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**OPERATING AGREEMENT -  
EASY TRANSPORT SCOTLAND ISLAND SERVICE**

**PARTIES**

**MANLY WARRINGAH PITTWATER COMMUNITY TRANSPORT INCORPORATED**

**AND**

**SCOTLAND ISLAND RESIDENTS ASSOCIATION INCORPORATED**

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**AGREEMENT** dated 25<sup>th</sup> June 2015

**PARTIES** **Manly Warringah Pittwater Community Transport Incorporated**  
**ABN 45 293 348 239**  
30 Howard Avenue, Dee Why NSW 2099  
(**"MWPCT"**)

**AND** **Scotland Island Residents' Association Incorporated**  
**ABN 19 163 341 913**  
PO Box 70, Church Point, NSW 2105  
(**"SIRA"**)

## **INTRODUCTION**

MWPCT, trading as Easy Transport, is an incorporated association which provides Community Transport Services to the residents of Manly, Warringah and Pittwater.

SIRA is an incorporated association which provides a range of services to the residents of Scotland Island, including a Community Vehicle Service which is funded through the Community Transport Program ("CTP") managed by Transport for NSW.

Due to the increasing compliance requirements for the continuation of CTP funding, SIRA has requested, and MWPCT has agreed, that MWPCT become the Service Provider as defined under the Community Transport Funding Contract whereby CTP funds are received and the terms and conditions of that contract are met for the Scotland Island Community Vehicle Service.

This agreement contains the terms and conditions under which MWPCT will be the Service Provider and SIRA will operate the Service.

## **IT IS AGREED**

### **1 Definitions**

1.1 In this Agreement:

- (a) **"Easy Transport"** is a trading name and registered trade mark of MWPCT;
- (b) **"Easy Transport Scotland Island Service"** means the provision of a transport service for residents of, and visitors to, Scotland Island;
- (c) **"Laws"** means all applicable government legislation, regulations, orders, rules, codes of practice and work standards;
- (d) **"Service"** means the Easy Transport Scotland Island Service;
- (e) **"Volunteer Driver"** means any person authorised by either party to be carrying out voluntary work as a driver on their behalf.

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## **2 Term**

- 2.1 This Agreement will commence on 1 July 2015 and will continue until terminated in accordance with its terms.

## **3 Supply of Motor Vehicle**

- 3.1 MWPCT will supply a motor vehicle ("Vehicle") to the specifications agreed between MWPCT and SIRA.
- 3.2 The first Vehicle to be supplied will be subject to a lease between MWPCT and Pittwater Council.
- 3.3 SIRA is required to operate this Vehicle in accordance with the applicable terms and conditions of this lease, a copy of which will be supplied by MWPCT, and this Agreement.

## **4 Operation of Motor Vehicle**

- 4.1 The Vehicle is to be used only for the provision of the Service.
- 4.2 The Vehicle must not be removed from Scotland Island, other than for repairs, maintenance and inspection, without the prior consent of MWPCT.
- 4.3 The Vehicle must be used only in accordance with the manufacturer's instructions and recommendations.
- 4.4 Any loads carried by the Vehicle are not to exceed the manufacturer's recommended load limits.
- 4.5 SIRA will be responsible for:
- Maintaining possession of the Vehicle
  - Taking proper care of the Vehicle
  - Keeping the Vehicle in good working order and repair, and
  - Complying with the manufacturer's regular servicing requirements as stipulated in the Vehicle's log book.
- 4.6 The Vehicle is to be made available to MWPCT upon reasonable request for inspection.
- 4.7 SIRA will notify MWPCT as soon as practicable of any incident or insurable event involving the Vehicle or its occupants.

## **5 Volunteer Drivers**

- 5.1 SIRA is responsible for the recruitment, training and rostering of Volunteer Drivers.
- 5.2 Only drivers authorised by SIRA may operate the Vehicle.
- 5.3 Volunteer Drivers must comply with the Community Transport Driver Safety Framework which requires drivers to:
- Undergo a National Criminal History record check every three years

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- Maintain a satisfactory driving record to be verified every three years
  - Notify MWPCT if their licence status changes eg if they no longer have a current NSW Drivers' License applicable to the type of Vehicle provided
  - Pass a health assessment, equivalent to bus and taxi drivers, every three years.

5.4 Volunteer Drivers must also have satisfactorily completed a Working With Children Check prior to being authorised to act as Volunteer Drivers.

5.5 MWPCT will hold all records referred to in this section and manage their currency. MWPCT will provide access to SIRA upon request.

5.6 Volunteer Drivers must be familiar with and comply with the contents of the Easy Transport Scotland Island Community Transport Vehicle Operations Manual, a copy of which must be supplied to each driver and an acknowledgement that they have read and understood the same obtained.

5.7 MWPCT will offer Volunteer Drivers the same access to training and social events as offered to MWPCT team members who perform the role of Volunteer Drivers on the mainland.

## **6 Client Fees**

6.1 The fees to be charged to clients will be as listed in the Easy Transport Scotland Island Community Transport Vehicle Operations Manual.

6.2 These fees and the conditions under which they are charged may be adjusted on 30 days' notice with the agreement of MWPCT.

## **7 Financials and Reporting – MWPCT**

7.1 MWPCT will account to Transport for NSW for all funds received and expended for the Service.

7.2 MWPCT undertakes to pay the suppliers directly for the following expenses:

- Payments due under any vehicle lease agreement
- Comprehensive insurance for the Vehicle

MWPCT undertakes to pay for the following once approved for payment by SIRA:

- Fuel and oil
- Lighterage
- Vehicle cleaning
- One mobile phone

Note: this list is not exhaustive.

7.3 MWPCT will pay monthly invoices correctly rendered by SIRA within 14 days of receipt.

7.4 Quarterly in arrears, MWPCT will provide an income and expenditure statement showing quarterly and year to date actual and budget results for the Service.

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## **8 Financials and Reporting - SIRA**

- 8.1 Annually in advance MWPCT will provide SIRA with a budget for the forthcoming year.
- 8.2 For all expenditure identified in the budget as being the responsibility of SIRA, SIRA will pay the expense and claim reimbursement from MWPCT.
- 8.3 The budget will provide a total annual amount which SIRA may claim as reimbursement and the applicable categories of expenditure. For flexibility SIRA may incur expenditure in these or other categories as it sees fit provided the total annual amount is not exceeded.
- 8.4 If SIRA is likely to incur expenditure which will exceed the budget it must obtain prior approval from MWPCT.
- 8.5 Monthly in arrears SIRA will provide a GST compliant invoice to MWPCT in a format agreed by MWPCT detailing:
- Trip numbers as defined by MWPCT
  - Passenger contributions
  - Payments to volunteer drivers
  - Expenditure to be reimbursed showing payee, purpose and amount.
  - Such other information as MWPCT reasonably requests.
- 8.6 SIRA will retain supporting documentation for the items listed on the monthly invoice and provide it to MWPCT upon request.

## **9 Insurance**

- 9.1 MWPCT shall, at its own cost, prior to providing the Service and at all times during the Term maintain the following insurances:
- (a) Voluntary Workers Personal Accident for a death and capital benefits sum insured of at least \$50,000,
  - (b) Public Liability covering personal injury, death and damage to or destruction of property for at least \$20 million in respect of each occurrence and in the aggregate for any period of insurance, and
  - (c) Comprehensive Motor Vehicle Insurance for the Vehicle.
- 9.2 MWPCT shall provide certificates of insurance upon reasonable request of SIRA.

## **10 Recognition – Branding, Promotion, Media**

- 10.1 All promotional and other material related to the Service shall acknowledge MWPCT as the Service Provider through reference to MWPCT or Easy Transport, and be approved by the General Manager, MWPCT.
- 10.2 The Vehicle shall display signage approved by the General Manager, MWPCT referencing MWPCT and /or Easy Transport.

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10.3 All media contact and promotion regarding the Service is to be handled by the General Manager, MWPCT only.

## **11 Warranty by SIRA**

11.1 SIRA expressly represents, warrants and agrees that:

- (a) It has the legal authority to enter into this Agreement;
- (b) the Service will be carried out in a safe and workmanlike manner with all due care and skill;
- (c) it will comply with all Laws applicable to its supply of the Service including those concerning health and safety;
- (d) it will comply with the terms and conditions of the lease agreement entered into by MWPCT with Pittwater Council for the supply of the Vehicle, as they apply to the Service supplied by SIRA, and as notified by MWPCT;
- (e) it will comply with the terms and conditions of the Community Transport Funding Contract between Transport for NSW and MWPCT( a copy of which is available on request) which includes funding for the Service, as they apply to the Service supplied by SIRA, and as notified by MWPCT;.
- (f) It will not knowingly take any action which could void the insurance coverage of the Vehicle;
- (g) It will not hold itself out as having the authority to bind MWPCT in any way.
- (h) It will not charge, sell or otherwise encumber the Vehicle in any way.

## **12 Warranty by MWPCT**

12.1 MWPCT expressly represents, warrants and agrees that:

- (a) It has the legal authority to enter into this Agreement;
- (b) it will comply with the terms and conditions of the lease agreement entered into with Pittwater Council for the supply of the Vehicle,
- (c) it will comply with the terms and conditions of the Community Transport Funding Contract with Transport for NSW which includes funding for the Service;.
- (d) It recognises the unique nature of the provision of community transport on Scotland Island and will use its best endeavours to support SIRA in the operation of the Service.

## **13 Intellectual Property**

13.1 Intellectual property in all information supplied by either party in relation to the Service remains vested in that party and must not be used or reproduced for any purpose without the prior written approval of that party.

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13.2 Each party agrees to return all such information, where practicable, on termination of this Agreement.

#### **14 Confidential Information**

14.1 Both parties shall keep any confidential information of the other party strictly confidential.

14.2 Neither party may disclose such confidential information to anyone without the written consent of the disclosing party.

14.3 Either party may however, disclose it to its employees, volunteers and contractors who need to know the information in order to perform this Agreement.

14.4 Upon expiration or termination of this Agreement, or upon request of the disclosing party, the receiving party shall destroy or return all confidential information.

#### **15 Dispute Resolution**

15.1 Should a dispute arise in connection with either this Agreement or the performance thereof the parties agree to use their best endeavours to resolve same as quickly and equitably as possible.

15.2 Notice of dispute addressed to the General Manager MWPCT or the Team Leader SIRA shall be provided detailing the subject of the dispute and requiring resolution within 14 days.

15.3 Should the dispute thereafter remain unresolved the parties shall refer the matter to arbitration in accordance with The Institute of Arbitrators and Mediators Australia Arbitration Rules.

15.4 Nothing in the foregoing shall preclude either party from seeking immediate injunctive relief through the courts of New South Wales..

#### **16 Force Majeure**

16.1 If the performance of this Agreement is not possible by reason of force majeure, the affected party shall immediately inform the other. All steps must be taken to overcome such obstacle. However, should the force majeure endure for a period in excess of three months the non-affected party may terminate this Agreement immediately.

16.2 An event of force majeure means any:

- (a) act of God;
- (b) war, riot, insurrection, vandalism or sabotage;
- (c) strike, lockout, ban, limitation of work or other industrial disturbance;
- (d) law, rule or regulation of any government or governmental agency and executive or administrative order or act of general or particular application; and



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- (e) any other occurrence whatsoever which is beyond the control of either party.

## **17 Termination**

17.1 This Agreement may be terminated by either party:

- (a) for material breach of this Agreement by the other party if it fails to correct the breach within 30 days after receiving written notice of the breach;
- (b) immediately if the other party becomes insolvent or makes any assignment for the benefit of creditors, is placed in receivership, reorganization, liquidation or bankruptcy (voluntary or involuntary);
- (c) immediately if any law, regulation or other governmental action changes the relationship or rights created by this Agreement; including cessation of CTP (Community Transport Program) Funding;
- (d) by mutual agreement.

## **18 Notices**

18.1 Any notice connected with this Agreement must be in writing and sent to the addresses provided by the parties. The initial contacts and addresses are contained in Schedule 1. Either party may change its details for service by giving notice to the other.

## **19 Governing Law**

19.1 This Agreement shall be governed by the laws of New South Wales and both parties agree to submit to the non-exclusive jurisdiction of such courts.

## **20 Miscellaneous**

20.1 SIRA may not assign this Agreement or any amounts due hereunder without MWPCT's prior written consent.

20.2 No agency or employee relationship is created by this Agreement. SIRA is and shall remain an independent third party. SIRA may not bind MWPCT in any way.

20.3 Anything in this Agreement found to be illegal, unenforceable or void is severed from it. All other terms remain in force.

20.4 This Agreement, including its Schedule represents the entire agreement and understanding between the parties and supersedes any prior agreement or negotiations.

20.5 This Agreement may be amended by mutual agreement signed by both parties.

**Executed as an agreement.**

Signed for and on behalf of **Manly Warringah Pittwater Community Transport Incorporated** by its authorised representatives :



Signature of authorised representative

Angela Doolan

Name of authorised representative (BLOCK LETTERS)

General Manager

Title

Signed for and on behalf of **Scotland Island Residents' Association Incorporated** by its authorised representatives:



Signature of authorised representative

DAVID HEGARTY

Name of authorised representative (BLOCK LETTERS)

Vice President SINA

Title



Signature of authorised representative

LAWRENCE CROFT

Name of authorised representative (BLOCK LETTERS)

SECRETARY

Title



Signature of authorised representative

CAROL GYE (CASS)

Name of authorised representative (BLOCK LETTERS)

TREASURER

Title

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## SCHEDULE 1

### Contact Details

**Manly Warringah Pittwater Community Transport Incorporated**

30 Howard Avenue, Dee Why NSW 2099

PO Box 701, Dee Why NSW 2099

Attn: Angela Doolan – General Manager

PH: 9919 0704

M: 0416 142 589

[angela.doolan@mwpc.org.au](mailto:angela.doolan@mwpc.org.au)

**Scotland Island Residents' Association Incorporated**

PO Box 70, Church Point, NSW 2105

Attn: Cass Gye

M: 0418 220 107

[cassgye@spin.net.au](mailto:cassgye@spin.net.au)

INTERNAL - FINAL		SCOTLAND ISLAND COMMUNITY TRANSPORT SERVICE									
		2016 FINANCIAL YEAR INCOME AND EXPENDITURE - BUDGET									
	2015	Notes	2016				2016	2015	ACCT RESPONSIBILITY		
	BUDGET						BUDGET	FORECAST	SIRA	MWPCT	
	TOTAL		Q1	Q2	Q3	Q4	TOTAL	TOTAL			
	\$		\$	\$	\$	\$	\$	\$			
	Tfn						Internal	Internal			
<b>INCOME</b>											
CTP Funds	30,677		5,528	5,528	5,528	5,528	22,111	22,111		X	
Passenger Contributions	18,000	Assumed 2016 same as 2015	5,832	6,504	5,280	5,872	23,488	23,488	X		
Membership Subscriptions	2,200										
Interest	300										
<b>Total Income</b>	<b>51,177</b>						<b>45,599</b>	<b>45,599</b>			
<b>EXPENDITURE</b>											
<b>Driver Costs</b>											
Reimbursements	18,000	same as contributions	5,832	6,504	5,280	5,872	23,488	23,488	X		
Concessions			200	200	200	200	800	800	X		
Insurances	1,100						0	906			
	19,100						24,288	25,194			
<b>Vehicle Costs</b>											
Fuel and Oil	3,000		750	750	750	750	3,000	2,730		X	
Insurance	1,500		1,300				1,500	1,287		X	
Lease	9,091	New lease from September 1	750	2,300	2,300	2,300	7,650	5,371		X	
Transport		Lighterage - 3 trips	200		200	200	600	429		X	
Cleaning	1,950	Karine Valleix	315	315	315	315	1,260	1,211		X	
		Other	50	50	50	50	200	217	X		
Repairs & Maint	1,600	Not covered under insurance or warranty					1,000	687		X	
Honorarium (R&M)	500	Steve Valenti @\$125/qtr	125	125	125	125	500	500	X		
	17,641						15,710	12,430			
<b>Telephone</b>	650	Mobile phone	120	120	120	120	480	434		X	
<b>Administration</b>											
Accounting	600					0	600	120		X	
Printing & Stationery	436		50	50	50	50	200	193	X		
CTO Subscription						0	0	150			
Police Checks							312	110		X	
Health Checks							500	353		x	
Honorarium (Coordinator)	500	Graeme Crayford	250	250	250	250	1,000	500	X		
Bookkeeping			180	180	180	180	720	741	x		
Driver Meetings			40	40	40	40	160	134	X		
Other	12,250						500	592	x		
	13,786						3,992	2,892			
<b>Total Expenditure</b>	<b>51,177</b>						<b>44,470</b>	<b>40,950</b>			
<b>NET SURPLUS</b>	<b>0</b>						<b>1,129</b>	<b>4,649</b>			

MWPCT -

LEO LAWRENCE CROFT - SECRETARY

Ayn Dan Angele Doolan General Manager.

SIRA -

CJ CASSEY Treasurer

DD DAVID HECHY JP

TfNSW - FINAL		EASY TRANSPORT SCOTLAND ISLAND SERVICE						
		2016 FINANCIAL YEAR INCOME AND EXPENDITURE - BUDGET						
2015	Notes	2016				2016	2015	
BUDGET						BUDGET	FORECAST	
TOTAL		Q1	Q2	Q3	Q4	TOTAL	TOTAL	
\$		\$	\$	\$	\$	\$	\$	
TfNSW						TfNSW		
<b>INCOME</b>								
CTP Funds	30,677	5,528	5,528	5,528	5,528	22,111	22,111	
Passenger Contributions	18,000	5,832	6,504	5,280	5,872	23,488	23,488	
Membership Subscriptions	2,200							
Interest	300							
<b>Total Income</b>	<b>51,177</b>					<b>45,599</b>	<b>45,599</b>	
<b>EXPENDITURE</b>								
<b>Driver Costs</b>								
Reimbursements	18,000	5,832	6,504	5,280	5,872	23,488	23,488	
Concessions		200	200	200	200	800	800	
Insurances	1,100					0	906	
Training								
	19,100					24,788	25,194	
<b>Vehicle Costs</b>								
Fuel and Oil	3,000	750	750	750	750	3,000	2,730	
Insurance	1,500	1,300				1,500	1,287	
Lease	9,091	750	2,300	2,300	2,300	7,650	5,371	
Transport		200		200	200	600	429	
Cleaning	1,950	315	315	315	315	1,260	1,211	
		50	50	50	50	200	217	
Repairs & Maint	1,600					1,000	687	
Honorarium (R&M)	500	125	125	125	125	500	500	
	17,641					15,710	12,430	
<b>Telephone</b>								
	650	120	120	120	120	480	434	
<b>Administration</b>								
Accounting	600				0	600	120	
Printing & Stationery	436	50	50	50	50	200	193	
CTO Subscription					0	0	150	
Police Checks						312	110	
Health Checks						500	353	
Honorarium (Coordinator)	500	250	250	250	250	1,000	500	
Bookkeeping		180	180	180	180	720	741	
Driver Meetings		40	40	40	40	160	134	
Other	12,250				1,129	1,129	592	
	13,786					4,621	2,892	
<b>Total Expenditure</b>	<b>51,177</b>					<b>45,599</b>	<b>40,950</b>	
<b>NET SURPLUS</b>	<b>0</b>					<b>0</b>	<b>4,649</b>	

MWPCT -

LEGG LAWRENCE CROFT - SECRETARY

Angela Doolan Angela Doolan General Manager

SIRA -

DAVID HEGANIS SIRA VP

OC

CASSIENE

Treasurer

Signature