

# Policy on Non-Complying Shareholders

Adopted:	June 2022
Review:	Annually, or as required
Consultation:	Internally with Staff, Te Runanga o Arowhenua, Canterbury Regional Council
Related Documents:	ALIL Environmental Management Strategy

## 1 Introduction

For Ashburton-Lyndhurst Irrigation Ltd (ALIL) to operate effectively and ensure fair and timely delivery to all, shareholders are required to adhere to all Company Policies and contractual obligations under the Water Supply Agreement (WSA) for irrigated properties and Nutrient Management Agreement (NMA) for associated properties.

## 2 Purpose

The purpose of this policy is to define ALIL's approach to managing shareholder non-compliance, and to outline the consequences of a breach of Company Policy, Environmental Management Strategy (EMS) or WSA/NMA.

## 3 Scope

This policy applies to all ALIL shareholders, and to ALIL team and Board in the implementation of sanctions where necessary.

## 4 Policy Details

### 4.1 Approach to Compliance

ALIL believes that a successful compliance model is fair, reasonable, consistent, and transparent in the process, and that where it is appropriately implemented, shareholders are more likely to make the permanent changes required to consistently perform at a higher standard.

We aim to support shareholders by providing the information, resources and knowledge needed to ensure voluntary compliance with the terms of their WSA/NMA, the EMS and other Company Policies.

### 4.2 Breach of Water Supply Agreement

There may be instances where shareholders fail to take the steps necessary to meet the requirements of their WSA/NMA, the EMS or other Company Policies, which may result in a breach of terms of the WSA/NMA and jeopardise the secure delivery of water.

Where a breach has been identified, Clause 19 of the WSA (irrigated properties) or Clause 12 and 13 of the NMA can be initiated, permitting ALIL to temporarily reduce

the amount of water provided, prohibit a take, or forfeit a shareholder's shares (irrigated properties) or implement breach obligations under the NMA (associated properties).

Educational processes and support will be undertaken prior to the initiation of any formal response to a breach of the WSA/NMA.

### **4.3 Charges Incurred**

Where ALIL takes action as a result of a breach to the WSA/NMA, the shareholder is still liable for all charges in accordance with Clause 19.1 and 19.2 of the WSA or Clause 12 and 13 of the NMA.

### **4.4 Consideration of Historical Breaches of Water Agreement**

In determining whether to take any action under this policy, ALIL will take into account any notice of a breach of the WSA/NMA within the preceding three years, unless the property has been sold during this time and is under new management (subject to section 4.5 below).

### **4.5 Changes in Property Ownership**

Non-compliant shareholders actions are likely to be material information on sale and purchase of land and should be disclosed by the vendor to the purchaser as part of the purchaser's due diligence and failure to do so may breach warranties provided under the sale and purchase agreement. Due to privacy issues, ALIL is generally unable to disclose this information to third parties without the existing shareholders permission.

Where land that is currently subject to non-compliant shareholder actions, has been sold or transferred to another entity, the new owners of the shareholding will be advised of any historical breaches of the WSA and are expected to address the issues within the timeframes set out in any existing FEP, FEP Audit or any Corrective Action Request issued to the property. Where ALIL identifies the new owner subsequently breaching the WSA/NMA, ALIL may use its discretion in its enforcement decisions under this policy to have regard to the history of the property.

### **4.6 Non-compliance Levels**

ALIL have created four possible levels of actions for breaches of the WSA/NMA (as shown in Figure 1 & 2), which the consequences of these breaches ranging from a verbal warning (Non-compliance 1) to cancellation of the WSA/NMA and the forfeiture of shares or removal of the property from the discharge consent (Non-compliance 4).

Non-compliance 1	· Explanation to scheme management
Non-compliance 2	· Formal warning
Non-compliance 3	· Action Plan
Non-compliance 4	· Activation of Clause 19 of the WSA

*Figure 1: Non-compliance Levels (Irrigated Properties)*

Non-compliance 1	· Explanation to scheme management
Non-compliance 2	· Formal warning
Non-compliance 3	· Action Plan
Non-compliance 4	· Expulsion from ASM and ECan notification

*Figure 2: Non-compliance Levels (Associated Properties)*

Where ALIL, a member of the public or associated contractors identify potential non-compliances such as:

- Irrigators irrigating the road
- Dairy effluent ponding
- Failure to address FEP actions in a timely manner
- Other issues

ALIL will register the information in the Complaints Register. Where possible the following information will be recorded:

- Date, time, and precise location of the event (sufficient to identify the shareholder and particular machine)
- Date and time ALIL was notified of the event
- Take photographs and/or GPS co-ordinates
- What was seen
- Details of the complainant (to be kept confidential)

ALIL will notify the FEP Implementer and/or the shareholder of the necessary details of the complaint, advise the action required and record any responses.

The information and follow up from the complaint will be stored on the shareholder's FEP Folder and be provided to the FEP Auditor at the next audit for follow up.

#### **4.6.1 Verbal warning – Non-compliance 1 (Irrigated & Associated Properties)**

Prior to any formal action being taken against a shareholder for failing to meet their obligations, they will be verbally advised by ALIL staff of their requirements, when these requirements are expected to be completed and potential consequences should any timeframes fail to be met.

Records of all verbal warnings will be held on the shareholder's file and referred to if further action is deemed necessary.

If there are more than three verified complaints within an irrigation season for a similar issue, a formal written warning will be issued.

#### **4.6.2 Formal Written Warning – Non-compliance 2 (Irrigated & Associated Properties)**

A formal written warning will be issued for Non-compliance 2 offences and will provide 20 working days' notice to remedy the breach.

In each case the shareholder will be advised of the actions they must take and a reasonable timeframe for completion. Each formal warning will detail steps ALIL will take if the issue is not rectified within the specified timeframes.

#### **4.6.3 Action Plan – Non-compliance 3 (Irrigated & Associated Properties)**

The action plan will take effect if the shareholder remains in breach 20 working days (or such shorter time as may be imposed on ALIL by a regulatory body) after being served written notice of the breach.

For irrigated properties the action plan may involve a Cease Water Notice and will apply for different periods of time depending on the seriousness of the offence requiring action by ALIL. The levels and amount of time for which water supply will cease are:

- 24 hours
- 7 days
- 14 days
- 30 days
- Remainder of irrigation season

Where a Cease Water Notice comes into effect during total low flow restrictions, the cease water notice takes effect on the first day low flow restrictions are lifted, and the shareholder is able to take water.

If the breach occurs during the winter season the water will be turned off for the time specified in the Cease Water Notice at the commencement of the following season (provided that the shareholder has first had twenty working days' notice to remedy the breach).

When a shareholder is issued a 30 day or remainder of irrigation season offence notice, they will be required to explain the reasons for the breach(s) and their proposed actions to rectify the issue to the ALIL Board.

For Associated Properties the action plan may involve removal of the property from Schedule A of ALIL's discharge consent either permanently or until such time as the breaches have been rectified.

#### 4.6.4 Activation of Clause 19 of the WSA – Non-compliance 4 (Irrigated Properties only)

Clause 19 of the Water Supply Agreement (WSA) can be initiated where there is a breach, the clause permits the scheme to reduce water supply, temporarily or permanently stop a take or forfeit a customer's shares.

If the ALIL team determines the continued breaches of the WSA cannot be remedied, and such breaches have continued for at least 60 working days after the shareholder was first served written notice of a breach, it will be recommended to the Board of ALIL that the shareholder's WSA is cancelled, and shares surrendered at nominal value.

If a shareholder is excluded from the scheme, ALIL will formally notify Te Rūnanga o Arowhenua and the Environment Canterbury Monitoring and Compliance Manager within 20 working days of the exclusion taking effect.

#### 4.6.5 Expulsion from ASM and ECAN notification (Associated Properties only)

Clause 13 of the NMA can be initiated where there is a breach, and the property will be removed from Schedule A of ALIL's discharge consent.

If a shareholder is excluded from the scheme, ALIL will formally notify Te Rūnanga o Arowhenua and the Environment Canterbury Monitoring and Compliance Manager within 20 working days of the exclusion taking effect.

#### 4.7 Exceptional Circumstances

In the event a shareholder or farmer notifies ALIL of exceptional circumstances which have led to a breach of the WSA/NMA, ALIL may use its discretion when deciding whether to issue any of the above notices or follow any of the procedures described in this policy. Exceptional circumstances may include, but are not limited to:

- Death of a shareholder or a member of a shareholder's family
- Hospitalisation of a shareholder or a member of a shareholder's family
- Significant personal events
- Other relevant events

ALIL will keep a record where exceptions have been made and relevant actions taken. Such application of exceptional circumstances shall not be considered to set a precedent for other shareholders.

#### Sign-Off and Revisions:

Revision Chronology					
Rev	Revision Status	Date	Preparer	Checked	Approved
1	<i>Development of EMS</i>	06/22	Various	RW	Board