may wish to merge as they:

- "think that it would benefit the groups of people they help
- have the same or similar purposes, cultures and values

- conduct the same or similar activities
- already work together
- want to share resources and funding, or
- they think that they would be more effective if they worked together".

An acquisition however, is when a smaller organization transfers it assets and liabilities into a larger organization and then ceases to exist. The board of the smaller organization is disbanded and the larger organisations culture will dominate the larger organization (AICD, 2018).

In the current operating climate of the NFP sector, the ACNC is encouraging the merging or acquiring of smaller NFP entities to create efficiencies within the sector, particularly when government funding is limited. According to Russell (2009), many NFP are realizing that there is significant pressure to merge in order to be competitive and to achieve the organisations mission. In the 2017 NFP Governance and Performance Study (AICD, 2016), 38% of directors reported that their organisation in the last 12 months had discussed the possibility of a merger, however only 7% had actually completed a merger in the last year.

The NDIS showed a significant change in the way NFP would provide services in the future. According to the NDIA 2018 Annual report (Page 2, 2018):

- "183,965 Australians are benefiting from the NDIS, including, 176,197 people have received individualised plans and 7,768 children aged 0-6 are receiving support through the NDIS Early Childhood Early Intervention (ECEI) approach
- 86,705 New participants who received an approved plan in 2017-18
- 54,802 Australians accessing supports for the first time".

The NDIS aims to provide over 460,000 Australians under the age of 65 with a disability with support by 2020 (NDIS Annual Report, 2017). According to the ABS (2016), 1 in 5 Australians or 4.3 Million people in Australia live with a disability. The NFP sector according to the Productivity Commission (2010) is relied heavily upon by the Australian government to provide services, both flexible, value for money and client centered. Mergers or acquisitions in the NFP sector are encouraged by the ACNC to provide better services to clients in terms of choice and delivery as well as value for money with access to larger client groups.

Based on the significance of the NFP sector particularly in regional Australia, and the pressure for them to merger and grow, the following research question will be posed:

Research Question: What is the **"**lived experience" of two not-for-profit entities, providing services in regional Australia embarking on the possibility of a merger or acquisition?

Methodology: The Lived Experience

The lived experience is "…experience we live through before we take a reflective view of it" (Van Manen, 2014, p. 42). In the context of research, the lived experience is "…a representation and understanding of a researcher or research subject's human experiences, choices, and options and how those factors influence one's perception of knowledge." (Boylorn, 2008, pp. 490-491). According to

Van Manan (2004, pp. 580-581) the lived experience "…remains a central methodological notion that aims to provide concrete insights into the qualitative meanings of phenomena in people's lives."

The lived experience is used in this research as the researcher is the vice chair of entity 1, Link Ability, and as such is part of the potential merger, and is literally living the process of the due diligence governance process and exploration phase of the potential merger.

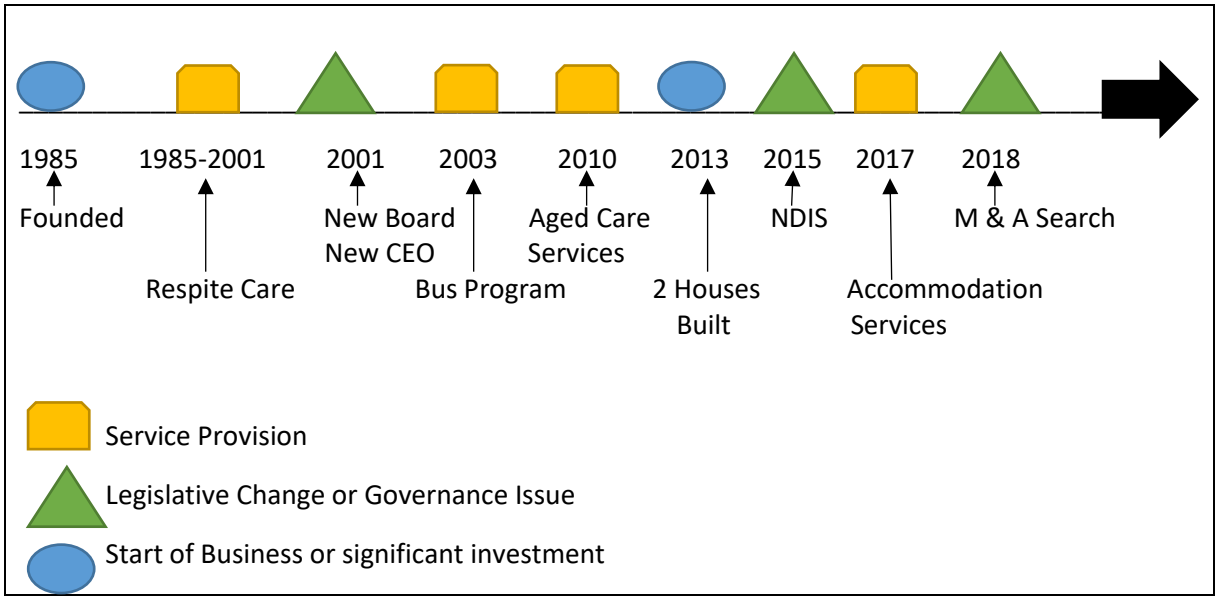
Background for Two Regional Not-for-profit entities

1/ Entity 1: Link Ability

Entity 1 known as "Link Ability" (not their real name for privacy purposes) was formed in 1985 by a group of parents dissatisfied with the level of care provided for people with a disability, particularly young people in regional NSW of Australia. The organisation provided disability services and respite care from 1985 to 2001 when the Board resigned amongst much chaos and a new board was formed and a new CEO recruited. In 2003 they embarked in their first transport programs to allow people with disabilities to attend day programs by picking them up and dropping them home using their own buses. In 2010 they introduced Aged Care services due to the growing demand particularly by baby boomers retiring. In 2013 the organisation opened up 2 purpose built houses, for respite care of people with a disability and also to run day programs particularly for youth with a disability and behavioural problems.

2015 saw the introduction of the National Disability Insurance Scheme (NDIS), administered by the National Disability Insurance Agency (NDIA), where instead of institutions receiving funding and providing services to clients, clients would now receive the money and choose where to get their services from. The NDIS had a significant impact on Link Ability and its systems. It underwent significant systems development to accommodate the new legislation which was both costly and timely. 2017 saw the provision of further accommodation services. As part of the strategic planning in 2018, the Board decided on a growth strategy to find another organization to merger or acquire. A summary of these significant events are shown in figure 1.

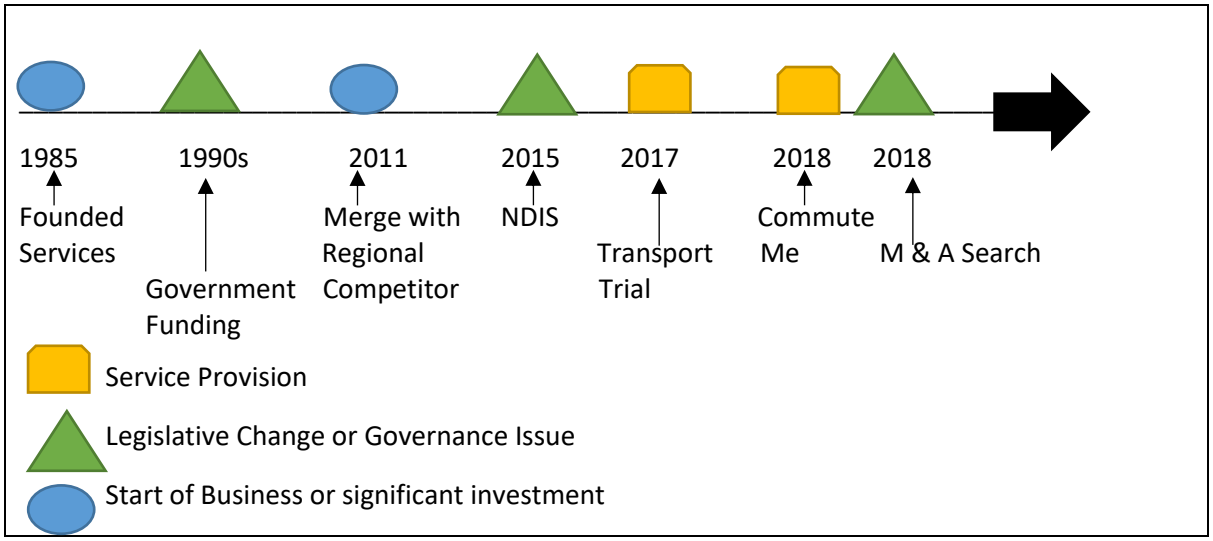
Figure 1: Link Ability Timeline



2/ Entity 2: Trans Connect

Entity two will be known as "Trans Connect" (for privacy purposes) and was formed in 1985, to provide transport for people in regional areas with little access to public transport, particularly those with a disability, or from the aged care sector. In 2011, Trans Connect merged with a similar transport organization in another close region, and doubled in size. 2017 saw the first trial of new software and applications for accessing transport options for clients, and 2018 saw the formatting of a new service "commute me" (fictional name), paid for by the Australian government, to specifically provide transport from individual houses to the local train station for ease of commuting to the nearest city (a one and half hour train ride with little provision for parking). A summary of significant events is shown in Figure 2.

Figure 2: Trans Connect Timeline



Why merge?

2018 saw both Link Ability and Trans Connect decide to discuss possible mergers with other like-minded NFP entities in their region, as part of their individual strategic growth strategies. The two boards were at a distinct advantage in that they shared both Board members and CEOs, which at times would create conflicts of interest, but it also provided efficiencies of sharing of information.

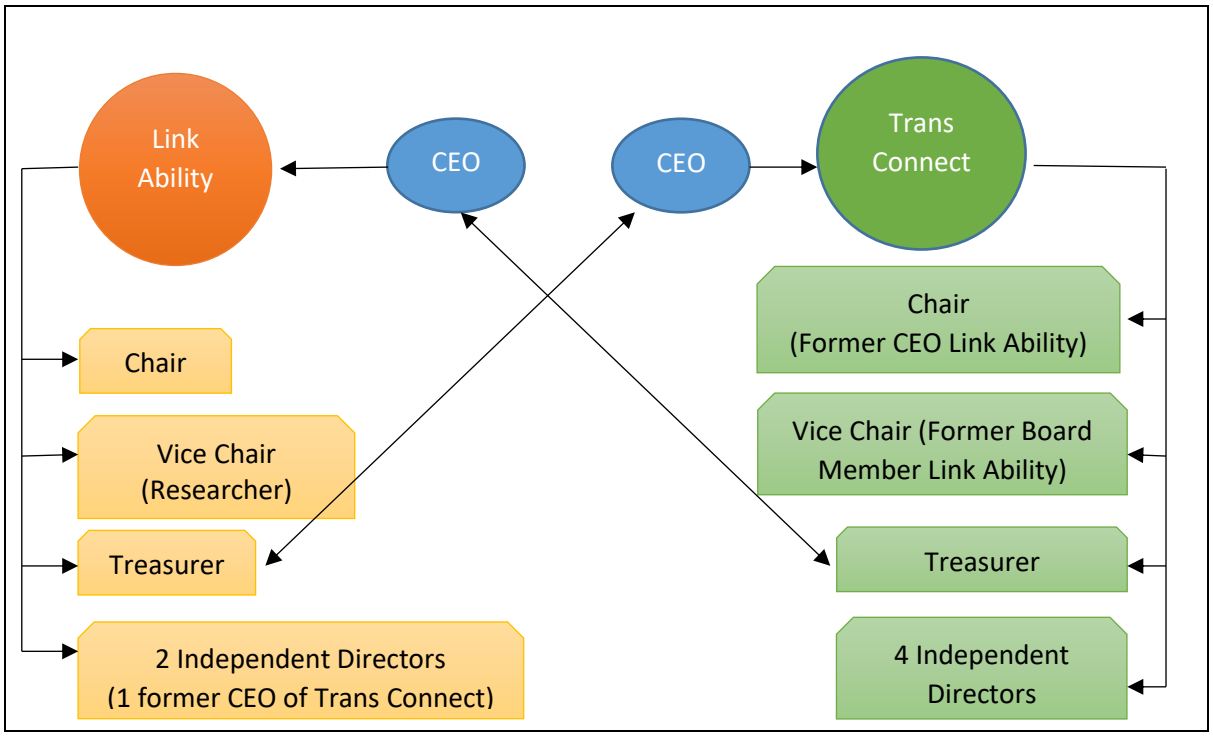
Both boards at their annual strategic planning meetings had goals of growth, particularly through a merger or acquisition. As the CEO of Link Ability was on the Board of Trans Connect, and the CEO of Trans Connect was on the Board of Link Ability, the conversation started on the possibility of a potential merger or acquisition. Both Boards signaled that there would at times be conflicts of interest but that at all times negotiations would involve trust. Trust was defined as being the good of one or more beneficiaries, and that both parties would have the ability to rely on the ethical conduct of both the boards and the senior executives. Stakeholders of this trust would be:

1. Clients
2. New Entity Structure
3. Board recruitment of new entity
4. Senior Executive Recruitment
5. Employees and volunteers of new entity

Conflicts of Interest

Figure 3 outlines the potential conflicts of interest of the current Boards of Link Ability and Trans Connect. Both Boards shared Board members, and both Boards had the CEO of the other organization on their Boards. Current board members have previously served on the other boards, and current board members have in the past served as the other boards CEO. As trust was a big issue for both boards, it was important to understand any potential conflicts of interest, so decisions could be made ethically and for the benefit of stakeholders. Figure 3 details these complex conflicts.

Figure 3: Two Boards Conflicts of Interest



Link Ability conflicts of interest included the following:

- Current CEO serving as Treasurer of Trans Connect
- Current Treasurer is CEO of Trans Connect
- Independent Board Member formerly CEO of Trans Connect

Trans Connect conflicts of Interest included the following:

- Current CEO serving as Treasurer of Link Ability
- Chair was formerly CEO of Link Ability
- Vice Chair was formerly an independent board member of Link Ability
- Treasurer current CEO of Link Ability
- 1 independent director is a current employee of Link Ability

These conflicts of interest were seen as creating efficiencies for the proposed merger or acquisition, but at all times it was agreed that 3 sets of meetings would held, one each for the existing entities of Link Ability and Trans Connect, and a third meeting of the proposed new entity. This would create a circle of trust so that board members with potential conflicts of interest had opportunities to withdraw from any conversations they felt uncomfortable in, it also meant that other board members could ask those with conflicts to leave meetings where they could be potentially conflicted.

Initial Joint Board Meeting Held

After both boards had their midyear (2018) strategic planning workshops and both CEO's considered the option of a merger or acquisition it was decided that both boards should meet to discuss the possibility. A meeting was held on 19th July 2018, where both CEO's presented information to both boards both separately and collectively on advantages and challenges of a proposed merger. At this meeting all members of each of the boards were introduced, and discussion was held as to the implementation of the due diligence governance process (DDGP). At this meeting a draft non-binding Memorandum of Understanding (MOU) was drawn up and signed by both Chairs of Link Ability and Trans Connect.

It then took another 3 months before any movement on the potential merger or acquisition was considered. This was mainly due to the end of the financial year and auditing of both sets of accounts from each organization, and the holding of Annual General Meeting (AGM) of both organisations in October, 2018. After the AGMs were held, a joint Board meeting was scheduled for 21st November 2018. At this meeting it was discovered that both boards also had the same auditing and accounting firms (AA Firm) engaged. It was decided to seek information from the AA firm regarding the process of a merger and acquisition and to seek advice as to the potential success of the current two organisations gaining efficiencies and growth and in particular if they would have the ability to provide greater services to a collective larger client date base. It was agreed that the AA firm provide a quote for the provision of a due diligence governance process (DDGP) for consideration of the two boards.

It was also decided at that meeting that a joint strategic planning day be held to discuss what the new organization would look like particularly in relation to the purpose, mission and vision of the combined organization. The AA firm provided a quote for services, and suggested that decisions made at the strategic planning day would impact on the due diligence governance process (DDGP), and would provide a report after the planning day was held.

Joint Strategic Planning Day

Both Boards outlined their expectations in Figure 4.

Figure 4: Strategic Planning Day



Each of the entities were then asked to give their top 10 priorities for the new organization.

Table 1: Comparison of priorities

Priorities	Link Ability	Trans Connect
1	Ageing population	Low entry barriers
2	Client Choice	Automated Vehicles
3	Large for Profits	More for less
4	Service delivery robots	Change Governments
5	NDIS funding	Workforce
6	Accommodation	Environment
7	Demand for services	Client demands
8	Changing customers	Insurance
9	Price Points	Point to point
10	Growth in housing and day services	Regulations

Groups made up of Board members of each of the 2 boards were then asked what their shared purpose would be as follows, with the themes demonstrated below:

Table 2: Shared Purpose

	What should the "shared purpose" of the new entity be?
Group 1	To form an organization that leverages the experience, capability and heart to deliver enhanced benefit to our community, customers, staff and the community
Group 2	To provide efficient increasing range of services for better quality and easier lifestyle choices for our clients
Group 3	Providing client purposes support and service that empower and enrich the lives of people

Groups where then asked what should the shared vision be, with the three responses listed below:

Table 3: Shared Vision

	What should the "shared vision" of the new entity be?
Group 1	By 2023 we will be the leading provider of aged, disability and community transport in our region, and be seen as innovators
Group 2	By 2023 we will continue to thrive in the environment of change
Group 3	Developing new markets, products, services and regional areas and enriching the lives of our chosen customer segments

As a collective group it was then decided on the next steps in the process as follows:

- Seek Legal advice in relation to proposed entity
- Skills based review of the board of directors of proposed entity
- Decision to be made on organizational structure
- Job description of new CEO to be created
- Register company, appoint Board and allocate positions (if necessary)

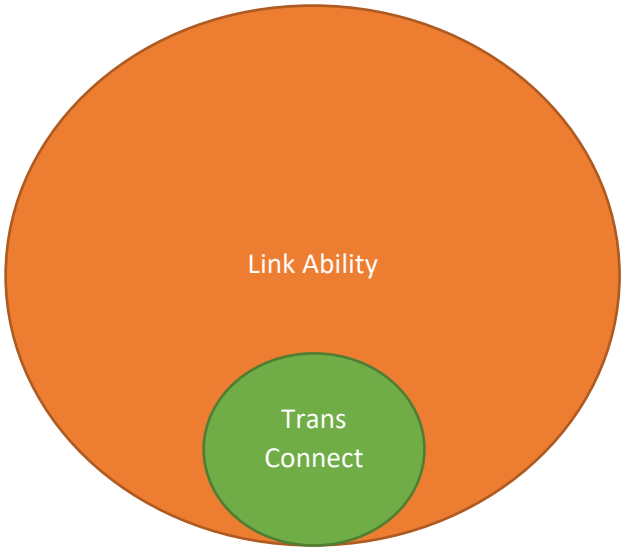
Due Diligence Governance Process (DDGP)

The next meeting of the two boards was then scheduled for the 14th January 2019 to discuss the Governance of the new entity. On this day three major decisions were made:

- That Link Ability would acquire Trans Connect (*acquisition* NOT merger)
- That the board of Link Ability be expanded to allow for equal representation of both Link Ability and Trans Connect (4 from each entity = 8 in total).
- That the CEO of the new Link Ability be recruited from the current CEO of Link Ability and Trans Connect and not be tendered out in the market place (as yet).

The following was decided as the new entity structure:

Figure 5: Acquisition of Trans Connect into Link Ability



This would mean that effectively, Link Ability would acquire Trans Connect. This decision was based on the following:

Table 4: Link Ability acquisition of Trans Connect

Reason	Explanation
Asset Structure	Link Ability had a stronger net asset position
Regulatory authorities	No need for a new company registration, new ABN or new Charity status with ACNC, or ATO or ASIC
Transport NSW	Transport NSW has agreed with the planned merger
Board Structure	Link Ability to review Constitution to increase board members from six to eight, and the new board would be made up of 4 members from each entity.
Board Functions	The Chair of Link Ability would remain as chair, the Chair of Trans Connect would become Vice Chair of Link Ability
Senior Executive Positions	The CEO of Link Ability role would be reviewed and a new position description created. Both CEOs of Link Ability and Trans Connect would be encouraged to apply. Initially the position would not be taken to the market place due to the high caliber of the 2 current CEOs.

The decision for Link Ability to acquire Trans Connect was a difficult decision that both boards considered meticulously. But the efficiencies gained by an acquisition, particularly in relation the government red tape such as charity status of the new entity was considered too high a financial barrier for the two organisations. All of these reasons however will be subject to advice from the AA firm, as part of their due diligence governance process.

Upon making the decision that an acquisition would take place, the Chair of Trans Connect made it very clear that they believed that this was the best way forward for the new entity, and that they believed the two organisations had established significant trust in each other, that all clients would be taken care of, that the new board would be represented equally from both organisations. However, they made it very clear that trust would not impede the due diligence governance process, that the DDGP would in fact enhance that trust, but also that the trust both boards have in the current CEOs would create efficiencies in the new CEO recruitment process which would not go to the marketplace.

This was met with much discussion by all parties. It was discussed that the CEO position should be tendered to the marketplace so that the new organization would be seen as transparent in its recruitment for the larger entity CEO position. It was questioned are we relying too much on existing trust at the expense of due diligence in recruitment. As the organization will effectively be 50% larger than the existing Link Ability organization, would the current CEO have the ability to run the larger

entity? It was decided that a new position description would be written and that both CEOs would be invited to apply and be interviewed, however if they did not have the additional skills needed to run the entity, it would be tendered to the marketplace. This decision allowed the current trust both parties had in their current CEOs to be tested against the new job description for the larger entity. At no point have the current CEO s been guaranteed any employment in the future entity.

The next issue to be discussed was the board structure. To enhance trust between the two entities it was decided that the two entities would have equal representation on the new entity board. The current Chair of Link Ability would remain as Chair, with the current Chair of Trans Connect to take the role of Vice Chair. The other 6 positions would be occupied by 3 current Link Ability independent directors and 3 independent current board members of Trans Connect.

The Board structure of the new Link Ability was decided by the following as shown in table 6:

Table 5: proposed Board Structure

	New Board Structure	Link Ability	Trans Connect
1	Chair	Current Chair	Chair to resign and become Vice Chair Link Ability
2	Vice Chair	Current Vice Chair (researcher) to resign to take up position of Treasurer. New Vice Chair appointed (former Chair of Trans Connect)	Vice Chair to resign and be appointed as independent director 3 of Link Ability
3	Treasurer	Current treasurer to resign due to conflict of interest as CEO of Trans Connect. New Treasure appointed (previous Vice Chair Link Ability)	To resign due to conflict of interest (current CEO of Link Ability).
4	Independent 1	To remain	To resign and become Independent Director 4 of Link Ability
5	Independent 2	To remain	To resign and become Independent Director 5 of Link Ability
6	Independent 3	Currently Vacant To be taken up by Vice Chair of Trans Connect	To resign due to being current employee of Link Ability
7	Independent 4	New Appointment To be taken up by Independent Director 1 from Trans Connect	To resign
8	Independent 5	New Appointment To be taken up by Independent Director 2 from Trans Connect	Currently Vacant

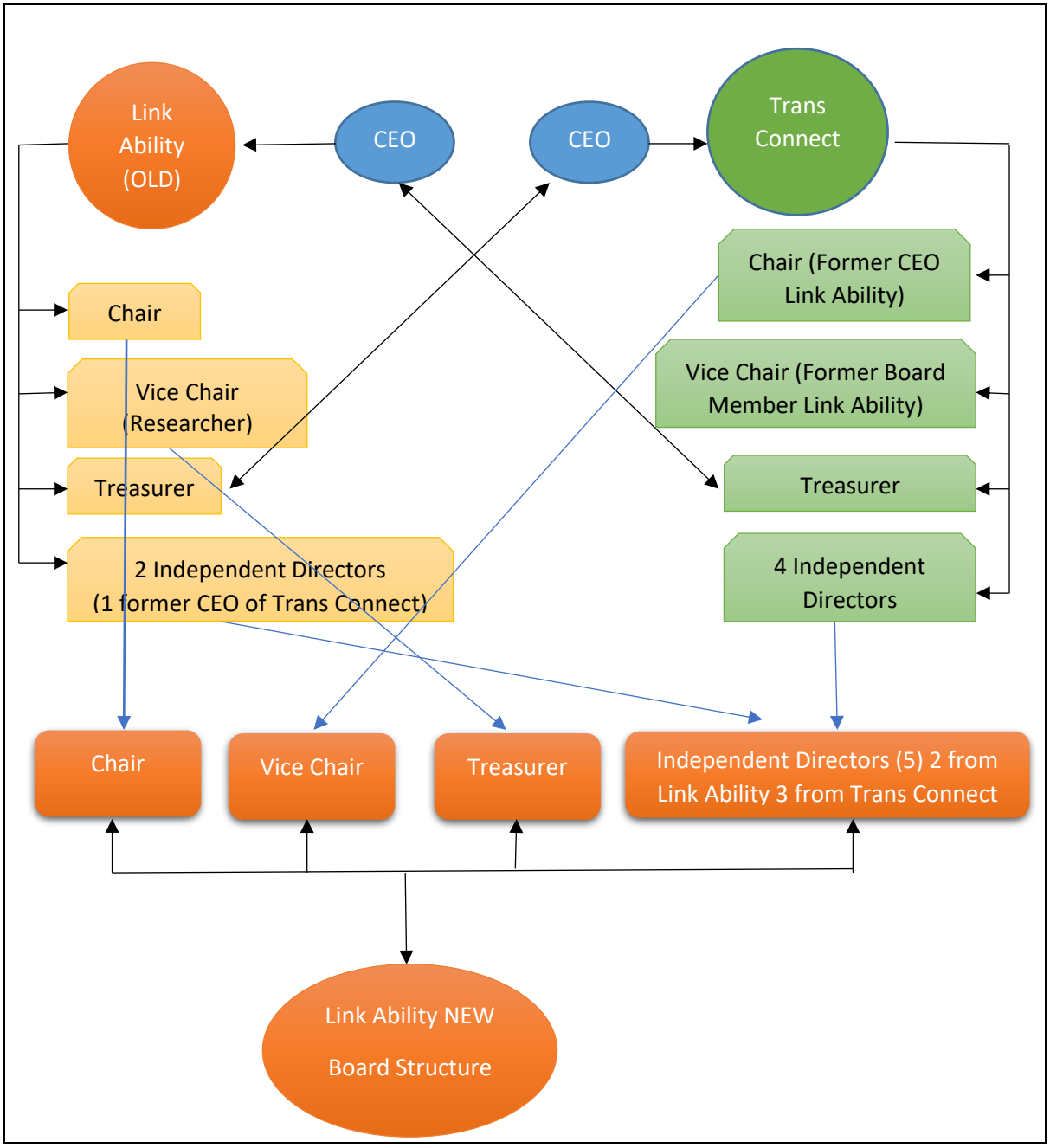
As part of this Board design, it was agreed that the independent directors would be appointed on a skills needed basis, to create a board that would reflect diversity of backgrounds, experience, industry knowledge and qualifications (see figure 6). A board skills audit would be undertaken prior

to the board restructure. This would reduce the risk of a board that is lacking in diversity and skills needed to govern to new larger organization.

Other risk factors identified included:

- Time for planning and resources
- Recruitment of the CEO
- Identification of Board risk appetite
- Organisational structure – potential recruitment of COO for Transport
- Constitutional Changes

Figure 6: Potential Board Structure

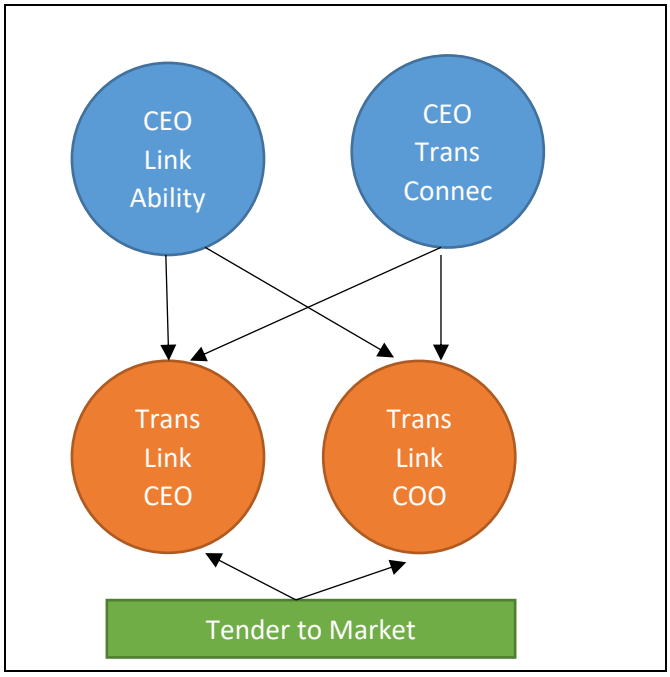


New Position COO

Currently Link Ability has 18 buses and Trans Connect has 36 vehicles. This would mean a total combined fleet of 54 buses and cars for the transport sector of the organization. It was discussed that there would be a need for a Chief Operations Officer (COO), specifically to control the larger fleet of vehicles. Part of the discussions centered on the role of the CEO and potential new role of COO specifically for transport, both roles of which could be considered by the current CEOs of both the organisations (or tendered to the market).

It was decided to create a job description for both the CEO and COO roles, and that both CEOs to be encouraged to apply. Should they not meet criteria set, then positions would then be sent to the market place.

Figure 7: Recruitment of Roles



Finally the two boards discussed what they would like to achieve and pitfalls they think they will need to avoid:

- Undergo proper due diligence
- Clarity of new organisations culture
- Review of processes and integration of technology and systems
- Translating Board decisions into practice
- Understanding of role of Board, CEO and COO
- Implement plans
- Understand critical success factors
- Communicate with stakeholders

With these issues in mind, it was decided to table specific issues and assign specific people the responsibility and timelines for completion as shown in table 7:

Table 6: Due Diligence Governance Processes

Item	Status	Responsible
Adoption of joint strategic plan	Individual adoption by Link Ability board and Trans Connect	Chairs
Due Diligence	Checklist has been provided to CEOs by AAF	CEOs
Budget and Forecast	Base line budget figures to be provided to AAF to build initial budget and 5 year forecast	CEOs
Structure (register new company if necessary)	Quotes for advice on the appropriate structure are being obtained from both a legal perspective and financial perspective	CEOs
Systems Alignment	Review how to align and automate procedures, software and chart of accounts.	Treasurer Trans Connect
Board Structure	Agreement to be made as to the structure of the boards including size, composition, and adoption of skills based board concept and office holders.	Chairs
Constitution	Board to review current constitution and recommend any changes to be requested for new entity.	Chairs
CEO Recruitment	Appoint CEO	Chairs and Board
Entity Name	Agreement to be made as to the entity name and any trading names.	New Board
Monthly Meetings	Timetable to be distributed	CEOs
Organisational structure (internal)	Prepare organisational chart	CEO and Senior Management
Other Systems	Design policies and procedures (disability and aged care quality system compliance need to be considered)	Senior Executives
Marketing and Communications Plan	Develop and roll out a communications Plan which incorporates internal and external stakeholders and a marketing plan for launch of the new entity	CEOs
Premises	Prepare options for Board consideration in regards to shared space	CEOs

At this stage there is much to do in terms of the due diligence governance processes ahead, but both entities agree that trust only gets the two entities to a certain point in terms of negotiations, and that the DDGP are then used to enhance that trust by reviewing all risks, opportunities and challenges that lay ahead for the new entity. So far the “big” decisions have been made:

- Link Ability to “acquire” Trans Connect
- Link Ability to extend Board membership to equal representation by both entities
- Chair of Link Ability to remain as chair, and new Vice Chair be appointed from the Chair position of Trans Connect

- CEO and COO roles to be clarified and recruited from current CEO's if possible, otherwise from the marketplace
- Completion of DDGP

The timeline for the proposed acquisition since its inception has been as follows:

Table 7: Initial Timeline

Date	Event	Outcome
19 Jul 2018	Introductory meeting of 2 boards	Signing of Non-Binding MOU
21 Nov 2018	Joint Board Meeting held	Agreement to engage Accounting Firm to provide due diligence services
17 Dec 2018	Joint Strategic Planning Day at Ourimbah	Preparation of draft strategic plan
19 Dec 2018	Formal notice submitted to authorities outlining the intention to merge	NDIS and Transport NSW Information
14 Jan 2019	Mergers and Acquisition Training	AICD Board knowledge

In summary, in the last 8 months the discussions from proposal to specific decisions has taken time, money and a lot of discussion. Trust between both Boards has been pivotal to the success so far of the acquisition process. Trust in particular of the Board of the smaller entity (Trans Connect), knowing that they will lose their position on the current board, and are not guaranteed a position on the new board due to the skills audit for the new Board. Trust is also exhibited by both CEOs who believe in the greater good of the process at the potential expense of their own current CEO positions. The fact that part of their current job is to make recommendations on the future organizational structure of an entity which could in turn cost them their jobs is a demonstration of their professionalism and their belief in the greater good of the organization. To reiterate from the literature review, according to Buckley et al (2012, p7) "a merger is one of the most challenging steps a voluntary organization can make…..and *can* lead to permanent and irreversible change". Watch this space…….

References

ACNC (2016) “Merge my Charity” https://www.acnc.gov.au/ date accessed 20/01/19

ACNC (2018) Home page, https://www.acnc.gov.au/ date accessed 20/01/19

Australian Bureau of Statistics, (2016) “4430.0 – Disability, Ageing & Carers Australia: Summary of findings, 2015”.

Australian Institute of Company Directors (2016) “NFP Governance and Performance Study”.

Boylorn, R. (2008). Lived experience. In L. Given (Ed.), The Sage Encyclopedia of Qualitative Research Methods (pp. 490-491). Thousand Oaks, CA: SAGE. doi:http://dx.doi.org/10.4135/9781412963909.n250

Buckley,E., et al (2012) “thinking about…..merger”, *Institute for Voluntary Action Research,* May, London, p7.

La Piana,D., and Hayes,M., (2005) “M & A in the non-profit sector: managing merger negotiations and integration”, *Strategy and Leadership,* Vol 33, No.2 p11-16

National Disability Insurance Agency (2018) Annual Report 2017/2018.

National Disability Insurance Scheme (2017) Annual Report 2016/2017.

Russell ,C., (2009) “The urge to Merge”, Third Sector Magazine, Third Sector, September 2009.

Van Manen, M. (2014). *Phenomenology of practice : Meaning-giving methods in phenomenological research and writing*. Walnut Creek, CA: Left Coast Press.